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OF THE COLONY OF THE CAPE OF GOOD HOPE.

STATUTES

OF THE

CAPE OF GOOD HOPE, 1652—1895.

EDITED BY

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PARLIAMENTARY REPRESENTATION.

By the Promulgation, on the 11th November, 1895, of the British Bechuanaland Annexation Act, No. 41, 1895, the number of members of the Legislative Council has been increased to 23, and that of the House of Assembly to 79.

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No. 1—1872.]

[Nov. 28, 1872.]

ACT

To Amend the Ordinance enacted on the 3rd of April, 1852, by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled "An Ordinance for Constituting a Parliament for the said Colony."

WHEREAS it is expedient, in order to the introduction of the system of executive administration, commonly called Responsible Government, to amend in certain respects the Ordinance enacted on the third day of April, in the year 1852, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled "An Ordinance for Constituting a Parliament for the said Colony": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. From and after taking effect of this Act, there shall be in this Colony a certain office to be called the office of "Commissioner of Public Works." ⁽¹⁾ Commissioner of Public Works.

2. The persons to hold the said offices respectively shall be appointed by Her Majesty the Queen, and shall hold office during Her Majesty's pleasure, and shall be charged with such duties as Her Majesty shall from time to time assign to them. Appointments to be made by Her Majesty, and to be held during pleasure.

3. The following persons holding offices of profit under Her Majesty the Queen shall be eligible, if otherwise duly qualified under the provisions of the Ordinance aforesaid, to be elected as members of the Legislative Council or of the House of Assembly, anything in the thirty-third and forty-seventh sections of the Ordinance aforesaid to the contrary notwithstanding, that is to say, —the Colonial Secretary, the Treasurer ⁽¹⁾, the Attorney-General, the Commissioner of Public Works: Provided, always, that it shall be lawful to appoint to any such office as aforesaid any person being already at the time of such appointment a member of the said Council or of the said Assembly. Persons holding certain offices of profit under Her Majesty, eligible to election as members of Legislative Council or House of Assembly.

4. It shall be lawful for any person holding any of the offices ⁽²⁾ in the third section of this Act mentioned, and being likewise a member of either the Legislative Council or of the House of Such officers, being members of either Council or Assembly, to have rights of debate in either.

¹ Printed as amended by Act 14, 1893, which creates the office of "Secretary for Agriculture," and may be held by the Prime Minister. The office of "Secretary for Native Affairs" is abolished and his duties shall be discharged by the Prime Minister or any other Minister to whom the Governor may assign the same.

² Prime Minister included in this section although he does not hold one of the offices referred to.—§ 8, Act 14, 1893. See also § 3.

No. 1—1872.

Assembly, to sit and take part in any debate or discussion which may arise in the House whereof he does not happen to be a member, subject, nevertheless, to any such standing rules and orders, as are in the seventy-eighth section of the Ordinance aforesaid mentioned; but it shall not be lawful for any such officer to vote on any proceeding in such House whereof he shall not be a member.

But no. right to vote in House whereof they shall not be members.

Section 79 of Constitution Ordinance repealed.

Pensions of present Executive officers secured.

5. From and after the taking effect of this Act, the seventy-ninth section of the Ordinance aforesaid shall be, and the same is hereby repealed.

6. In the event of the retirement from office on political grounds after the taking effect of this Act of Richard Southey, Esq., Colonial Secretary, James Christopher Davidson, Esq., Treasurer of the Colony, and William Downes Griffith, Esq., Her Majesty's Attorney-General for the Colony, or any of them, the said officers, respectively shall be and are hereby declared to be entitled to demand and receive from and out of the public revenue of the Colony such pension or retiring allowance as Her Majesty the Queen shall, through one of Her Principal Secretaries of State, fix and determine: Provided that, if after the assignment of any such pension or retiring allowance, any such officer shall accept any new appointment under the Crown in this Colony, or elsewhere, his pension or retiring allowance shall, during the tenure of such appointment, merge, or be reduced *pro tanto*, according as the salary or emolument of any such appointment shall be equal to or less than the pension or retiring allowance of such officer.

Pensions to merge, or be reduced on reappointment to office.

Such officers not entitled to pension.

7. [Repealed by Act 32 of 1879.]

8. None of the officers in the last preceding section mentioned shall, upon ceasing to hold office, be entitled to claim or receive any pension or retiring allowance.

Commencement of Act.

9. This Act shall commence and take effect when and so soon as the Governor shall by proclamation ⁽¹⁾ declare that Her Majesty has been pleased to allow and confirm the same.

Short title.

10. This Act may be cited for all purposes as "The Constitution Ordinance Amendment Act, 1872."

No. 2—1872.]

[July 31, 1872.]

An Act to Repeal Act No. 25, 1868, commonly called the Contagious Diseases Prevention Act.

[Not printed.]

¹ Proc. in Gazette 29th November, 1872.

No. 3—1872.]

[July 31, 1872.

ACT

To Alter the Limits of the Division of Wodehouse.

WHEREAS it is expedient to alter and amend the limits of the Fiscal Division of Wodehouse, and to make them correspond with the boundaries of the judicial ⁽¹⁾ district of Wodehouse: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of the provisions of the first section of Act No. 6 of 1871 as is repugnant to the provisions of this Act is hereby repealed.

Repugnant provisions of section 1 of Act No. 6 of 1871 repealed.

2. From and after the promulgation of this Act the boundaries of the Fiscal Division of Wodehouse shall be the boundaries in the schedule to this Act set forth.

Boundaries of Division of Wodehouse.

SCHEDULE.

Boundaries of the Division of Wodehouse.

A line from the highest point of Saltpetre Berg along the western boundary of the Farms Penhoek, Nooitgedacht, Crown land between Nooitgedacht and Klipplaat, Klipplaat, Strydfontein, and Leeuwe Kraal, the north-western boundary of the farms Wolfefontein, Spitskop, Uitkijk, Klipfontein, Rietfontein, and Vaalbank, the north-eastern boundary of Pretorius Kraal, the northern boundary of Driefontein to the Holle Spruit, thence along the Holle Spruit to its junction with the Kraai River, along the Kraai River to the Farm Upper Drumbo (Police Reserve), along the western boundary of the Field-cornetcy Highlands, including the farms Glencoe and Reed's Dell, to the Colonial boundary, thence along the eastern boundary of the Colony to the eastern boundary of the farm Geli or Nageli, thence along the top of the range of mountains forming the eastern boundaries of the farms granted to Sam Segeni and Malgas Songa; thence continuing along the summit of the same range westwards to the Cacado Poort; thence straight to the Shaba Intjeko range; thence along the top of that range, and crossing the Intjeko Neck, to the nearest beacon of the farm granted to Jantje Umleba; thence passing along the western boundary of that farm to the nearest summit of the Mount Arthur range; thence along the top of that range to the summit of Mount Arthur; thence along the top of the watershed leading to the Kabousie mountain, to the highest point of that mountain; thence direct to the highest point of the Gonyana mountain; thence passing along the Vaalbank Ridge to the Tjneni Mountain; thence

Schedule.

¹ Boundaries altered for judicial purposes by Proclamation No. 300, 1894. in Gazette of 31st August, 1894.

No. 6—1872.

along the top of the Tjneni range to the easternmost beacon of the farm Weltevreden: thence along the north-eastern boundary of and excluding that farm; thence along the boundaries of and excluding the farms Dwaalfontein, Vaalkrantz, Wenfontein, Naudesfontein, Kloppersfontein, Rietkuil, and Gretna, to the highest point of Saltpetre Berg.

No. 4—1872.]

[July 31, 1872.

An Act to Amend the Act 11 of 1863, so far as the same relates to the Transfer Duty payable on the Purchase of Immovable Property.

[Repealed by Act 5, 1884.]

No. 5—1872.]

[July 31, 1872.

An Act to Authorise the Port Elizabeth and Uitenhage Railway Company (Limited) to deviate from and extend the Line of Railway authorised by Act No. 8 of 1871, "The Port Elizabeth and Uitenhage Railway Company (Limited) Act, 1871."

[Lapsed.]

No. 6—1872.]

[July 31, 1872.

ACT

To Amend the Act No. 3, 1865, entitled "An Act to make provision for the Incorporation of British Kaffraria with the Colony of the Cape of Good Hope, and to increase the number of the Members of both Houses of Parliament of the said Colony," and to remove the existing Disqualification of certain Persons, otherwise well qualified, from being admitted Attorneys of the Supreme Court.

Preamble.

WHEREAS by the sixth section of Act No. 3, 1865, entitled "An Act to make provision for the Incorporation of British Kaffraria with the Colony of the Cape of Good Hope, and to increase the number of Members of both Houses of Parliament of the said

Colony," the Supreme Court of British Kaffraria, existing at the time of such incorporation, was abolished: And whereas by the eighth section of the aforesaid Act, it is provided that every advocate admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled after such incorporation, upon proof of such admission and enrolment, to be admitted and enrolled as an advocate in the Supreme Court and in the Court of the Eastern Districts, without the payment of any fee or charge; and that all attorneys admitted and enrolled in the Supreme Court of British Kaffraria shall be entitled after such incorporation, upon proof of such admission and enrolment, to be admitted and enrolled as attorneys of the Court of the Eastern Districts, without the payment of any fee or charge: And whereas the ninth section of the said Act provides that no person admitted and enrolled as an attorney of the Court of the Eastern Districts under and by virtue of the eighth section of the said Act shall be entitled, by reason of such admission and enrolment, to be admitted and enrolled as an attorney of the Supreme Court: And whereas it is expedient to repeal the ninth section of the aforesaid Act, and to make other provisions in lieu thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The ninth section of the aforesaid Act No. 3, 1865, is hereby repealed.

Section 9 of Act No. 3 of 1865 repealed.

2. Every person admitted and enrolled as an attorney of the Court of the Eastern Districts of the Cape of Good Hope, under and by virtue of the eighth section of the aforesaid Act No. 3, 1865, shall, upon proof of such admission and enrolment, be entitled to be admitted and enrolled an attorney of the Supreme Court of the Colony of the Cape of Good Hope, without the payment of any fee or charge.

Attorneys of Eastern Districts Court entitled to enrolment in Supreme Court.

3. Service rendered before the taking effect of this Act under articles by any clerk to any attorney of the Court of the Eastern Districts admitted as such under and by virtue of the said eighth section of said Act 3 of 1865, shall, for the purpose of entitling the articulated clerk so serving to be admitted and enrolled as an attorney of the said Supreme Court, be reckoned as if the attorney to whom such service was rendered had been, when the articles were executed, and thereafter, an attorney of the said Supreme Court; provided that in case the attorney to whom such clerk shall have been articulated shall be admitted and enrolled as an attorney of the said Supreme Court within three months next after the taking effect of this Act, such service shall be deemed and taken to have been unbroken, and shall be reckoned continuously from the first commencement thereof.

Service of articulated clerks, how to be reckoned.

No. 7—1872.]

[July 31, 1872.

ACT

To Constitute the Division of Wodehouse an Electoral Division.

Preamble.

WHEREAS it is expedient that the Fiscal Division of Wodehouse should be constituted an Electoral Division, and be entitled to send two members to the House of Assembly of the Cape of Good Hope: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the Ordinance enacted on the 3rd day of April in the year 1852, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled “An Ordinance for Constituting a Parliament for the said Colony,” so much of the Act No. 3, 1865, intituled the “British Kaffraria Incorporation and Parliamentary Representation Amendment Act of 1865,” and so much of the Act No. 6, 1871, intituled “An Act to Erect the District of Wodehouse into a Fiscal Division,” or of any other Law or Ordinance in force in this Colony, as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Wodehouse constituted an electoral division.

2. The Fiscal Division of Wodehouse shall be and the same is hereby constituted an Electoral Division, and shall be entitled from time to time to elect two members of the House of Assembly.

Electoral rights of divisions previously forming part of new electoral division of Wodehouse not affected.

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

Formation of voters' list.

4. Forthwith upon the taking effect of this Act the Civil Commissioners of the divisions of Albert, Aliwal North, and Queen's Town respectively, shall make out and transmit to the Civil Commissioner of the division of Wodehouse a list of all registered voters resident in the said Electoral Division hereby created, and the list so transmitted shall form the list of registered voters for the said division; and the lists of registered voters, from which the said last-mentioned list was taken, as they shall stand respectively, after deduction of the names contained in the list transmitted, shall form the lists of registered voters for the time being of the said Electoral Divisions of Albert, Aliwal North, and Queen's Town.

Election of members.

5. The Electoral Division of Wodehouse shall become entitled to elect members under this Act at the next ensuing general election for members of the House of Assembly, and not sooner.

6. This Act may be cited for all purposes as the “Wodehouse Representation Act, 1872.”

No. 8—1872.
Short title.

No. 8—1872.]

[July 31, 1872.

ACT

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

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

Preamble.

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

Loan authorised.

2. The application of the sum or sums of money to be from time to time raised as aforesaid for the purpose of constructing the said dock shall be entrusted to the commissioners for the time being appointed or to be appointed under the provisions of any Act relating to the management of the docks and breakwater in Table Bay, and such commissioners shall, in respect to such application, have and exercise all the powers conferred upon them by any such Act.

Application of loan.

No. 10—1872.

Declaration on admission to office.

4. Every person who shall be appointed to any office or employment in the service of the Customs shall, on his admission thereto, make the following declaration, that is to say :—

I, A. B., do solemnly declare that I will be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge and inspection in the service of the Customs of the Cape of Good Hope, and that I will not require, take, or receive any fee, perquisite, gratuity or reward, whether pecuniary, or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter, or thing done or performed, or to be done or performed in the execution or discharge of any of the duties of my office or employment on any account whatever, other than my salary, and what is or shall be allowed me by law or by any special order or regulation of the Governor.

Dismissal of officers taking unauthorised fees.

5. If any officer, clerk, or other person acting in any office or employment in or belonging to the Customs in this Colony, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, directly or indirectly, from any person (not being a person duly appointed to some office in the Customs and duly authorised in that behalf) on account of anything done or to be done by him in, or in any way relating to the said office or employment, except such as he shall receive under and by order or permission of the Governor, every such officer so offending shall, on proof thereof to the satisfaction of the Governor, be dismissed from his office; and if any person (not being a person duly appointed to some office in the Customs and duly authorised in that behalf) shall give, offer, or promise to give any such fee, perquisite, gratuity, or reward, such person shall, for every such offence, forfeit the sum of one hundred pounds sterling.

Penalty on person giving fees.

Penalty £100.

Inquiry by collector upon oath.

6. Upon examinations and enquiries made by the Collector or principal officer of the Customs within this Colony or by the principal officer of Customs in charge of any port for ascertaining the truth of facts relative to the Customs, or the conduct of officers or persons employed therein, any person examined before such officer as a witness may be required to deliver his testimony on oath, or by way of solemn declaration, which oath or solemn declaration shall be administered by or taken before such Collector or other principal officer of Customs as shall examine any such witness and who is hereby authorised to administer such oath, and to take such solemn declaration; and if any person shall be convicted of making a false oath or solemn declaration touching any of the facts so testified on oath or solemn declaration, or of giving false evidence on his examination on oath or by solemn declaration before any such Collector or principal officer of Customs, every such person so convicted as aforesaid shall be deemed guilty

of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

No. 10—1872.

7. In all cases wherein proof on oath or by solemn declaration shall be required by any law relating to the Customs, or for the satisfaction or consideration of the Governor, in any matter relating to the Customs, the same may be made before the Collector or other principal officer of the Customs of the port where such proofs shall be required to be made, or before the persons acting for them respectively, and who are hereby authorised and empowered to administer the same.

Officers before whom oath may be taken.

8. It shall be lawful for the Governor from time to time to appoint the hours of general attendance of the respective officers of the Customs at their proper offices and places of employment, and to appoint the times during such hours at which any particular parts of the duties of such officers respectively shall be performed by them.

Hours of attendance.

9. No day shall be kept a public holiday by the Customs except Sundays, Christmas Day, Good Friday, and New Year's Day in every year, and any days proclaimed by the Governor as a general fast or a general thanksgiving, and also such days as shall have been or shall be appointed for the celebration of the birthdays of Her Majesty and of her successors.

Holidays.

10. It shall be lawful for the proper officers of Customs to board any ship arriving at any port in this Colony, or being within one league of the coast thereof, and freely to stay on board until all goods laden therein shall have been duly delivered from the same, and such officers shall have free access to every part of such ship, with power to fasten down hatchways and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board of such ship; and if any place or any box or chest be locked and the keys be withheld, such officers, if they be of a degree superior to tidewaiters, may open any such place, box, or chest, in the best manner in their power, and if any goods liable to duty be found concealed on board of any such ship they shall be forfeited, and if the officer shall place any lock, mark, or seal upon any goods on board, and such lock, mark, or seal be wilfully opened, altered, or broken before due delivery of such goods, or if any such goods be secretly conveyed away, or if the hatchways, after having been fastened down by the officer, be opened, the master of such ship shall forfeit the sum of one hundred pounds sterling.

Boarding and searching of ships.

Penalty, £100.

11. It shall be lawful for the Collector or other principal officer of Customs of any port of this Colony to station any officer or officers on board of any ship while within the limits of such port, and the master of every ship on board of which any officer is so stationed, shall provide according to his means every such officer sufficient accommodation and subsistence in accordance with his rank, and in case of neglect or refusal so to do, shall forfeit the sum of

Stationing of officers on board of ship.

Penalty £20.

- No. 10—1872. twenty pounds sterling; but in the absence of express agreement such master shall not be liable to reimburse the Government for any other expenses incurred.
- Master's name on registry of ship. 12. It shall be lawful for the officers of the Customs at any port in this Colony, to refuse to admit any person to do any act at such port as master of any British ship, unless the name of such person shall be inserted in or have been endorsed upon the certificate of registry of such ship as being the master thereof, or until the name shall have been so endorsed by the proper officer at such port as aforesaid.
- Examination of goods at importer's expense. 13. The unshipping, carrying and landing of such goods, and the bringing of the same to the proper place after landing for examination, or for weighing, or for gauging, and the putting the same into the scales, and the taking the same out of and from the scales after weighing, shall be performed by or at the expense of the importer.
- Prohibitions. 14. No articles of foreign manufacture, nor any packages of such articles bearing any names, brands or marks purporting to be the names, brands or marks of manufacturers resident in the United Kingdom, or any British Possession, and no base or counterfeit coin, and no indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engraving, or any other indecent or obscene articles, shall be imported or brought into this Colony; and it shall be lawful for the Governor, by proclamation, to prohibit the importation of gunpowder, arms, ammunition, or utensils of war from any place or places other than the United Kingdom or some British Possession; and if any of the articles herein enumerated shall be imported or brought in contrary to the provisions hereof, the same shall be forfeited.
- Power of Governor. 15. The ports of Cape Town, Simon's Town, Port Beaufort, Mossel Bay, Port Elizabeth, Port Alfred, and East London, and such other ports within this Colony as may be hereafter declared by the Governor by proclamation for that purpose, shall be free ports,—that is to say, ports into or from which any goods may be imported or exported; and if any goods shall be imported into or exported from any other ports than free ports, except in conformity with the provisions of any Act relating to the Customs, all such goods shall be forfeited.
- Penalty. 16. If any goods, wares, or merchandise liable to the payment of duties of Customs on importation shall be imported by the Crown, or by any party legally entitled to claim exemption from such duties, and shall afterwards be sold by the Crown or by such party in the like condition as when the same were imported, then and in every such case such goods, wares, and merchandise shall be charged with such duties as shall by law be payable on the importation of the same at the time of such sale; and any such goods, wares, or merchandise which shall be sold after having been in use, except in the case of guns, pistols, gun-barrels, pistol-
- Liability to duty of Crown property or of goods legally exempted when subsequently sold.

barrels, and gunpowder, which shall in every case be charged with the duty leviable on such articles on importation, shall be charged with a duty of ten pounds sterling per centum on the amount for which the same shall be sold, in case such rate shall not exceed in amount the duty which would have been payable thereon on the importation thereof: and in case such rate of ten pounds sterling per centum shall exceed such duty, then such goods, wares, or merchandise shall on such sale as aforesaid be charged with the same duties as would be payable on the importation thereof at the time of such sale; and all sales to be held under the provisions of this section shall be made in conformity with such regulations as shall from time to time be made in that behalf by the Governor, with the advice of the Executive Council: and any such goods, wares, or merchandise which may be sold in violation of the provisions hereof, shall be forfeited.

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Regulations for sale.

Penalty.

Weights and measures.

Governor to manage duties.

17. All duties shall, unless otherwise specially provided, be charged, paid, and received on and according to the weights and measures by law established in this Colony; and in all cases where such duties are imposed according to any specific quantity, or any specific value, the same shall be deemed to apply proportionally to any greater or less quantity or value; and all such duties shall be under the management of the Governor.

Duties collected to be paid into Colonial Treasury.

18. The gross produce of the duties received under any law in force in this Colony relating to the Customs shall be paid by the Collector or other principal officer of Customs into the hands of the Treasurer-General of this Colony, or other proper officer authorised to receive the same.

Report at custom-house of ship's arrival within twenty-four hours.

19. The master of every ship arriving at any port or place in this Colony, whether laden, or in ballast, shall, within twenty-four hours after such arrival, and before bulk be broken, come to the Custom-house for the port or place where he arrives, and there make due report in writing, in duplicate, of such ship, and shall make and subscribe a declaration to the truth of the same, before the Collector or other proper officer of Customs at such port, and such report shall contain the particulars of the arrival and voyage of such ship, stating her name, country, and tonnage (and, if British) the port of registry, the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such ship, and whether she be laden or in ballast, and, if she has on board any goods for any port in this Colony, the marks, numbers, and contents of every package and parcel of goods on board, and where the same were laden, and where, and to whom consigned, and where and what goods, if any, had been unladen during the voyage, as also a list of all unconsumed stores on board of such ship, as far as such particulars are known to him; and the master of any ship arriving at any port or place in this Colony without having on board any goods for any port therein, shall, when reporting his ship, deposit at the Custom-

Particulars of report.

List of unconsumed stores.

Deposit of manifest when ship has no goods for port of arrival.

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Master bound to give information required.

Penalty £100.

Report may, in certain cases, be made by agent for ship, instead of by master.

Duty of master when any goods are consigned to ports other than that of arrival.

Penalty.

Entry outwards of ship bound from the Colony.

Penalty £50.

house the manifest or bills of lading of the cargo of such ship (which shall be returned to him when clearing his vessel outwards); and the master shall, at the same time, answer all such questions concerning the ship and cargo, and the crew, passengers, and voyage, as shall be demanded of him by such officer of Customs; and if any goods be unladen from any ship before such report be made, or if the master fail to make such report, or make an untrue report, or do not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling, and if any goods be not reported, such goods shall be forfeited: Provided, however, that if at any port which the Governor shall consider as not sufficiently sheltered, it shall not reasonably be possible for the master, having regard to the nature of his voyage, to present himself in person at the Custom-house, for the purpose of making such report and answering such questions as aforesaid, then, if the agent for the ship or other person duly authorised by the master shall, for and on behalf and at the risk of the master, make such report and answer all such questions as aforesaid, such report may be taken as made and such answers as given by the master under the provisions of this section, and shall be considered in all respects and for all purposes as his report and answers respectively.

20. If any of the goods on board of any ship arriving at any port of this Colony shall be consigned to any other port or ports in the same, the master shall at the time of making report, in manner provided in the preceding section, deliver an extract of such report, describing the goods consigned to the port of arrival; and when such ship shall clear for any such other port, the duplicate of the report made on first arrival shall be returned to the master, enclosed under the proper seal of the proper officer of Customs at such port of arrival, addressed to the proper officer of Customs at such other port as aforesaid: And the master shall deliver the same to the proper officer of Customs at such other port, together with an extract, in duplicate, if so required by such officer, describing the goods consigned to such last mentioned port; and if the master shall fail to make such extract as aforesaid, or shall make an untrue extract, he shall forfeit the sum of one hundred pounds sterling; and if any goods shall be landed at any port, which are not entered in the extract of goods consigned to the same, they shall be forfeited.

21. The master of every ship bound from any port or place in this Colony shall, before any goods be laden therein, deliver to the Collector, or other proper officer of Customs, an entry outwards, under his hand, of the destination of such ship, stating her name, country and tonnage (and, if British) the port of registry, the name and country of the master, the country of the owners, the number of the crew, and how many are of the country of such ship; and if any goods be laden on board of any ship before such entry be made, the master of such ship shall forfeit the sum of

fifty pounds sterling; and before such ship depart the master shall bring and deliver to the Collector or other proper officer of Customs a content, in writing, under his hand, of the goods laden and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages or parcels of the same, together with a victualling bill containing a full account of all stores shipped on board of such vessel from bond, and shall make and subscribe a declaration to the truth of such content and victualling bill as far as any such particulars are known to him; and the master of every ship bound from any port or place in this Colony, whether in ballast or laden, shall, before departure, come before the Collector or other proper officer of Customs, and answer all such questions concerning the ship and the cargo, if any, and the crew, passengers, and voyage, as shall be demanded of him by such officer, and thereupon the Collector or other proper officer of Customs, if such ship be laden, shall make out and give to the master a certificate of the clearance of such ship for her intended voyage, containing an account of the total quantities of the several sorts of goods laden therein, or a certificate of her clearance in ballast, as the case may be; and if the ship shall depart without such clearance, or if the master shall deliver a false content, or shall not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds sterling.

22. Notwithstanding anything in the last foregoing section contained, it shall be lawful for the principal officer of Customs of any port, if it shall be made to appear to him that it is necessary to lade any heavy goods or ballast on board of any ship before the whole of the inward cargo shall have been discharged, to grant a stiffening order for that purpose, prior to the entry outwards of such ship.

23. Except as is hereafter provided, no goods shall be laden or water-borne to be laden on board of any ship, or unladen from any ship in this Colony until due entry shall have been made of such goods, and warrants granted for the lading or unlading of the same, and no goods shall be so laden or water-borne, or so unladen, except at some place at which an officer of Customs is appointed to attend the lading or unlading of such goods, or at some place for which a sufferance shall have been granted by the Collector or other principal officer of Customs of the port for the lading or unlading of such goods, and no goods shall be so laden or unladen, except in the presence or with the permission, in writing, of the proper officer: Provided, however, that before entry be made for the landing of any goods, the same may be landed, for the purpose of facilitating the dispatch of the vessel, by order of the Collector or other principal officer of Customs of the port, within the hours duly appointed for the transaction of business of the Customs and at a duly appointed and approved landing-place; but in every such case the same shall be by the

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Delivery of content to officer of customs, before departure.

Victualling bill.

Certificate of clearance.

Penalty £100.

Stiffening order may be granted previous to entry outwards.

Entry of goods previous to being landed or shipped.

Exception in favour of facilitating dispatch of ship.

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importer thereof, or by the agent of the ship, taken to the Queen's warehouse, and may be there detained until due entry shall have been made thereof, and the duties and charges payable thereon shall have been paid, or the goods duly warehoused, and such charges as may be due thereon paid; and if such entry shall not be duly made, and such duties and charges duly paid, or such goods duly warehoused, and such charges as may be due thereon paid, within the period of three months, then such goods may be sold on account of the owners thereof, and the balance of the proceeds of the sale, if any, after payment of all duties and charges, including expenses of warehouse and sale due in respect thereof, not exceeding, as to warehouse rent, a rent for three months, shall be paid to the owners thereof, and all goods laden or water-borne, or unladen, contrary to the provisions of this Act, unless in conformity with any Act for the regulation of the coasting trade of this Colony, shall be forfeited. ⁽¹⁾

Penalty.

Particulars of bill
of entry.

24. The person entering any goods on behalf of any importer or exporter shall deliver to the Collector or other proper officer of Customs a separate bill of the entry of the goods imported or exported on behalf of each separate importer or exporter; and such bill may be in the form in that behalf, as the case may be, in the first schedule hereto annexed, containing the name of the importer or exporter and of the ship and of the master, and of the place from or to which bound, and of the place within the port where the goods are to be laden or unladen, and the particulars of the quality and quantity of the goods and of the packages containing the same, and the marks and numbers on the packages, and setting forth whether such goods be the produce of the United Kingdom or of any British Possession or not, and shall also, at the same time, deliver such duplicates of such bill, as may be required, not exceeding two, in which all sums and numbers may be expressed in figures; and the particulars to be contained in such bill of entry shall be written and arranged in such form and manner as the Collector or other principal officer of Customs shall require, and such person shall, at the same time, pay down all duties due upon the goods, unless the same shall be entered to be warehoused, and the Collector or other proper officer of Customs shall thereupon grant his warrant for the lading or unlading of such goods.

Entry by bill of
sight.

25. If the importer of any goods, or his agent, shall make and subscribe a declaration before the Collector or other proper officer of Customs that he cannot, for want of full information, make perfect entry thereof, it shall be lawful for the Collector or such other proper officer to receive an entry by bill of sight, which may be in the form in that behalf in the first schedule hereto annexed, for the packages or parcels of such goods by the best description

¹ See Act 26 of 1872, and also § 2 Act 6, 1885.

which can be given, and to grant a warrant thereupon, in order that the same may be landed and secured to the satisfaction of the officer of the Customs, and at the expense of the importer, and may be seen and examined by such importer, or his agent, in the presence of the proper officers; and within three days after the goods shall have been so landed, the importer, or his agent, shall make a perfect entry thereof and pay down all duties due thereon or duly warehouse the same; and in default of such entry, such goods shall be taken to the Queen's warehouse, and if the importer or his agent shall not, within three months after such landing, make perfect entry of such goods, and pay the duties due thereon, or duly warehouse the same, paying at the same time the charges of removal and Queen's warehouse rent, such goods shall be sold for the payment thereof, and the overplus, if any, shall be paid to the proprietor of the goods.

26. (1) In all cases where the duties imposed upon the importation of articles into this Colony are charged, not according to the weight, tale, gauge, or measure, but according to the value thereof, such value shall be ascertained by the declaration of the importer of such articles, or his agent, in the manner and form following, that is to say:

I, A.B., do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is _____

Witness my hand, the — day of ——. A.B.

The above declaration signed the — day of —, in the presence of

C.D., Collector (or other proper officer).

Which declaration shall be written on the bill of entry of such articles and shall be subscribed with the hand of the importer thereof, or of his agent, in the presence of the Collector or other proper officer of the Customs, and the said value, with the addition of five pounds (2) per centum, shall be the sum whereon duty shall be levied: Provided that if, upon view and examination of such articles by the proper officer of the Customs, it shall appear to him that the said articles are not valued according to the current value thereof, at the port whence the same were imported, then and in such case the Collector or other proper officer may, if he deem it fitting so to do, require the importer, or his agent, to declare on oath before him to the truth of the aforesaid declaration, according to the best of the belief of such importer or his agent, and to adduce any documentary evidence he may possess in support

¹ See § 3, Act 6 of 1885, as to what is to be deemed the current value of goods on which *ad valorem* duties are imposed.

² Five pounds substituted for ten by Act 6 of 1885, § 4.

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Documentary evidence.

Examination of goods when customs officer is not satisfied with declared value.

Fines on undervaluation.

Penalty. Transport expenses in United Kingdom not included in valuation.

Proceedings on refusal of importer to pay duty.

thereof: Provided, also, that if it shall appear to the Collector or other proper officer, whether such oath as aforesaid shall have been required or not, that such articles have been declared at a value below the current value thereof at the place from whence the same were imported, the articles shall, in such case, be examined by two competent persons, one to be nominated and appointed by the Governor, and the other by the importer; and such two persons shall, before entering into the enquiry, appoint an umpire, and shall then declare on oath before the Collector or proper officer of Customs, what is the current value of such articles at the port whence the same were imported, and in case such persons shall not agree, then the declaration of such value on oath, as aforesaid, of the umpire shall be final; and if any importer shall fail, within three days from his being required so to do by the proper officer of Customs, to make an appointment as hereinbefore provided, or if no declaration shall be made by the persons appointed, or by the umpire selected by them, within three days from their appointment or selection, then, in any such case, the declaration of the person to be appointed as aforesaid by the Governor shall be final, and the duties shall be charged and paid upon the value as ascertained and declared in conformity therewith, with the addition of five pounds (¹) per centum thereon as aforesaid: Provided, further, that should the value so ascertained and declared under any of the provisions hereinbefore contained for arbitration exceed by fifteen per cent. and not by thirty per cent. the value originally declared by the importer, there shall be payable on such goods double the amount of duty otherwise chargeable thereon, and should the value so ascertained and declared as aforesaid exceed by thirty per cent. and not by sixty per cent. the value originally declared by the importer, then there shall be payable on such goods four times the amount of duty otherwise chargeable thereon, and should the value so ascertained and declared as aforesaid exceed by sixty per cent. or upwards, the value originally declared by the importer, then such goods shall be forfeited: Provided that in regard to such articles as aforesaid as shall be shipped from any port in the United Kingdom, the reasonable costs and charges attending the transport thereof from the place in the United Kingdom, where the same shall have been manufactured or purchased to the port of shipment shall not be reckoned as part of the current value thereof for payment of duty. (²)

27. If the importer of such articles shall refuse to pay the duties imposed thereon under the preceding section, it shall and may be lawful for the Collector or other principal officer of Customs of the port, and he is hereby required, to take and secure the same, with the casks or other packages thereof, and to cause

¹ Five pounds substituted for ten by Act 6 of 1885, § 4.

² But see § 3, Act 6, 1885.

the same to be publicly sold within the space of twenty days at the most after such refusal made, and at such time and place as such officer shall, by four or more days' public notice, appoint for that purpose, which articles shall be sold to the highest bidder; and the money arising from the sale thereof shall be applied, in the first place, in payment of the said duties, together with the charges which shall have been occasioned by the said sale, and all costs and charges of arbitration, and the overplus, if any, shall be paid to such importer, or proprietor, or any other person authorised to receive the same.

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28. Every importer of any goods shall, within fourteen days after the arrival of the importing ship, make due entry inwards of such goods, and land the same; and in default of such entry, it shall be lawful for the officers of Customs to convey such goods to the Queen's warehouse, and if the duties due upon such goods be not paid within three months after such fourteen days shall have expired, together with all charges of removal and warehouse rent, the same shall be sold, and the produce thereof shall be applied, first to the payment of freight and charges, next of duties, and the overplus, if any, shall be paid to the proprietor of the goods, or any person authorised to receive the same.

Entry to be made of goods within fourteen days of ship's arrival.

29. Whenever any goods shall be taken to and secured in any of the Queen's warehouses in this Colony for security of the duties thereon, or to prevent the same coming into home use, it shall be lawful for the Collector or other principal officer of Customs to charge and demand and receive warehouse rent for such goods for all such time as the same shall remain in such warehouse: Provided, always, that it shall be lawful for the Collector of Customs, with the sanction of the Governor, to fix the rates or amount of rent which shall be payable for any goods secured in any of the Queen's warehouses aforesaid.

Rent of Queen's warehouse.

Rate chargeable.

30. If at any time it shall be necessary temporarily to discharge the cargo of any ship arriving at any port in this Colony, in order that such ship may be repaired, it shall be lawful for the master of such ship to place such cargo, during the progress of such repairs, in any convenient store or warehouse, which may for that purpose be to the satisfaction of the Collector or other principal officer of Customs of the port specially and exclusively set apart and secured.

Temporary discharge of distressed vessels.

31. No entry nor any warrant for the landing of any goods or for the taking of any goods out of any warehouse shall be deemed valid unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report of the ship, or in the certificate, or other document, where any is required, by which the importation or entry of such goods is authorised, nor unless the goods shall have been properly described in such entry by the denomination and with the characters and circumstances according to which such goods are charged with duty, or may be imported;

Particulars of goods, in entry.

- No. 10—1872. and any goods taken or delivered out of any ship or out of any warehouse by virtue of any entry or warrant not corresponding or agreeing in all such respects, or not properly describing the same, shall be deemed to be goods landed or taken without due entry thereof, and shall be forfeited: Provided, however, that should the goods so declared to be forfeited be contained in any entry or warrant embracing more than one package, and it shall be shown that the non-correspondence or non-agreement, or improper description as aforesaid arose without any wilful default or neglect of anyone connected with such goods, and that such non-correspondence, or non-agreement, or improper description does not exist as to the whole of the packages in such entry or warrant, only the package or packages not corresponding or agreeing with the particulars of the same hereinbefore mentioned, or not properly described as aforesaid, shall be forfeited.
- Penalty.
- Free warehousing ports. 32. The ports of Cape Town, Simon's Town, Mossel Bay, Port Elizabeth, Port Alfred, and East London, and such other ports within this Colony as may hereafter be declared by the Governor, by proclamation, to be fit for that purpose, shall be "free warehousing ports" for the purpose of any Act relating to the Customs.
- Ports for limited purposes. 33. It shall be lawful for the Governor, with the advice of the Executive Council, by proclamation in the *Government Gazette* to establish ports within this Colony for such particular and limited purposes, and for such periods as shall be specified in such proclamation: And it shall be lawful, in case export only be allowed from any such port, and there shall be no officer of Customs resident thereat, that the export entry of any ship or vessel taking in cargo at such port for export may be passed, and her clearance may be granted at such free port as shall be ordered by the Governor for that purpose, before such ship or vessel shall clear for the port of export aforesaid.
- Bonded warehouses. 34. It shall be lawful for the Collector or other principal officer of Customs, by notice, in writing, under his hand, to appoint, from time to time, such warehouses at any of the free warehousing ports, as shall be approved of by him for the warehousing and securing of goods therein for the purposes of any Act relating to the Customs and also in such notice to declare what sort of goods may be so warehoused, and also, by like notice, to revoke or alter any such appointment or declaration: Provided, always, that every such notice shall be published in the *Government Gazette*.
- Storing of goods in bonded warehouses without payment of duty. 35. It shall be lawful for the importer of any such goods to warehouse the same in the warehouses so appointed without payment of any duty on the first entry thereof, subject, nevertheless, to the rules, regulations, restrictions and conditions hereinafter contained; Provided, always, that any goods warehoused at any warehousing port, may be delivered under the authority of the proper officer of Customs, upon a sufferance granted in that behalf without payment

of duty, except for any deficiency thereof, for the purpose of removal to another warehousing port in this Colony, under bond, to the satisfaction of such officer, for the due arrival and re-warehousing of such goods at such other port.

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36. All goods so warehoused shall be stowed in such parts or divisions of the warehouse and in such manner as the Collector or other principal officer of Customs of the port shall direct, and the warehouse shall be locked and secured in such manner, and shall be opened and visited only at such times and in the presence of such officers, and under such rules and regulations as the Collector or other principal officer of Customs shall direct, and all such goods shall, after being landed upon importation, be carried to the warehouse, or shall, after being taken out of the warehouse for exportation, be carried to be shipped under such rules and regulations as the Collector or other principal officer of Customs shall direct.

Stowage of goods.

Securing and opening of warehouse.

37. Upon the entry of any goods to be warehoused, the importer of such goods, instead of paying down the duties due thereon, shall give bond with one sufficient surety, to be approved of by the Collector or other principal officer of Customs of the port, in double the duties payable on such goods, with condition for the safe depositing of such goods in the warehouse mentioned in such entry, and for the payment of all duties due upon such goods, or for the exportation thereof, or shipment thereof as stores, according to the first account taken of such goods upon the landing of the same, and with further condition that the whole of such goods shall be so cleared from such warehouse and the duties upon any deficiency in the quantity according to such first account shall be paid within five years from the date of the first entry thereof; and with further condition that no part thereof shall be taken out of such warehouse until cleared from thence, upon due entry and payment of duty, or upon due entry for exportation, or for the shipment as stores; and with further condition that if, at end of two years from the date of such bond, the quantity of goods of any particular denomination in respect of which the same shall have been given, still remaining in the warehouse, shall be so reduced that the duties payable on the balance shall not exceed ten pounds sterling, that then such balance shall be cleared from the warehouse, and the duties thereon forthwith paid; and if after such bond shall have been given, the goods, or any part thereof, shall be sold or disposed of, so that the original bonder shall be no longer interested in or have any control over the same, it shall be lawful for the Collector or other principal officer of the port to admit fresh security, to be given by the bond of the new proprietor, or other person having control over such goods, with his sufficient surety, and to cancel the bond given by the original bonder of such goods, or to exonerate him to the extent of the fresh security so given; but nothing in this section contained shall be deemed to invalidate or

Importer to give bond and security in double duties payable.

Stores.

Fresh security on cessation of bonder's interest.

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to alter the condition of any bond given under the law heretofore relating to the Customs of this Colony, but every such bond shall remain in force as if this Act had not been passed.

General bond of proprietor or occupier of bonded warehouse.

38. It shall be lawful for the proprietor or occupier of any bonded warehouse, appointed under authority of this Act, if he be willing to give general security by bond, with two sufficient sureties, to the satisfaction of the Collector or other principal officer of Customs, for the payment of the full duties of importation on all such goods as shall at any time be warehoused therein, or for the due exportation thereof, upon the like terms and conditions with regard to times of payment and clearance of balances as those contained in the bond in the last foregoing section mentioned, and where such general securities shall have been given in respect of any bonded warehouse, it shall not be necessary for the importer to give bond as by the last foregoing section required in respect of the particular goods imported and entered to be warehoused therein; but nothing herein contained shall be deemed to invalidate or to alter the conditions of any bond given under the law heretofore in force with regard to the Customs of this Colony, but every such bond shall remain in force as if this Act had not been passed.

Forfeiture of goods entered to be warehoused if removed without permission

39. If any goods which have been entered to be warehoused shall not be duly carried into and deposited in the warehouse, or shall afterwards be taken out of the warehouse, without due entry and clearance, or having been entered or cleared for exportation, shall not be duly carried and shipped, or shall afterwards be re-landed, except with the permission of the proper officer of the Customs, such goods shall be forfeited.

Account of goods entered to be warehoused to be taken.

40. Upon the entry and landing of any goods to be warehoused, the proper officer of Customs shall take a particular account of the same, and shall, if he see fit, mark the contents on each package, and shall enter the same in a book to be kept for that purpose;

Delivery from warehouse.

and no goods which shall have been so warehoused shall be taken or delivered from the warehouse except upon due entry and under the care of the proper officers for exportation, or upon due entry and payment of duty for home use; and whenever the whole of the goods warehoused under any entry shall be cleared from the warehouse, for home use, or whenever further time shall be granted for any such goods to remain warehoused, an account shall be made out of the quantity upon which the duties have been paid if any and of the quantity exported if any, and of the quantity (to be then ascertained) of the goods still remaining in the warehouse, as the case may be, deducting from the whole the quantity contained in any whole packages, if any, which may have been abandoned for duties; and if upon such account there shall, in either case, appear to be any deficiency of the original quantity, the duty payable upon the amount of such deficiency shall then be paid; except as to the following goods, namely, ale, beer, spirits and wine in wood, and currants, figs, dates, raisins,

Account of goods cleared, &c.

Payment of duty on deficiency.

Exceptions.

unrefined sugar, and tobacco (not being cigars or snuff), the duties whereon, when cleared from the warehouse for home use, shall be charged upon the quantity of such goods, ascertained by weight, measure and quantity, and in case of spirits by the quantity, if not overproof, or by the strength, if overproof, at the time of actual delivery thereof, unless there is reasonable ground to suppose that any portion of the deficiency or difference between the weight, measure, and quantity as above mentioned, ascertained on landing and first examination of such lastmentioned goods and that ascertained at the time of actual delivery, has been caused by illegal or improper means, in which case the proper officer of Customs shall make such allowance only for loss as he may consider justly to have arisen from natural evaporation, or other legitimate cause; in no instance are the allowances to exceed, in the case of ale, beer, spirits and wine, those specified in the second schedule hereto annexed: Provided that nothing in this section contained shall extend or apply to any goods entered and cleared from the warehouse for exportation, as hereinafter in the forty-seventh section of this Act mentioned and provided for.

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Exception.

41. It shall be lawful for the Collector or other principal officer of Customs, under such regulations as he shall see fit, to permit moderate samples to be taken by the importer or his agent of any goods so warehoused without entry and without payment of duty, except as the same shall eventually become payable as on a deficiency of the original quantity.

Samples of warehoused goods.

42. It shall be lawful for the Collector or other principal officer of Customs, under such regulations as he shall see fit, to permit the proprietor or other person having control over the goods so warehoused to sort, separate, and pack and repack any such goods, and to make such lawful alterations therein, or arrangements and assortments thereof as may be necessary for the preservation of such goods or in order to the sale, exportation, or shipment as stores to ships not being then proceeding coastwise, either in original packages, or such other packages as the Collector or other principal officer of Customs may authorise, or in order to other legal disposal of the same, and also to permit any parts of such goods so separated to be destroyed, but without prejudice to the claim for duty upon the remaining quantity of such goods; and, further, to permit, by the admixture of vinegar, or salt, crude, in the proportions shown in the second schedule hereto annexed, with unsound wine, to enable the person entering such wine for home use to receive delivery upon the payment of the duty upon vinegar: Provided, always, that no duty shall be payable upon any goods so destroyed as aforesaid, and that it shall be lawful for any person to abandon any whole packages to the officers of Customs for the duties which would otherwise have been chargeable thereon.

Sorting, repacking, or destroying goods under collector's authority.

Stores.

Admixture of vinegar or salt to unsound wine.

Abandonment of whole packages.

43. All goods warehoused or re-warehoused shall be duly

Clearing of goods in terms of bond.

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cleared, either for exportation or for home consumption, according to the terms of the conditions of the bonds whereunder the same shall have been warehoused or re-warehoused; and if any such goods be not so cleared, it shall be lawful for the Collector or other principal officer of Customs to cause the same to be sold, and the produce shall be applied, first to the payment of the duties, next to warehouse rent and other charges, and the overplus, if any, shall be paid to the proprietor: Provided, always, that it shall be lawful for the Collector or other principal officer of Customs to grant further time for any such goods to remain warehoused if he shall see fit so to do.

Time may be extended.

Export of bonded goods
Bond to be given for double duty or double value.

44. Upon the entry outwards of any goods to be exported from the warehouse, the person entering the same shall give security, by bond, in double the duties of importation on the quantity of such goods, or if such goods are prohibited to be imported for home use, in double the value of such goods, with one sufficient surety, to be approved of by the Collector or other principal officer of Customs of the port of export, that the same shall be landed at the place for which they are entered outwards, or be otherwise accounted for to the satisfaction of such Collector or other principal officer, and the Collector or other principal officer of Customs of the port, should he see fit, may require that a certificate should be produced by the exporter from the proper authorities at the port or place of destination in proof of the actual landing thereof of the goods shipped: Provided, always, that it shall be lawful for any person who shall have duly made entry at any port in this Colony of any goods to be there lodged in the warehouse, and who shall in all other respects have complied with the law respecting the warehousing of such goods to tranship the same for exportation within the limits of the said port into any vessel, without the actual landing thereof on shore, if such person shall in all respects comply with and observe the regulations in the next following section mentioned, or such other regulations and conditions as may be hereafter made or required by the Collector or other principal officer of Customs for effecting any such transhipment.

Transhipment of bonded goods.

Transhipment in bond.

45. In case of the transhipment of goods entered to be warehoused at any of the free warehousing ports of this Colony, the bond required to be given by the thirty-seventh section of this Act upon the entry of the goods shall be dispensed with, and the transhipment allowed to take place under the care and superintendence of the officers of Customs, on due entries inwards and outwards being previously passed for the goods, and bond being entered into for the exportation of the same, in like manner as if they had been actually landed and deposited in the warehouse.

Transhipment of transit goods.

46. Transhipment, within any free warehousing port in this Colony, of goods in transit from any place beyond the limits of this Colony, consigned to any other place beyond the limits of this Colony, shall be deemed to be transhipment of goods entered to be

warehoused at such free warehousing port; but in any such case where the value and contents of any package of such goods are unknown to the persons desiring to tranship the same, the specification of such contents and value in the bills of entry of such goods may be dispensed with, and the bond for the exportation thereof may be given upon such estimated value as the persons so desiring to tranship the same, and the Collector or other principal officer of Customs of the port shall agree to.

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47. No duty shall be charged in respect of any deficiency in goods entered and cleared from the warehouse for exportation unless the officer of Customs have reasonable ground to suppose the deficiency, or any part thereof, has arisen from illegal abstraction; if any goods duly entered for delivery from the warehouse for removal to another port in this Colony, or for exportation, shall be destroyed by unavoidable accident, either in the delivery from the warehouse, or the shipping thereof, the Collector or other principal officer of Customs shall remit the duties due thereon; if goods entered to be warehoused or entered to be delivered from the warehouse, or in the warehouse, the Collector or other principal officer of Customs shall return the duties, if any, paid thereon.

Duty not chargeable on deficiency of goods entered and cleared for exportation.

Or on goods accidentally destroyed.

48. All appointments of warehouses for the warehousing of goods at present in force shall continue in force as if the same had been made under the authority of this Act.

Act to apply to existing bonded warehouses.

49. All goods whatsoever, which now are or may be deposited in any warehouse or place of security, under lawful authority, without payment of duty upon the first importation thereof, or which may be imported and on board of any ship or vessel, shall upon being entered for home consumption, be subject and liable to such and the like duties as may at the time of passing such entry be due and payable upon the like sort of goods under any Act for the time being in force relating to the Customs.

Liability of bonded goods to duty at date of entry.

50. It shall be lawful for the officers of Customs to go on board of any ship in any port in this Colony, and to rummage and search all parts of such ship for prohibited or uncustomed goods, and also to go on board of any ship hovering within one league of the coast of this Colony, and in either case freely to stay on board of such ship, so long as she shall remain in such port or within such distance; and if any such ship be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for the officers of Customs to bring such ship into port and to search and examine her cargo, and to examine the master on oath touching the cargo and voyage: and if there be any goods on board prohibited to be imported into this Colony, such ship and her cargo shall be forfeited, and if the master shall not truly answer the questions which shall be demanded of him on such examination, he shall forfeit the sum of one hundred pounds sterling.

Boarding and searching of ships.

Examination of ship hovering about port.

Penalties on discovery of prohibited goods, and on master untruly answering, £100.

51. Any officer of Customs may search any person on board of

Searching of persons.

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any ship or boat within the limits of any port in this Colony, or any person who shall have landed from any ship or boat, provided such officer shall have good reason to suppose that such person has any uncustomed or prohibited goods secreted about his or her person; and if any passenger or other person on board of such ship or boat, or who may have landed from such ship or boat, shall, upon being questioned by such officer whether he or she has any dutiable goods upon his or her person, or in his or her possession, deny the same, and any such goods shall, after such denial be discovered to be, or to have been at the time of such denial, in his or her possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods.

Penalty.

Person may require to be brought before collector before being searched.

52. Before any person shall be searched by any officer as aforesaid, such person may require such officer to take him or her before the Collector or other principal officer of Customs of the port who shall if he sees no reasonable cause for search, discharge such person, but if otherwise, direct such person to be searched, and, if a female, she shall not be searched by any other than a female.

Female to search female.

Penalty on customs officer contravening foregoing section, £10.

53. Any person required to take such person before such Collector or other principal officer of Customs of the port, shall do so with all reasonable dispatch; and any officer guilty of any contravention of this enactment shall forfeit the sum of ten pounds sterling.

Forfeiture of vessels, &c., carrying goods liable to forfeiture

54. All vessels, boats, carriages, and cattle made use of in the removal of any goods liable to forfeiture under any Act relating to the Customs, shall be forfeited, except it shall be shown that the same were made use of in the removal of goods liable to forfeiture without the consent or knowledge of the owner thereof, or his agent or other person in possession or charge thereof with the consent of such owner, and every person who shall knowingly by himself or by his agent in that behalf assist or be otherwise concerned in the unshipping, landing, or removal, or in harbouring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit the treble value thereof, or the penalty of one hundred pounds sterling at the election of the principal officer of Customs, and the averment in any information or libel to be exhibited for the recovery of such penalty that the officer proceeding has elected to sue for the sum mentioned in the information shall be deemed sufficient proof of such election without any other or further evidence of such fact.

Penalty on persons unshipping, landing, &c., such goods, £100.

Seizure of vessels, &c., by customs officers.

Penalties on obstruction, £200.

Period within which seizure may be made.

55. All goods, and all ships, vessels, and boats, and all carriages, and all cattle liable to forfeiture under any Act relating to the Customs shall and may be seized and secured by any officer of the Customs; and every person who shall in any way hinder, oppose, molest, or obstruct any officer of Customs, or any person acting in his aid and assistance, shall, for every such offence, forfeit the sum of two hundred pounds sterling: Provided that no such seizure shall be made at any time later than six months reckoned from the

day on which such goods, ships, or other articles first became liable to forfeiture, unless, firstly, such goods, ships, or other articles shall, before the expiration of such six months, have been removed out of this Colony, in which case such goods, ships, or other articles may, when found again in this Colony, be seized at any time, if then owned by the same person who owned the same when they became liable to forfeiture, or by any person who became owner with knowledge or notice that the same were so liable, or if in the possession or charge of any person who took such possession or charge with such knowledge or notice; or unless, secondly, such goods, ships, or other articles, although never removed out of this Colony, shall be found in the possession of some such owner as above described, or of some person who took such possession with such knowledge or notice as aforesaid.

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56. If any officer of Customs, or any person duly employed for the prevention of smuggling, shall make any collusive seizure, or deliver up, or make any agreement to deliver up or not to seize any vessel, boat, or goods, liable to forfeiture under any Act relating to the Customs, or shall take any bribe, recompense, gratuity, or reward for the neglect or non-performance of his duty, every such officer or other person, shall forfeit for any such offence the sum of five hundred pounds sterling; or may be liable on conviction to imprisonment, with or without hard labour, for any period not exceeding five years; and every person who shall give or offer, or promise to give, or procure to be given, any bribe, recompense, or reward to, or shall make any collusive agreement with, any such officer or person as aforesaid in this Colony, to induce him in any way to neglect his duty, or to do, or conceal, or connive at anything whereby the provisions of any Act relating to the Customs may be evaded, shall forfeit the sum of two hundred pounds sterling.

Collusive seizure or agreement not to seize.

Penalty on officers and others.

57. All vessels, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited in this Colony under any Act relating to the Customs, shall be deemed and taken to be condemned, and may be dealt with in the manner hereinafter by the sixtieth section of this Act directed, unless the person from whom such vessels, boats, goods, and other things shall have been seized, or the owner of them, or some person authorised by him, shall within one calendar month from the day of seizing the same, give notice, in writing, to the person or persons seizing the same, or to the Collector or other principal officer of Customs of the port where the same shall have been seized, that he claims the vessel, boat, goods, or other things, or intends to claim them, and in default of giving such notice as aforesaid, no action, suit, or proceeding shall be capable of being brought or instituted against any officer of Customs grounded merely upon the seizure of any of the vessels, boats, goods, or other things so seized as aforesaid.

Period within which notice of claim may be given by owner of seized vessel, &c.

In default of notice, action grounded on seizure barred.

58. Under the authority of any writ of assistance granted by

Powers under writs of assistance granted

- No. 10—1872. the Supreme Court of this Colony, or Court of Vice-Admiralty ⁽¹⁾ having jurisdiction in this Colony (which Court or Courts are hereby authorised and required to grant such writs of assistance upon application made to them for that purpose by the principal officer of Customs within this Colony), it shall be lawful for any officer of the Customs, taking with him any officer of the law proper for the execution of criminal warrants, to enter any building or other place in the daytime, and to search for and seize and secure any goods liable to forfeiture under any Act relating to the Customs, and, in case of necessity, to break open any doors and any chests or other packages for that purpose; and such writs of assistance when issued, shall be deemed to be in force during the whole of the reign in which the same shall have been granted, and for twelve months from the conclusion of such reign.
- Penalty on ob- 59. If any person shall, by force or violence, assault, resist, struction of officers, £500, or imprisonment, five years. oppose, molest, hinder, or obstruct any officer of the Customs or other person employed as aforesaid in the exercise of his office, or any person acting in his aid or assistance, such person, being thereof convicted, shall be liable to a fine not exceeding five hundred pounds sterling, or to be imprisoned, with or without hard labour, for any period not exceeding five years.
- Disposal of 60. All things which shall be seized as being liable to forfeiture seizures. under any Act relating to the Customs shall be taken forthwith to and delivered into the custody of the Collector or other principal officer of Customs, at the Custom-house next to the place where the same were seized, who shall secure the same, and, after condemnation thereof, the Collector or such other principal officer shall cause the same to be advertised and sold by public auction to the highest bidder: Provided, always, that it shall be lawful for the Governor to direct that, in lieu of such sale, any of such things shall be destroyed, or shall be reserved for the public service: Provided, also, that the produce of such sale shall be exempt from the payment of auction dues thereon.
- Governor may direct things seized to be destroyed. Auction dues not chargeable. Recovery of penalties, &c. 61. All penalties and forfeitures which may have been heretofore, or may be hereafter incurred under any Act relating to the Customs, may be prosecuted, sued for, and recovered in the Supreme Court, or in the Court of the Eastern Districts (in case the act or omission entailing such forfeiture shall have taken place in any of the districts in or over which such Court shall have jurisdiction), or in any Circuit Court having jurisdiction, or in the Vice-Admiralty ⁽¹⁾ Court of this Colony.
- Authority for delivery of seizure under security by bond. 62. If any goods, or any ship, or vessel, shall be seized as forfeited under any Act relating to the Customs, and detained, it shall be lawful for the Supreme Court, or Court of the Eastern Districts in the case supposed in the preceding section mentioned, or any Judge of either of these Courts, or the Judge of the Vice-

¹ Supreme Court substituted for Vice-Admiralty Court, see 53 & 54 Vict., Ch. 27.

Admiralty Court aforesaid, with the consent of the Collector or other principal officer of Customs, to order the delivery thereof, on security by bond, with two sufficient sureties, to be first approved by such Collector or other principal officer, to answer double the value of the same in case of condemnation; and such bond shall be taken to the use of Her Majesty, in the name of the Collector or other principal officer of the Customs in whose custody the goods, or the ship, or the vessel may be lodged, and such bond shall be delivered to and kept in the custody of such Collector or officer, and in case the goods, or the ship, or vessel shall be condemned, the value thereof shall be paid into the hands of such Collector, or officer, who shall thereupon cancel such bond.

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Custody of bond.

63. Every suit for the recovery of any penalty or forfeiture under any Act relating to the Customs shall be commenced in the name of the Collector or other principal officer of the Customs, or of Her Majesty's Attorney-General for this Colony; and if a question shall arise whether the person suing is such Collector or other principal officer of the Customs, *viva voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence.

Mode of procedure in suits for penalties, &c.

64. If any goods shall be stopped or seized for non-payment of duties, or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid for the same, or the same have been lawfully imported or lawfully laden or exported, the proof of the affirmative of these facts shall be on the owner or claimer of such goods, and not on the officer who shall seize or stop the same.

Proof of improper seizure on claimant of goods.

65. When and as often as the Collector or other principal officer of Customs at the port within this Colony, where any vessel, boat, goods, or other things shall have been seized as forfeited under any Act relating to the Customs shall have received the certain notice, in writing, hereinbefore in the fifty-seventh section of this Act mentioned, the said Collector or other officer shall, within one month, cause proceedings to be commenced in the Supreme Court of this Colony, or in the Eastern Districts Court as the case may require, or in some competent Circuit Court thereof, or in the Vice-Admiralty Court ⁽¹⁾ thereof, for the purpose of obtaining the condemnation of the matters or things which shall have been so seized.

Period for commencing proceedings for condemnation limited.

66. When and as often as the said Collector or other officer shall cause such proceedings as in the last preceding section mentioned to be commenced, no owner or other lawful claimant shall make any claim or be admitted to defend the said suit, or in any way to dispute the legality of the said seizure, unless oath to the property in the matter or thing so seized be made by the owner, or by his attorney, or agent, by whom such action, suit, or proceeding shall be defended, to the best of his knowledge and belief;

Defendant to declare on oath property in seizure.

¹ Supreme Court substituted for Vice-Admiralty Court, see 53 & 54 Vict., Ch. 27.

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Penalty on false oath.

Security for costs of suit, £100.

Notice of action to be given to customs officer within one month.

Period for bringing action limited.

Costs of suit where probable cause of seizure is found by judgment.

and every person making a false oath thereto shall be deemed to be guilty of the crime of perjury, and shall be liable to punishment by law provided for the said crime.

67. No owner or other lawful claimant shall be admitted to enter a claim in the Vice-Admiralty ⁽¹⁾ Court aforesaid, or to defend any action, suit, or proceeding in any other Court as aforesaid, in regard to anything seized in pursuance of any Act relating to the Customs, until sufficient security shall have been given in the Court where such proceedings shall have been instituted, in a penalty not exceeding one hundred pounds sterling, to answer and pay such costs as may be awarded against the party giving such security.

68. No writ shall be sued out against, nor a copy of any process served upon any officer of the Customs for anything done by him in pursuance of any Act relating to the Customs until one calendar month after notice, in writing, shall have been delivered to him, or left at his usual place of abode, by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained, the cause of the action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced except of such cause as shall be contained in such notice, and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs.

69. Every such action shall be brought within three calendar months after the accruing of the cause thereof, and the defendant may plead the general issue, and give the special matter in evidence, and if the plaintiff shall become non-suited, or shall discontinue the action, or if judgment shall be given against the plaintiff, the defendant shall receive as costs full indemnity for all expenses incurred by him in or about the cause of action, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

70. In case any action or suit instituted by any officer of Customs, or by the said Attorney-General, shall be brought to trial on account of any seizure made under any Act relating to the Customs, and judgment shall be given for the defendant, and the Court before which such cause shall have been tried shall find and adjudge that there was probable cause of seizure, the defendant shall not be entitled to any cost of suit; and in case any action or suits shall be brought by any person against any officer of Customs for or on account of any such seizure by such officer made, wherein judgment shall be given for the plaintiff, such plaintiff, in case the

¹ Supreme Court substituted for Vice-Admiralty Court, see 53 & 54 Vict., Ch. 27.

Court by and before which such cause shall have been tried shall find and adjudge that there was probable cause of seizure, shall recover only the things seized, or the value thereof, without costs of suit.

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71. It shall be lawful for such officer, within one calendar month after such notice as aforesaid, to tender amends to the party complaining, or his attorney or agent, and to plead such tender in bar to any action, together with any other pleas, and if the Court shall find the amends sufficient, it shall give a judgment for the defendant, except as to the amends tendered, and in such case, or in case the plaintiff shall become non-suited, or shall discontinue his action, then such defendant shall be entitled to full costs; but if upon the trial of any such cause the court shall find and adjudge that no amends were tendered, or that the same were not sufficient, or shall find against the defendant upon such other plea or pleas, then such Court shall give judgment for the plaintiff, with such damages as such Court shall think proper, together with costs of suit.

Tender of amends, and effect thereof.

72. All penalties and forfeitures recovered under any Act relating to the Customs shall be paid into the hands of the Collector or other principal officer of Customs of the port where such penalties or forfeitures shall be recovered, and shall be divided, paid, and applied as follows, that is to say,—after deducting the charges of prosecution, if any, and of the costs of sale from the produce, two third parts of the net produce shall be paid into the hands of the Collector or other principal officer of Customs of such port for the use of Her Majesty the Queen in her Colonial Treasury, and the other third part shall be placed at the disposal of the Governor, for the purpose of granting thereout such sum or sums of money, or the whole thereof, to such officer or officers, or other persons as may have rendered efficient service, either by information or active assistance, in leading to the recovery of such penalty or forfeiture, and the balance of such third part, if any, shall be repaid to the public treasury for the use of Her Majesty: Provided that if it shall be made to appear to the Governor of the Colony in any particular case that one third part will be sufficient for the adequate acknowledgment of such services as above mentioned, such third part may be increased to one-half of such net produce, instead of one third.

Payment and disposal of penalties, and forfeitures.

Power of Governor,

73. All actions or suits for the recovery of any of the penalties or forfeitures imposed by any Act relating to the Customs may be commenced or prosecuted at any time within three years after the offence committed, but not later: Provided that nothing in this section contained shall extend to alter or affect any of the provisions of the fifty-fifth section of this Act.

Bar of suit for penalties, &c., after three years.

Exception.

74. No appeal shall be presented from any decree or sentence of the Vice-Admiralty (1) Court aforesaid, touching any penalty or

Proceedings in appeal from Vice-Admiralty Court.

¹ Supreme Court substituted for this Court. See 53 & 54 Viet. Ch. 27.

- No. 10—1872. forfeiture imposed by any Act relating to the Customs, unless the inhibition shall be applied for and declared within twelve months from the time when such decree or sentence was pronounced: Provided, always, that in every case in which proceedings shall have been or shall hereafter be instituted in the Vice-Admiralty Court aforesaid, against any ship, vessel, boat, goods, or effects, or for the recovery of any penalty or forfeiture under any Act relating to the Customs, the execution of any sentence or decree restoring such ship, vessel, boats, goods, or effects to the claimant thereof, which shall be pronounced by the said Vice-Admiralty Court in which such proceedings shall have been had, shall not be suspended by reason of any appeal which shall be prayed and allowed from such sentence: Provided that the claimant shall give sufficient security, to be approved of by the Court, to render and deliver the ship, vessel, boat, goods, or effects concerning which such sentence or decree shall be pronounced, or the full value thereof, to be ascertained, either by agreement between the parties, or, in case the said parties cannot agree, then by appraisement under authority of the said Court, to the appellant or appellants in case the sentence or decree, so appealed from, shall be reversed, and such ship, vessel, boat, goods or effects be ultimately condemned.
- Non-suspension of decree restoring ship, &c., on appeal. Security by claimant.
75. It shall and may be lawful for the Governor to direct any vessel, boat, goods, or commodities whatever, seized under any Act relating to the Customs, to be delivered to the proprietor or proprietors thereof, whether condemnation shall have taken place or not, and also to mitigate or remit any penalty or fine incurred under any such Act, or to release from confinement any person or persons committed under any such Act as aforesaid, on such terms and conditions as to him shall appear to be proper: Provided, always, that no person shall be entitled to the benefit of any order for such delivery, mitigation, remission, or release, unless such terms and conditions are fully and effectually complied with: And provided that if the proprietor or proprietors of the goods seized as aforesaid shall accept the terms and conditions prescribed by the Governor, he or they shall not have or maintain any action for recompense or damage on account of such seizure or detention; and the person making such seizure shall not proceed in any manner for condemnation.
- Power of Governor to restore seizures and to mitigate or remit penalties. But terms prescribed to be complied with.
76. If any person shall in this Colony counterfeit, or falsely, or wilfully use, when counterfeited, or falsified, any entry, warrant, cocket, transire, or other document for the unlading, lading, entering, reporting, or clearing any ship or vessel, or for the landing, shipping, or removing of any goods, stores, baggage, or article whatever, or shall, by any false statement, procure any writing or document to be made for any such purposes, or shall falsely make any oath or affirmation required by any Act relating to the Customs, or shall forge or counterfeit a certificate of the said oath
- And action for damage barred. Falsification of documents, &c. False oath or declaration.

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or affirmation, or shall publish such certificate, knowing the same to be so forged or counterfeit, every person so offending shall for every such offence, forfeit the sum of two hundred pounds sterling, and such penalty shall and may be prosecuted, sued for, and recovered in like manner, and by such ways and means as any penalty may be prosecuted, sued for, and recovered under the provisions and directions of this Act.

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Penalty £200.

77. All entries, reports, warrants, clearances, and other documents required to carry out the provisions of this Act, shall, as near as may be, follow the forms thereto respectively applicable, as set forth in the first schedule hereto annexed, and where any of such forms require a declaration to be made thereto by a master, shipper, or other person, such declaration shall be made before the Collector or other proper officer of the Customs at the port where such declaration is required or directed to be made.

Forms in schedule.

78. This Act may for all purposes be cited as the "Customs Act, 1872."

Short title.

SCHEDULE I.

(FORM A.)

Rotation No.—.

Port of —

MASTER'S REPORT INWARDS.

Particulars of Arrival		Date ———	
		Time ——— o'clock —m.	
Name of Ship			
Whether British, or of what Country.			
If British, Port of Registry			
Number of Crew	{ British Men, Country of Ship	—————	
Name and Country of the Master in full			
Name and Country of the Owner			
Whether in Ballast or Laden		Tonnage	
Names of any other Ports at which the Vessel may have touched (since her loading) and discharged part Cargo			

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Marks of Packages.	Numbers of Packages.	Where and by whom Laden.	Quantity and Contents of every Package and Parcel of Goods on Board, as far as any such particulars can be known to the Master.		Where and to whom consigned.
			Number of Packages.	Description.	

Whether any Goods have been unladen during this Voyage, and if so

What Goods unladen as far as can be known by the Master.	Where.

I do declare that this report now made and subscribed by me is a just report of the name of the abovementioned ship, its burden, build, property, number, and country of mariners, the present master and voyage; and that it further contains a true account of the lading of the ship, with the particular marks, numbers, quantity, quality, and consignment of all the goods and merchandise in the said ship, to the best of my knowledge, and that bulk hath not been broke, nor any goods delivered out of the said ship since her loading in _____

_____, Master.

Signed and declared at the Custom-house, the _____ day of _____, in the presence of _____

_____ Sub-Collector.

CUSTOMS MANAGEMENT.

1225

(FORM B.)

No. 10—1872.

Port of —

LIST OF UNCONSUMED STORES.

On board the _____, _____, Master, from _____, _____ Men,
 _____ Passengers or Troops, _____ Guns, _____ Tons.

Description.	Quantities.	Description.	Quantities.
Ale or Beer (in bottle)		Molasses	
Ditto (in wood)		Nutmegs	
Barley (Pearl)		Oatmeal	
Beef		Oil (Lamp)	
Bread and Biscuit		Peas	
Butter		Pepper	
Candles		Pickles	
Cassia		Pork	
Cheese		Raisins	
Chow-Chow or Preserved Ginger		Rice	
Cigars		Soap	
Cinnamon		Spirits (sweetened) in bot. ..	
Cloves		Ditto ditto in wood	
Coffee (raw)		Ditto (unsweetened) in bot. ..	
Cocoa		Ditto ditto in wood	
Currants		Sugar (refined)	
Figs		Ditto (unrefined)	
Fish (preserved)		Ditto (candy)	
Flour (wheaten)		Tamarinds	
Fruits (bottled)		Tea	
Ditto (dried)		Tobacco (manufactured)	
Ginger (preserved) or Chow-Chow		Ditto (unmanufactured)	
Ginger (dry)		Vegetables (preserved)	
Jams		Vinegar (in bottles)	
Lard		Ditto (in wood)	
Mace		Wine (in bottles)	
Meats (preserved)		Ditto (in wood)	

I declare the above to be a true account.

_____, Master.

Declared before me at the Custom-house,
 this _____ day of _____, 18—
 _____, Sub-Collector.

(FORM C.)

Rotation No. _____.

Port of _____

MASTER'S CONTENT OUTWARDS.

Name of Ship			
Whether British, or of what Country			
If British, Port of Registry			
Number of Crew	{ British Men	_____	
	{ Country of Ship	_____	

1226

CUSTOMS MANAGEMENT.

No. 10—1872.

Name and Country of the Master in full					
Name and Country of the Owner					
Whether in Ballast or Laden				Tonnage	
Where Bound					
Marks of Packages.	Numbers of Packages.	Whence and by whom shipped.	Quantity and Contents of every Package and Parcel of Goods on Board, as far as any such particulars can be known to the Master.		Whither and to whom consigned.
			Number of Packages.	Description and Contents.	

I, _____, Master of the vessel above-named, do declare that the content above written now tendered and subscribed by me is a just and true account of all the goods laden on board my ship for the present voyage, and of the names of the respective shippers and consignees of the said goods, and of the marks and numbers of the packages containing the same.

_____, Master.

Signed and declared before me,
at the Custom-house, the _____ day of _____, 18—.

_____, Sub-Collector.

Recapitulation of Abstract of this Content (to be made by Examining Officer on the back of Form C.)

(FORM D.)

CONTENT OUTWARD—ADDITIONAL.

Port of _____

Additional Content in the _____, _____, Master, for _____

Marks and Numbers of Packages.	Whence and by whom shipped.	Quantity and Description of Goods.	Whither and to whom consigned.

CUSTOMS MANAGEMENT.

1227

I, _____, Master of the vessel abovenamed, do declare that the content above written, now tendered and subscribed by me, is a just and true account of all the goods laden on board my ship for the present voyage, in addition to the goods mentioned in the content declared to by me on the _____ day of _____ last; and also of the names of the respective shippers and consignees of such goods, and of the marks and numbers of the packages containing the same.

No. 10-1872.

_____, Master.

Declared before me, at the Custom-house, the _____ day of _____, 18—.

_____, Sub-Collector.

(FORM E.)

CERTIFICATE OF CLEARANCE.

No. —

CAPE OF GOOD HOPE.

Port of _____

These are to certify to all whom it doth concern, that _____, Master or Commander of the _____, Burthen _____ Tons _____ Ship, bound for _____, having on board _____, hath here entered and cleared his Vessel according to Law.

Date of Clearance _____

_____, Sub-Collector.

(FORM F.)

STIFFENING ORDER.

Port of _____

Place within the Port where the }
Goods may be shipped and laden } _____

(1) Quantity and Description of the Goods. Application having been made to me to permit (1) _____ to be shipped on board the _____, _____ Master, for _____, before the whole of her inward cargo is discharged, in order to stiffen the said vessel, and to prevent her upsetting, you may permit the same to be done accordingly, previous to her being entered outwards, taking care that no expense be incurred by the Crown or risk to the revenue.

_____, Sub-Collector.

Custom-house,
(date), _____

To the Examining Officer.

1228

CUSTOMS MANAGEMENT.

No. 10—1872.

(FORM G.)

LANDING SUFFERANCE.

Place within the Port where the Goods }
are to be unladen and landed } _____

Port of _____

Custom-house,
this _____ day of _____ 18—.

Suffer to be landed from on board the _____, whereof
_____ is Master, from _____

Marks of Packages.	Numbers of Packages.	Description and Number of Packages.

To be deposited in the Queen's Warehouse for security of duty,
on account of _____.

_____, Sub-Collector.
(No. _____)

(FORM H.)

SHIPPING SUFFERANCE.

Place within the Port where the Goods }
are to be laden and shipped } _____

Port of _____

Custom-house, this _____ day of _____ 18—.

Suffer to be shipped on board the _____, whereof _____
is **Master**, for _____

Marks of Packages.	Numbers of Packages.	Description and Number of Packages.

On account of _____

_____, Sub-Collector.
No. _____

CUSTOMS MANAGEMENT.

1231

(FORM K.)

No. 10-1872

[Stamp.]

Port of _____ }
_____ }

BILL OF ENTRY.—EXPORT.

_____, Exporter.

In the _____, whereof _____ is Master, for _____,
_____ Ship.

PACKAGES.			Particulars of the Quality and actual Quantity of all the Goods contained in the several Packages, and stating whether they are the Produce or Manufacture of this Colony, or of what Country.	Current Value at this Port.	
Marks.	Numbers.	Number and Description.			
Total No. of Packages.			Total, £		

I, _____, do hereby declare that the articles mentioned in this entry, and contained in the packages specified herein, are truly described in the above schedule.

Witness my hand this _____ day of _____, 18—.

Place within the Port where the Goods }
are to be laden and shipped } _____

The above declaration signed this _____ day of _____, 18—.

In the presence of _____.

_____, Sub-Collector.

To the Examining Officer.

No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

1232

CUSTOMS MANAGEMENT.

No. 10—1872.

(FORM L.)

[Stamp.]

Port of _____ } BILL OF SIGHT. _____, Importer.

In the _____, whereof _____ is Master, from _____,
_____ Ship.

PACKAGES.

Marks.	Numbers.	Number and Description.

I, _____, do hereby declare that I cannot, for want of full information, make perfect entry of the above packages and their contents, and that I have not received sufficient invoice, bill of lading, or other advice, from whence the quality, quantity, or value of the goods herein mentioned can be ascertained.

Witness my hand, the _____ day of _____, 18—.

The above declaration signed the _____ day of _____, 18—, in the presence of _____.

_____, Sub-Collector.

Warrant granted on the above declaration that the packages described may be landed at _____, and be brought to the examining warehouse, to enable the importer to see and examine them in the presence of the proper officer of Customs, such examination, as well as the other requirements of section — of Act No. — of 1872, to take place within three days.

Dated at the Custom-house, the _____ day of _____, 18—.

_____, Sub-Collector.

No. _____

To the Examining Officer.

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

CUSTOMS MANAGEMENT.

1233

(FORM M.)

No. 10—1872.

[Stamp.]

BILL OF ENTRY.—For Payment of Duty.

Port of _____ } Perfect on Bill of Sight.

Dated _____ day of, 18—. No. —.

_____, Importer.

In the _____, whereof _____ is Master, from _____,
_____ Ship.

PACKAGES.			Particulars of the Quality and Quantity of all the Goods contained in the several Packages, and whether such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not, as far as such can be ascertained.	Current Value of Goods at the Port whence imported.	Duty.
Marks.	Num- bers.	Number and Description.			
Total No. of Packages.			Total, £		

I, _____, do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is

Duty, £—. Witness my hand this _____ day of _____, 18—.

The above declaration signed the _____ day of _____, 18—, in the presence of _____.

_____, Sub-Collector.

I certify that the packages described in the above bill of entry were opened in my presence and examined, and that the values set opposite the description of the several packages and goods are, to the best of my belief, the current value of the goods therein contained at the port whence the same are imported.

_____, Examining Officer.

No.—.

N.B.—This Form must be filled up on one side only of the paper whereon it is written.

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CUSTOMS MANAGEMENT.

No. 10--1872.

(FORM N.)

Port of }
 _____ }

[Stamp.]

BILL OF ENTRY.—WAREHOUSING.

Perfect on Bill of Sight.

Dated _____ day of _____, 18—.

No. —.

_____, Importer.

In the _____, whereof _____ is Master, from _____, _____
 Ship.

PACKAGES.			Particulars of the Quality and Quantity of all Goods contained in the several Packages, and whether such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not, as far as such can be ascertained.	Current Value of Goods at the Port whence imported.	
Marks.	Numbers.	Number and Description.			
Total No. of Packages.				Total, £	

I, _____, do hereby declare that the current value of the articles mentioned in this entry, and contained in the packages specified, at the port whence the same are imported, is

The above to be warehoused in _____ Bond _____ Warehouse by virtue of Act No. _____ of 1872. Bond having been given.

Witness my hand the _____ day of _____, 18—.

The above declaration signed the _____ day of _____, 18—, in the presence of _____.

_____, Sub-Collector.

I certify that the packages described in the above bill of entry were opened in my presence and examined, and that the values set opposite the description of the several packages and goods are, to the best of my belief, the current value of the goods therein contained at the port whence the same are imported.

_____, Examining Officer.

No. —.

N.B.—This form shall be printed or written in red ink.

CUSTOMS MANAGEMENT.

1235

(FORM O.)

No. 10-1872.

Port of }
_____ }

SUFFERANCE FOR REMOVAL IN BOND.

For Warehoused Goods.

_____, Remover.

In the _____, whereof _____ is Master, from _____, _____
Ship.

PACKAGES.			Particulars of the Quality and present actual Quantity of all the Goods contained in the several Packages, and stating whether they are the Produce or Manufacture of the United Kingdom, or of some British Possession or not.	Value according to the account taken at the first Landing.	
Marks.	Numbers.	Number and Description.			
Total No. of Packages.			Total, £		

I, _____, do hereby declare that the articles mentioned in this sufferance, and contained in the packages herein specified, originally warehoused _____ day of _____, 18—, ex _____, from _____, by _____, in _____ Bonded Warehouse, and now entered for removal, for which bond is given, are truly described in the above schedule.

Witness my hand this _____ day of _____, 18—.

Place within the Port where the Goods }
are to be laden and shipped }

The above declaration signed this _____ day of _____, 18—, in the presence of _____.

_____, Sub-Collector.

To the Examining Officer.

No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

1236

CUSTOMS MANAGEMENT.

No. 10-1872.

(FORM P.)

Port of _____ }
_____ }

[Stamp.]

BILL OF ENTRY.--DUTY PAID FOR WAREHOUSED GOODS.

_____, Importer.

In the _____, whereof _____, is Master, from _____, _____
Ship.

PACKAGES.			Particulars of the Quality and original Quantity of all the Goods contained in the several Packages, and whether such Goods are the Produce or Manufacture of the United Kingdom, or of some British Possession or not.	Value according to the account taken at the first landing.	Duty.
Marks	Numbers.	Number and Description.			
Total Number of Packages.			Total, £		

I, _____, do hereby declare that the articles mentioned in this entry, and contained in the packages specified, warehoused the _____ day of _____, 18—, by _____ in _____ Bonded Warehouse, and now entered for consumption, were, at the first landing thereof, of the value of _____.

Witness my hand, the _____ day of _____, 18—

Duty £—.

The above declaration signed the _____ day of _____, 18—, in the presence of _____.

_____, Sub-Collector.

No. —

N.B.—This Form shall be printed or written in red ink.

CUSTOMS MANAGEMENT.

1237

(FORM Q.)

No. 10—1872.

Port of _____ }
 _____ }

BILL OF ENTRY.—EXPORT FOR WAREHOUSED GOODS.

_____, Exporter.

In the _____ whereof _____ is Master, for _____, _____
 Ship.

PACKAGES.			Particulars of the Quality and present actual Quantity of all the Goods contained in the several Packages, and stating whether they are the Produce or Manufacture of the United Kingdom, or of some British Possession, or not.	Value according to the Account taken at the first landing.	
Marks.	Numbers.	Number and Description.			
Total number of Packages.			Total, £		

I, _____, do hereby declare that the articles mentioned in this entry, and contained in the packages herein specified, originally warehoused _____ day of _____, 18—, ex _____, from _____, by _____, in _____ Bond _____ Warehouse, and now entered for exportation, for which bond is given, are truly described in the above schedule.

Witness my hand, this _____ day of _____, 18—.

Place within the Port where the Goods are } _____
 to be laden and shipped }

The above declaration signed this _____ day of _____, 18—, in the presence of _____.

_____, Sub-Collector.

To the Examining Officer.

No. —.

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

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CUSTOMS MANAGEMENT.

No. 10--1872.

(FORM R.)

Port of }
_____ }

VICTUALLING BILL.

Stores delivered from the bonded warehouse at this port, and shipped on board the _____, _____ Master, for _____, _____ Men, _____ Passengers or Troops, _____ Guns, _____ Tons.

Description.	Quantities.	Description.	Quantities.
Ale or Beer (in bottle) ..		Meats (preserved)	
Ditto (in wood)		Molasses	
Barley (Pearl)		Nutmegs	
Beef		Oatmeal	
Bread and Biscuit		Oil (Lamp)	
Butter		Peas	
Candles		Pepper	
Cassia		Pickles	
Cheese		Pork	
Chow-Chow or Preserved		Raisins	
Ginger		Rice	
Cigars		Soap	
Cinnamon		Spirits (sweetened) in bot. ..	
Cloves		Ditto ditto in wood	
Coffee (raw)		Ditto (unsweetened) in bot. ..	
Cocoa		Ditto ditto in wood	
Currants		Sugar (refined)	
Figs		Ditto (unrefined)	
Fish (preserved)		Ditto Candy	
Flour (wheaten)		Tamarinds	
Fruits (bottled)		Tea	
Ditto (dried)		Tobacco (manufactured)	
Ginger (preserved) or Chow-		Ditto (unmanufactured)	
Chow		Vegetables (preserved)	
Ginger (dry)		Vinegar (in bottles)	
Jams		Ditto (in wood)	
Lard		Wine (in wood)	
Mace		Ditto (in bottles)	

I declare the above to be a true account.

_____, Master.

Declared before me at the Custom-house,
the _____ day of _____, 18—.

_____, Sub-Collector.

Examined _____, 18—.

_____, Examining Officer.

Cleared _____, 18—.

N.B.—This Form shall be printed or written in red ink.

CUSTOMS MANAGEMENT.

1239

(FORM S.)

No. 10—1872

REQUISITION TO SHIP STORES FROM BOND.

Place within the Port where the Stores are }
to be laden and shipped } _____

Port of _____
Cape of Good Hope,
_____, 18—.

To the Sub-Collector of Customs.

SIR.—I request permission to ship, as Stores, from the Bonded Warehouse at this Port, on board the _____, whereof _____ is Master, bound for _____, the undermentioned articles, which I certify are *bond fide* intended for the use of the said ship, viz. :—

Quantity and Quality of the Goods.	Name of Importing Ship, and where from.	When warehoused, and by whom.	Bonding Warehouse.

I have the honour to be,

Sir,

Your obedient Servant,

No. —.

_____, Master.

Permission granted this _____ day of _____, 18—.

_____, Sub-Collector.

N.B.—This Form must be filled up on one side only of the paper whereon it is written, and shall be printed or written in red ink.

SCHEDULE II.

Wastage Allowance on Ale and Beer, in Wood, in Bonded Warehouses, when entered for Home Use.

	For any period.	Per cent.
Not exceeding 3 months	1 gallon.
„ 6 „	2 gallons.
„ 9 „	3 „
„ 12 „	4 „
„ 15 „	5 „

And no allowance will be permitted for any further time in addition to the above, nor any period less than two months.

E

No. 10—1872.

**Wastage Allowance on Spirits, in Wood, in the Bonded Warehouse,
when entered for Home Use.**

For any period.	Per cent.
Not less than 3 months and not exceeding 6 months ..	1 gallon.
Exceeding 6 months and not exceeding 12 ..	2 gallons.
" 12 .. " " " " 18 ..	3 gallons.
" 18 .. " " " " 2 years ..	4 gallons.
" 2 years and upwards	5 gallons.

On the quantity, if not overproof, and on the strength, if overproof, and if the fractional parts amount to fifty-hundredths of a gallon, one gallon to be allowed for such fraction.

**Wastage Allowance on Wine, in Wood, in Bonded Warehouses,
when entered for Home Use.**

For any period.	On casks containing less than 30 gallons.	On casks containing 30 gallons and not exceeding 70 gallons.	On casks of 70 gallons and upwards.
In the warehouse not less than 6 months and not exceeding 1 year	Per cent. 2	Per cent. 1½	Per cent. 1
Exceeding 1 year and not exceeding 2 years	2	3	2
Do. 2 years do. do. 3 do.	6	4½	3
Do. 3 do. do. do. 4 do.	8	6	4
Do. 4 do. do. do. 5 do.	10	7½	5
Do. 5 do. do. do. 6 do.	12	9	6
Do. 6 do. do. do. 7 do.	14	10½	7
Do. 7 do. do. do. 8 do.	16	12	8
Do. 8 do. do. do. 9 do.	18	13½	9
Do. 9 do. do. do. 10 do.	20	15	10
Total allowance not to exceed under any circumstances	5 gallons	7 gallons	9 gallons

The duty is to be remitted on deficiencies of wine in warehouse to the extent of 2 per cent. additional to the above scale on the ullage content of each cask without application to the Collector or other principal officer of Customs, provided such deficiencies have arisen from natural causes.

ORANGE RIVER BRIDGE.

1241

Table of Quantities of Vinegar, or Salt Crude, required to be mixed into unsound Wine, previous to its delivery from the Bonded Warehouse as Vinegar, for Home Use, viz. :

No. 12—1872.

	Vinegar the gallon.	Salt crude, the lb.
For any quantity of unsound wine, not exceeding 20 gallons	1	..
Exceeding 20 gallons and not exceeding 45 gallons	2	1
" 45 " " 75 " 	4	2
" 75 " " 100 " 	6	3
And so on in proportion.		

The duty is to be levied on the re-gauged quantity.

No. 11—1872.]

[July 31, 1872.

An Act to Amend, and continue as amended, the Act No. 9 of 1870, for Granting to Her Majesty in her Colonial Revenue certain Duties on Houses.

[Expired.]

No. 12—1872.]

[July 31, 1872.

ACT

To Further Promote the Construction of a Bridge or Bridges over the Orange River.

WHEREAS difficulties have arisen with respect to entering into a treaty or convention with the Government of the Orange Free State, as provided by the Act No. 15 of 1871, intitled "Act to promote the Construction of a Bridge or Bridges over the Orange River"; but the said Government is willing on its part to grant to any person or company erecting such bridge or bridges certain rights and privileges; and it is expedient that any person or persons, company or companies, willing to erect such bridge or bridges, shall, as far as possible, be enabled so to do upon the same terms and conditions, and with the same rights and privileges as in the said Act mentioned, without the necessity of any such treaty or convention as aforesaid, and without any agreement between the Government of the Orange Free State and the Government of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, acting with the advice of the Executive Council, and without any treaty or convention or agreement with the Governor of the Orange Free State, to enter

Power of Governor to enter into agreement for erection of bridge without treaty or convention with Orange Free State.

No. 13—1872.

into an agreement or agreements with any person or persons, or company or companies, who shall be willing to erect a bridge or bridges over the Orange River, authorising the erection of such bridge or bridges upon the like terms and conditions, and giving the same rights and privileges as in and by the said Act are authorised to be made or given by him, either by virtue or in pursuance of a treaty or convention with the Government of the Orange Free State, or in conjunction with the said Government, or otherwise so far as it is competent for the Governor by law so to do without such treaty, convention, or agreement.

2. Nothing herein contained shall prevent any treaty or convention from being entered into as provided by the said Act, but so much of the said Act as is repugnant to or inconsistent with this Act is hereby repealed.

But power of entering into such treaty or convention not affected.

No. 13—1872.]

[July 31, 1872.]

ACT

For enabling the Municipality of Swellendam to borrow Moneys for the Improvement of the Drainage and Waterworks of the Town of Swellendam and its Neighbourhood.

Preamble.

WHEREAS it is expedient to improve the drainage of certain lands lying within and belonging to the Municipality of Swellendam, and to extend and improve the waterworks of the said municipality: And whereas it is expedient that the commissioners of the said municipality should be empowered to borrow for that purpose a sum of money which shall not exceed in the whole the sum of five hundred pounds sterling: And whereas the commissioners of the said municipality have already borrowed a sum of five hundred pounds sterling for the purposes of draining the said lands and reclaiming certain waste lands within the said municipality: And whereas it is expedient that the said commissioners should be authorised to borrow a further sum of five hundred pounds sterling for the purpose of paying off the said debt: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Borrowing powers.

1. It shall be lawful for the commissioners for the time being of the municipality of Swellendam to borrow from time to time such sum or sums of money as the said commissioners shall, by a duly constituted meeting of the householders of the said municipality, of which meeting two weeks' previous notice shall have been publicly given, be authorised to borrow, not exceeding, however, the sum of five hundred pounds sterling, for the purpose of improving the drainage of certain lands known as the Vley, situated

Application of loan.

within the said municipality, and leading water by means of pipes out of a certain river called Cornlands River, into the town of Swellendam, and doing all such other matters or things as shall or may be required for improving and extending the waterworks of the said municipality, and to borrow a further sum of five hundred pounds sterling, for the purpose of paying off a certain debt of five hundred pounds sterling, heretofore incurred by the commissioners of the said municipality for the purposes aforesaid.

No. 13—1872.

2. It shall be lawful for the commissioners of the said municipality to impose, for the purpose of providing for the payment of the principal or interest, or principal and interest, of the moneys aforesaid, rates upon the immovable property situate within the said municipality and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836.

Power to levy rate for payment of principal or interest.

3. The sums aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of interest or principal, or interest and principal, of the moneys aforesaid, any funds or moneys coming to the said commissioners from any source whatever, and not specifically appropriated or required for any other object.

Loan chargeable on rate so levied; but may be paid from other sources.

4. The said commissioners shall grant to the party or parties, or company, society or co-partnership from whom they shall borrow such moneys as aforesaid a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the sum of one thousand pounds sterling, which acknowledgment shall in substance be in the form given in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, appointed for that purpose by a resolution of the board of commissioners of the said municipality, and of which three the chairman of the said board shall be one.

Mode of effecting loan.

5. All debts lawfully incurred by the said commissioners for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debits Act, 1867."

Public Bodies Debits Act, 1867, to apply to debts of municipality.

6. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and shall yearly and every year so long as any part of any debt contracted under and by virtue of this Act shall be in existence, prepare and deposit in the office of the said municipality for the inspection, at all reasonable times, of any resident householder of the said municipality, an account showing the particulars aforesaid, and giving any other

Separate accounts to be kept, and be open for inspection.

- No. 14—1872. information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the thirty-first day of December in each year, and shall be deposited in the office of the said municipality not later than the first day of March of the year next succeeding.
- Date when account shall be made up.
- Expenses of Act. 7. It shall be lawful for the said commissioners to pay the necessary costs, charges, and expenses of obtaining this Act and carrying the provisions thereof into effect out of the money or moneys to be received under the provisions of this Act.
- Short title. 8. This Act may be cited for all purposes as "The Municipality of Swellendam Loan Act, 1872."

SCHEDULE.

We, the undersigned, commissioners of the municipality of Swellendam, duly authorised thereto by the board of commissioners of the said municipality, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to _____ in the sum of _____, for so much money borrowed by the said commissioners for the purposes set forth in the "Municipality of Swellendam Loan Act," and certify that the said sum is secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say: (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Swellendam, this _____ day of _____.

A. B., Chairman.
C. D. }
E. F. } Commissioners.

Witnesses:

G. H.
I. K.

No. 14—1872.]

[July 31, 1872.]

ACT

To Amend "The Public Debt Consolidation Act, (1) 1870."

Preamble.

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

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

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

¹ Act No 7, 1870.

WELLINGTON RAILWAY PURCHASE.

1245

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

No. 15—1872.
Rate of interest.

No. 15—1872.]

[July 31, 1872.

ACT

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

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

Preamble.

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

Purchase autho-
rised.

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

Effect of purchase.

No. 15—1872.

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

3. [Repealed by Act 19, 1874.]

Raising of funds
for purpose of purchase.

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

Issue of debentures.

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

Debentures and interest chargeable on general colonial revenue.

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

Interest when and where payable.

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

Transfer of debentures.

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

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

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

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

No. 15—1872.

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

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

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

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

Sinking fund for extinction of debentures.

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

Application of sinking fund.

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

Accounts to be laid before Parliament annually.

No. 15—1872.

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

Short title.

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

SCHEDULE I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE II.

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

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

No. 16—1872.]

[July 31, 1872.

An Act to Authorise the Taking and Retaining of such Lands and Materials required for Constructing a Railway between Port Elizabeth and the Bushman's river as are not already authorised to be taken.

[Spent.]

No. 17—1872.]

[July 31, 1872.

An Act to Facilitate the Construction of the Line of Railway between Wellington and Worcester.

[Spent.]

No. 18—1872.]

[July 31, 1872.

An Act to Empower the Governor to raise a Sum not exceeding Seventy Thousand Pounds Sterling for the purpose of Telegraph Purchase and Extension, and for other purposes.

[Spent.]

No. 19—1872.]

[July 31, 1872.

An Act for Facilitating the Apprehension of certain Offenders escaping to this Colony from any place within the Territories or Dominions of the South African Republic and Orange Free State.

[Repealed by Act 22, 1882.]

No. 20—1872.]

[July 31, 1872.

ACT

For Defining the Limits of and preventing the Mischief arising from cutting, rooting up, and destroying the Trees, Shrubs, Bushes, and Fibrous Rooted Plants within an area bounded on the East and South by the Sea, on the West by the Farm Bushy Park, and including Northwards such portions of the divided Farm Buffels Fontein, the Village and Commonage of Walmer, formerly the Farm Nooitgedacht, and the Farm Paape Biesjesfontein, in the Division of Port Elizabeth, as the Drift Sands have extended or may extend over.

reamble.

WHEREAS it has become of the utmost importance to the port and harbour of Algoa Bay to preserve from the effects of drifting sands the works already made and to be made for improving the said port and harbour, and for preventing portions of the Crown lands and other property within the said area from further injury therefrom: And whereas a mischievous and illegal practice pre-

vails of cutting down, rooting up, and carrying away from within the said area for firewood and other purposes, the trees, shrubs, bushes, and fibrous rooted plants growing thereon, by means of which practice the sands are loosened and exposed, and are carried by the wind and deposited along the eastern boundary of the said area, and within the wash of the sea, to the serious detriment of the said port and harbour: And whereas it is expedient that the commissioners for improving the port and harbour of Algoa Bay, should be enabled to purchase land within the said area, and that provision should be made therefor, and for suppressing the said practice within the said area, and for binding and fixing those portions of the said area from which the sands are carried, by causing them to be planted with trees, shrubs, bushes and other fibrous rooted plants, and to erect or cause to be erected fencing mounds or other protection for the same: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. That the lands within an area bounded by the east and south by the sea, on the west by the farm Bushy Park, and including northwards such portions of the divided farm Buffels Fontein, the village and commonage of Walmer, formerly the farm Nooitgedacht, and the Farm Paape Biesjesfontein, in the Division of Port Elizabeth, as the drift sands have extended or may extend over, shall, for the purposes of this Act, be deemed and taken to be included in the said area.

Area defined.

2. It shall and may be lawful for the said commissioners, and they are hereby authorised to enter upon and take possession of such lands within the said area as may be required for the purposes of this Act: Provided that the proprietors of the said lands shall be paid by the said commissioners the just value by way of compensation for such lands.

Right of entry upon lands within area defined.

Compensation to owners.

3. In the event of the said commissioners and any such proprietor or proprietors or the person or persons claiming compensation not being able to agree upon the sum to be paid by the said commissioners and accepted by such proprietor or proprietors or person or persons claiming compensation, then the said commissioners shall cause to be served upon such proprietor or proprietors or person or persons claiming compensation a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such proprietor or proprietors, or person or persons claiming compensation to state in writing to the said commissioners within a certain limited time to be specified in the said notice, whether he or they is or are willing to accept the sum therein mentioned or not, and in case he or they shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said commissioners shall, by another notice in writing, call upon such proprietor or proprietors, or

How, where difference exists as to amount of compensation.

No. 20-1872.

Arbitration.

person or persons claiming compensation, to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said commissioners, and for that purpose to transmit to their representative in Port Elizabeth, within a certain reasonable time to be specified in the said last mentioned notice, the name of some person whom he or they shall select to be an arbitrator upon such arbitration, and the said commissioners, upon receiving the name of the person so elected shall nominate a second arbitrator, and the said arbitrators shall before proceeding in the arbitration choose a third arbitrator, and the said commissioners shall cause a deed of submission to be prepared, which shall be signed by the chairman of the said board of commissioners and by the said proprietor or proprietors or person or persons claiming such recompense or compensation as aforesaid, and which deed shall clearly set forth the matter to be determined by the said arbitrators, and the said arbitrators or any two of them shall be and are hereby authorised to fix and determine the amount of compensation to be paid as aforesaid according to what they shall conceive fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject matter; and in case such proprietor or proprietors or person or persons as aforesaid claiming compensation or recompense shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said commissioners, and they are hereby authorised, to lodge in some joint-stock bank in Port Elizabeth the sum of money offered by them as aforesaid for or on account and at the risk of such proprietor or proprietors or person or persons as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his or their absolute property, and the said commissioners, upon so lodging the said sum, shall be authorised and entitled to take and use the land in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid or had been awarded by the arbitrators, and thereupon or upon payment of any sum which may be awarded, or which may be agreed to be accepted as and for recompense and compensation as aforesaid, the said land shall be held and taken to be vested in the said commissioners as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors thereof or parties interested therein in favour of the said commissioners according to the law and custom of this Colony, or as if all acts by law required for vesting in the said commissioners a sufficient title thereto had been duly done and performed: Provided, further, that the costs of the arbitration aforesaid shall be in the discretion of the arbitrators.

4. It shall be lawful for the said commissioners, and they are hereby authorised and empowered to enter upon and take possession of any land within the said area belonging to Her Majesty the Queen, known as Crown lands, for the purpose of binding or fixing those portions of the said land within the said area from which the sands are carried, by causing them to be planted with trees, shrubs, bushes, or other fibrous rooted plants, and to erect or cause to be erected and made, fencings, mounds, or other protections to the same.

No. 20—1872.
Entry upon public lands.

5. If any person shall cut, root up, burn, break, or otherwise injure, destroy, or carry away any tree, shrub, bush, or other fibrous rooted plant growing or being upon any land, whether the same be Crown land or land acquired by the commissioners under section two of this Act, or shall trespass upon the same, or shall injure or destroy any fencing, mounds, or other means of protection to the same, such person shall, upon the first conviction for any such offence, forfeit any sum not exceeding five pounds sterling, and upon non-payment thereof, shall be imprisoned for any term not exceeding one calendar month, and upon a second conviction for any such offence shall forfeit a sum not exceeding ten pounds sterling, and upon non-payment thereof shall be imprisoned for any term not exceeding two months, and for a third or any subsequent offence shall forfeit any sum not exceeding twenty pounds sterling, and upon non-payment thereof shall be imprisoned for any term not exceeding six months.

Penalty for cutting &c.; bushes, &c.

6. When and so often as any wagon, cart, or other vehicle shall be found within or upon any part of the said area as aforesaid, or upon any road leading from thence having in or upon any such wagon, cart, or vehicle, trees, shrubs, bushes, or other fibrous rooted plants commonly found growing upon the Crown lands and upon lands the property of the said commissioners within the said area, it shall be lawful for any person finding the same, and suspecting that the said trees, shrubs, bushes, or other fibrous rooted plants have been cut or taken away from such lands as aforesaid, to forcibly compel the person in charge thereof to proceed forthwith to the nearest Resident Magistrate, there to be dealt with according to law in the exercise of the jurisdiction hereinafter conferred.

Inquiry as to destruction of bushes, shrubs, &c.

7. It shall be lawful for the said commissioners, with the consent of the Governor acting with the advice of the Executive Council of the Colony, out of any moneys which may come to them as such commissioners, to apply such sum or sums as may be necessary for the purpose of fixing the said sands within the said area and maintaining the same.

Funds to be applied to fixing drift sands.

8. The Court of the Resident Magistrate of Port Elizabeth and district thereof, and the Court of the Resident Magistrate of Uitenhage and district thereof, shall have jurisdiction to inquire into and determine all cases and questions of fines, forfeiture, penalties or contraventions of this Act.

Courts having jurisdiction.

9. This Act may be cited for all purposes as the "Port Elizabeth Sands Act, 1872."

Short title.

No. 21—1872.]

[July 31, 1872.]

An Act to Amend Ordinance No. 1 of 1847, intituled "Ordinance for Removing Vessels stranded in the Ports and Harbours of this Colony."

[Repealed by Act 46, 1885.]

No. 22—1872.]

[July 31, 1872.]

ACT

For the Management of the Docks and Breakwater of
Table Bay. (1)

Preamble.

WHEREAS it is necessary and expedient that due and proper provision should be made for the management of the Docks and Breakwater of Table Bay: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Laws repealed.

1. So much of the Ordinance No. 6 of 1851, intituled "Ordinance for Regulating the rates of Wharfage Dues in Cape Town and Simon's Town," as applies to the port of Cape Town; Section III of Act No. 20 of 1858, intituled an Act "For Constructing a Breakwater to form a Harbour of Refuge in Table Bay and otherwise improving the said Harbour"; and the Act No. 18 of 1868, intituled an Act "To provide for the Management of the Docks in Table Bay," shall be and the same are hereby repealed: Provided, however, that notwithstanding the repeal of Act No. 18, 1868, all regulations duly made under the provisions thereof, and in force at the time of taking effect of this Act, shall remain and continue in force in the same way as if they had been made under the provisions of this Act.

2. [Sections 2 to 5 repealed by Act 26 of 1881.]

Removal from office of commissioners.

6. Notwithstanding anything in this Act contained the Governor shall have the power to remove any commissioner either on account of failure to attend meetings of the board, or for any other cause, by proclamation, and appoint another commissioner in his place; and if any commissioner shall become insolvent or assign his estate for the benefit of his creditors, then the office of such commissioner shall, *ipso facto*, become vacant, and another commissioner shall be appointed in his place; and no commissioner shall vote on any question in which he shall have any personal or pecuniary interest, directly or indirectly, under a penalty not exceeding one hundred pounds sterling, to be sued for by the Attorney-General. (2)

Vacation of office.

No commissioner to vote on question in which he shall have personal interest.

1 See Acts 37, 1887; 9, 1893.

2 But see § 17 Act 26, 1881.

7. Save as hereinafter excepted, all goods of whatever kind or nature that may be brought into the port of Cape Town for importation from any part within or beyond the limits of the Colony, and all goods intended for exportation from the port of Cape Town to any part within or beyond such limits, shall be landed or shipped, as the case may be, at the dock known as the Alfred Dock, and at no other place in the said bay; but it shall be lawful for the Collector or other principal officer of Customs of the port to grant permission, on such terms as he may think fit, for the landing and shipping of any such goods at some other place in the said port.

No. 22—1872.

Where goods may be landed or shipped

Power of collector.

8. All goods which may be landed or shipped otherwise than in conformity with the preceding section shall be deemed and taken to have been illegally landed or shipped, and may be seized by any officer of the Customs, and shall be forfeited; and all such goods shall be dealt with in like manner as by the Ordinance No. 6 of the year 1853, or any Act for the time being in force for the regulation and management of the Customs of the Cape of Good Hope in lieu thereof, it is or shall be directed that goods forfeited thereunder shall be dealt with.

Penalty on contravention.

9. No goods brought to the dock on importation or for exportation shall be landed or shipped except by persons authorised by the commissioners in the second section of this Act mentioned.

Who may land or ship goods.

10. It shall be lawful for the said commissioners to charge for and in respect of any goods that may be warehoused by the owners thereof in any warehouse under the management of the said commissioners, warehouse rent at such rates as may from time to time be fixed by the said commissioners and approved by the Governor, and published in the *Government Gazette*.

Warehouse rent chargeable.

11. It shall be lawful for the said commissioners to demand and receive from any owner or master of any vessel that may enter the dock, dock dues at such rates as may from time to time be fixed by the said commissioners and approved by the Governor, and published in the *Government Gazette*.

Dock dues chargeable.

12. It shall be lawful for the said commissioners with the approval of the Governor, to employ for the construction, maintenance, and management of such docks, breakwater, and other works in connection therewith, and for the conduct of the business thereof, so many officers, and to pay them such salaries, and impose upon their appointments such conditions as may be deemed expedient, and it shall not be competent for any officer who may be employed under the authority of this Act under pain of immediate dismissal, to be directly or indirectly engaged or concerned in any business or trade whatsoever, nor shall any such officer accept any fees or emoluments other than his salary or allowance paid by the said commissioners without the previous sanction of the said commissioners and the approval of the Governor.

Employment of officers.

Officers not to engage in trade or accept fees, &c.

13. From and after the taking effect of this Act the said com-

Dues fixed in schedule chargeable.

- No. 24—1872.
- missioners shall be entitled to demand and receive from the importers, exporters, or transhippers, as the case may be, of all such goods, articles, matters, or things imported, exported, or transhipped in Table Bay, save as hereinafter excepted in the schedule hereto, as dock dues, such sums as are in the said schedule respectively set forth, or such lesser sums, respectively, as may be appointed by the said commissioners, and approved of by the Governor from time to time, and published in the *Government Gazette*: Provided that in every case in which any lesser sums shall be so appointed and approved of as aforesaid, goods landed from or shipped to ports or places within this Colony shall not be charged more than one half of the rates for goods landed from or shipped to ports or places beyond the limits of this Colony: Provided, also that transhipment shall, for the purposes of this Act, mean the act of removing goods direct by boat or otherwise from one ship into another without touching the shore, as also the act of removing goods from one ship to another by carrying them along the shore directly and continuously from the one ship to the other.
- Transhipment defined.
- Dues, by whom to be collected.
- Application of moneys.
- Previous sanction of Governor to commencement of further works required.
- Application of surplus moneys.
- Annual accounts to be laid before Parliament.
- Clearance outwards may be refused until regulations have
14. All sums accruing to the said commissioners under the provisions of this or any other Act shall (unless it shall be otherwise arranged between the said commissioners and the Governor) be collected by the Collector of Customs, and shall be paid into the Treasury to a separate account, and all moneys received under this Act shall in the first place be applied to the payment of interest upon the money borrowed or to be borrowed for the construction of the breakwater and dock and other works connected therewith, and next to the payment of the expenses of collecting the moneys aforesaid, and of managing and maintaining the said works, as well as to the construction of any further works connected with the works aforesaid, which shall be deemed by the said board to be necessary to render the said lastmentioned works more serviceable and efficient: Provided that no such further work which shall be estimated to cost £500 or upwards shall be commenced without the previous sanction of the Governor: Provided, also, that any surplus which may exist after defraying the charges aforesaid, shall be applied to the extinction of the money borrowed as aforesaid, in such manner as the Parliament shall hereafter direct.
15. The commissioners aforesaid shall, at the close of every half-year reckoned from the first day of January, 1873, prepare and transmit to the Governor, an account or statement showing the receipts and disbursements of the said commissioners during the past half-year, and every such account shall by the Governor be laid before both Houses of Parliament, if then sitting, or if not sitting, then within ten days from the commencement of the Session of Parliament which shall be held next after the receipt of such account.
16. It shall be lawful for the Collector or other principal officer of Customs at the port to refuse to any master of any ship in the

said port of Cape Town or Table Bay clearance outward until he shall have paid the dock dues of all kinds which may be due from him or his ship, and have in other matters complied with the regulations of the port.

No. 22—1872.

been complied with and dues paid.

17. (1) Subject to the provisions hereinbefore contained, it shall be lawful for the said commissioners, with the approval of the Governor, to make all necessary regulations for the management of the said dock, and of the landing, shipping, transshipping and warehousing of goods, and for the proper control of all vessels entering the same; and from time to time, as to them may appear proper and with the like approval, to alter and amend any such regulations; and all such regulations shall be published in the *Government Gazette*, and any person violating the same shall be liable on conviction to a fine not exceeding five hundred pounds sterling, or to imprisonment with or without hard labour for any period not exceeding six months unless the fine be sooner paid.

Framing of regulations.

Penalty.

18. [Repealed by Act 4. of 1873.]

19. This Act shall take effect upon and from the first day of January, 1873.

SCHEDULE.

TARIFF OF RATES.

Upon all goods landed from or shipped to ports or places beyond the limits of this Colony, or transhipped	s.	d.	
	5	0	per ton
Upon engines, plant, machinery, coals, and other articles required for the construction or working of the Cape Town and Wellington Railway during the term of years during which the Cape Railway Company has the privilege by its contract with the Colonial Government of having the said articles admitted into the Colony free of dues of wharfage	2	6	„
Upon all goods landed from or shipped to ports or places within the limits of this Colony	2	6	„
On horses, mules, asses, and horned cattle, landed, shipped, or transhipped	5	0	each.
On calves, sheep, pigs, and goats, landed, shipped, or transhipped	0	3	„
Upon goods less than a ton, proportions of the above shall be payable, as follows:—			
Upon one-fifth of a ton and under,—one-fifth of the above rates.			
Over one-fifth and not exceeding two-fifths,—two-fifths of the above rates.			

¹ Additional powers conferred by § 23, Act 26 of 1881.

No. 22—1872.

- Over two-fifths and not exceeding three-fifth,—three-fifths of the above rates.
- Over three-fifths and not exceeding four-fifths,—four-fifths of the above rates.
- Over four-fifths of a ton and under a ton shall be charged as one ton; and any fraction of a ton over one ton or over any greater number of tons shall be charged as a ton.

EXEMPTIONS.

1. All Naval and Military Stores for the use of Her Majesty's Naval and Military Forces, or for the use of Her Majesty's Civil Departments.
2. All stores for the use of Her Majesty in her Local Executive Government.
3. Such reasonable personal baggage of passengers and of masters and seamen as Customs duties shall not be levied on.
4. All such Military and Naval baggage as Customs duties shall not be levied on.
5. All provisions and stores, not liable to Customs duties, shipped at this port, for daily consumption on board the ship while in harbour.
6. All animals, living, not specified in the above tariff.
7. Coals shipped, on which the dock dues were paid when landed.

No. 23—1872.]

[July 31, 1872.

An Act to Continue to the end of 1873, the Act No. 10 of 1864.
[Expired.]

No. 24—1872.]

[July 31, 1872.

An Act for Applying a further Sum not exceeding Fourteen Thousand Nine Hundred and Eighty Pounds Sterling for the Service of the Year 1872.
[Spent.]

No. 25 —1872.]

[July 31, 1872.

An Act for Applying a Sum not exceeding Two Hundred and Five Thousand Nine Hundred and Ninety-five Pounds Seven Shillings and Five Pence Sterling for the Service of the Year 1872.
[Spent.]

No. 26—1872.]

[July 31, 1872.

ACT

For Regulating the Coasting Trade of the Colony of the Cape of Good Hope. (1)

WHEREAS by an Imperial Act passed in the thirty-second year of the reign of Her Majesty Queen Victoria, intituled "An Act for Amending the Law relating to the Coasting Trade and Merchant Shipping in British Possessions," it is enacted that, subject to certain conditions in the said Act contained, the Legislature of a British Possession may, by any Act or Ordinance, from time to time, regulate the coasting trade of the same: And whereas it is desirable to make provision for regulating the coasting trade of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Subject to the provisions of any Act of the Imperial Parliament of the United Kingdom, and so long as Her Majesty's Order in Council of the 7th day of December, 1855, shall remain unrevoked and in force, goods and passengers may be conveyed from any one port of this Colony to any other port thereof in other than British ships.

Conveyance of goods and passengers.

2. All trade by sea from any one part, port, or place in this Colony to any other part thereof shall, except as hereinafter provided, be deemed to be a coasting trade, and all ships while employed therein shall, except as hereinafter provided, be deemed to be coasting ships: Provided that no ship arriving from a port beyond the limits of this Colony, although bound to more than one port in this Colony, and no ship clearing outwards from any port in this Colony for a port beyond the limits of this Colony, although bound to one or more intermediate ports in this Colony, shall be deemed a coasting ship, nor shall her voyage between such ports in this Colony be deemed a coasting voyage.

Definition of coasting trade and coasting vessels.

Exception as regards ship arriving from or proceeding to port beyond colonial limits.

3. Any goods which shall be the growth, produce, or manufacture of this Colony, or which shall have already paid duty on importation into this Colony, may be shipped and conveyed coastwise from any one port in this Colony to any other port thereof in any ship, although such ship may not be a coasting ship.

Certain goods may be conveyed coastwise by other than coasting vessels.

4. If any goods shall be unshipped from any coasting ship arriving coastwise, or be shipped or water-borne to be shipped to be carried coastwise, unless in the presence or with the authority of the proper officer of the Customs and at such times and places as shall be appointed or approved by him for that purpose, the same shall be forfeited, and the master of the ship on board whereof

Goods illegally landed or shipped forfeited.

Penalty on master £50.

¹ See Act 10, 1872.

No. 26—1872.

Penalty on other persons £50.

any such goods shall be shipped, or wherefrom such goods shall be unshipped, shall forfeit a sum not exceeding fifty pounds sterling, and every person who shall land or ship, or place on board any lighter or boat to be shipped, or assist or be otherwise concerned in landing, shipping, or placing on board any lighter or boat to be shipped any of such goods otherwise than in the presence or with the authority of the proper officer, or otherwise than at such times or places as shall be appointed or approved by him for that purpose, shall, in like manner, forfeit a sum not exceeding fifty pounds sterling.

Shippers to furnish shipping note.

5. All persons shipping goods on board of any coasting ship shall furnish the master with a shipping-note, stating generally the description of goods, and, so far as may be known to the said shipper, whether the goods be the produce of this Colony or otherwise; and the master shall be bound to exhibit such note whenever so required to the proper officer of the Customs at the port whence the goods shall have been shipped, and also at the port to which the same shall have been shipped, and at any intervening port at which such coasting ship may touch on its voyage between such ports; and any goods respecting which any false statement shall be made in any such shipping-note, shall be forfeited.

Penalty.

Clearance and transire.

6. Before any coasting ship shall depart from the port of lading, an account, with duplicate thereof, signed by the master, shall be delivered to the Collector or other proper officer of Customs at such port, and such officer shall retain the duplicate and return the original account, dated and signed by him, and such account shall be the clearance of the ship for the voyage, and the transire or pass for the goods expressed therein: and if any such account be false, the master shall forfeit the sum of twenty pounds sterling: Provided, always, that the Collector or principal officer of Customs may, whenever it shall appear to him expedient, permit general or special transires to be given under such regulations as such Collector or principal officer may direct, for the lading or clearance and for the entry and unloading of any coasting ship to proceed to any place in this Colony therein mentioned, and there to discharge the whole or any part of the cargo of such coaster, and there to reload a cargo for shipment back to the port whence such coasting ship obtained such transire, or such other port in this Colony as shall be therein mentioned, and the same may be revoked by notice, in writing, under the hand of such Collector or other principal officer as aforesaid, delivered to the master or owner of any such ship, or any of the crew on board.

Special transire may be given.

And may be revoked.

Record by master.

7. The master of any ship proceeding coastwise to load or discharge cargo under the permission of a transire shall keep a correct record of the dates of the ship's arrival and departure at any port or ports, place or places, and of the goods laden on board or discharged, thereat, and whether, so far as the said master may have been informed such goods are the produce of the Colony or

otherwise, and such record shall be open for the inspection of any officer of Customs at all times and places, and should any master make any false entry in such record, or wilfully omit to make the proper entries thereon, he shall be liable to a penalty of twenty pounds sterling for each offence.

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Penalty £20.

8. Within twenty-four hours after the arrival of any coasting-ship at the port of discharge, and before any goods be unladen, the transire, with the name of the place or wharf where the landing is to be discharged noted thereon, shall be delivered to the Collector or other proper officer of Customs at such port of discharge, who shall note thereon the date of delivery, and if any goods be unladen contrary hereto, the master shall forfeit a sum not exceeding twenty pounds sterling, and if any goods shall be laden on board of any ship in any port or place in this Colony and carried coastwise, or having been brought coastwise shall be unladen in any such port or place contrary to these or any other lawful regulations relating to the coasting trade of this Colony, such goods shall be forfeited.

Transire to be delivered within 24 hours.

Penalty £20.

Goods forfeited.

9. Every suit for the recovery of any penalty or forfeiture under this Act shall be commenced in the name of the Collector or other principal officer of the Customs, or of Her Majesty's Attorney-General for this Colony; and if a question shall arise, whether the person suing is such a Collector or other principal officer of the Customs *viva voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence.

Prosecution, in whose name.

10. Any officer of the Customs may go on board of any coasting ship in any port or place in this Colony, or at any period of her voyage, search such ship and examine all goods on board, and all goods then lading or unlading, and demand all documents which ought to be on board of such ship, and the Collector or other proper officer may require that all or any such documents shall be brought to him for inspection, and the master of any ship refusing to produce such documents, or to bring the same to the Collector or other proper officer when required, shall forfeit and pay the sum of twenty pounds sterling.

Boarding of ships by officers.

Penalty £20.

11. The days fixed as Customs holidays, and the hours for general attendance of the respective officers of Customs at the proper offices and places of employment, and the times during such hours at which any particular part or parts of the duties of such officers respectively shall be performed by them, shall be the same as those provided in the general law for Customs management and regulations.

Holidays and hours of attendance.

12. The forms to be used in carrying out the provisions of this Act shall, as near as may be, be those set forth in the first and second schedules hereto annexed, as the same shall be respectively applicable; and where any such forms requires a declaration to be made thereto by a master, consignee, or other person, such declaration shall be made before the Collector or other proper

Forms.

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COASTING TRADE.

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officer of the Customs at the port where such declaration is required to be made.

Commencement of Act.

13. This Act shall take effect when and so soon as the Governor shall, by proclamation to be published in the *Government Gazette*, declare that Her Majesty has been pleased to assent to the same.

SCHEDULE I.

[Forms to be used for Ships exclusively employed in the Coasting Trade.]

TRANSIRE.

Port of Ship's Name				<i>Rotation No.</i>
Whether British, or of what Country				
If British, Port of Registry				
Number of Crew		British men		
		Country of Ship		
Name and Country of Master in full				
Name and Country of Owner				
Whether in Ballast or Laden		Tonnage		
Where bound				

Marks of Packages.	Number of Packages.	Names of the Shippers of the Goods, and where Shipped.	Quantity and Contents of every Package and Parcel of Goods on board, as far as any such particulars are known to the Master.		Names of the Consignees of the Goods, and where to be discharged.
			Number of Packages.	Description of Packages and Contents.	

I declare the above to be a true account.

Signed, _____, Master.

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Declared before me at the Custom-house, and cleared this _____
day of _____, 18—. No. 26—1872,

Signed, _____, Sub-Collector.

Port of } LANDING SUFFERANCE.

Place within the Port where the
goods are to be landed and unladen.

Custom-house, _____, 18

Suffer to be landed from on board the _____, whereof _____
is master, from _____, for account of consignees, _____,
a cargo coastwise, consisting of goods, the growth, produce, or manu-
facture of this Colony, as also imported articles upon which Customs
duties have been paid, not including _____ as per master's
report inwards or transire from _____.

_____, Sub-Collector.

No. _____

Port of } SHIPPING SUFFERANCE.

Place within the Port where the
goods are to be laden and shipped.

Custom-house, _____, 18

Suffer to be shipped on board the _____, whereof _____ is
Master, _____, for account of shippers, _____, a cargo
coastwise, consisting of goods, the growth, produce, or manufacture of
this Colony, as also imported articles upon which the Customs duties
have been paid, not including _____.

No. _____

_____, Sub-Collector.

SCHEDULE II.

Form to be used for the delivery, free of Duty, of Goods which
arrive at any Port in this Colony from any other Port in the
same, in other than coasting ships.

LANDING SUFFERANCE.—FREE OF DUTY.

In the _____, whereof _____ is Master, from _____
_____, Consignee.

Packages.		Number of Packages.	Description, quality, and quantity, and whether such Goods are the growth, produce, or manufacture of this Colony, or Duty Paid on importation.	Value.	
Marks.	Numbers.				
Total £:					

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COPYRIGHT.

No. 2—1873.

I, _____, declare that the above is a true account of the goods specified, and that the goods and packages were *bonâ fide* shipped at the port of _____ in this Colony, for this port, and are entitled to be delivered free of duty.

Witness my hand, this _____ day of _____, 18—
_____, Consignee.

Place within the Port where the goods } _____
are to be landed and unladen, }

Declared before me at the Custom-house,
this _____ day of _____, 18—

No. — _____, Sub-Collector.

No. 1—1873.] [June 26, 1873.

Act to Confirm the Annexation to this Colony of the Islands, Islets, or Rocks, on the South-west Coast of South Africa, called Ichaboe, Holland's Bird, Mercury, Long Island, Seal Island, Penguin Island, Halifax, Possession Island, Albatross Rock, Pomona, Plumpudding and Roast Beef or Sinclair's Island.

[Repealed by Act 4, 1874.]

No. 2—1873.] [June 26, 1873.

ACT

To Protect and Regulate the Rights of Authors in respect of their Works. (1)

Preamble.

WHEREAS it is expedient to protect the rights of authors in this Colony in respect of their works and to afford encouragement to the production of literary works of lasting benefit to the Colony: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Duration of copy-
right of books pub-
lished during the
author's lifetime.

1. The copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of five years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided, always, that if the said term of five years shall expire before the end of thirty years from the first publication of such book, the copyright shall in that case endure for such period of thirty years.

Of posthumous
work.

2. The copyright in every book which shall be published after the death of its author shall endure for the term of thirty years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published and his assigns.

¹ For copyright in certain Telegraphic Messages see Act 8 of 1880. See also Acts 4, 1888, and 18, 1895.

3. A registry book wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books and assignments thereof, shall be kept by the Registrar of Deeds, in his office in Cape Town, and shall at all convenient times be open to the inspection of any person on payment of one shilling for every entry which shall be searched for or inspected in the said book of registry; and the Registrar of Deeds shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified shall be received in evidence in all courts, and shall be *prima facie* proof of the proprietorship or assignment of copyright as therein expressed, but subject to be rebutted by other evidence.

No. 2—1873.
Regulations for
registry.

4. It shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book aforesaid of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, upon payment to the Registrar of Deeds of the sum of five shillings; and it shall be lawful for such registered proprietor to assign his interest or any portion of his interest therein, by making entry in the said registry book of such assignment and of the name and place of abode of the assignee thereof, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed or other instrument.

Mode of register-
ing and assigning
copyright.

5. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said registry book, it shall be lawful for such person to apply by motion to the Supreme Court in term time, or to any Judge of the Supreme Court in vacation, for an order that such entry may be expunged or varied, and thereupon such Court or Judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just; and the Registrar of Deeds shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same accordingly.

Objection to en-
tries in registry to be
decided by Supreme
Court.

6. If any person shall print or cause to be printed any book in which there shall be subsisting copyright without the consent in writing of the proprietor thereof, or shall import for sale from parts beyond the Colony any such book so printed in parts beyond the Colony, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose for sale, or shall have in his possession for sale, any book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to an action for damages at the suit of the proprietor of such copyright.

Persons infringing
copyright liable to
damages.

No. 2—1873.

Books unlawfully printed or imported to become the property of the proprietor of copyright.

7. All copies of any book wherein there shall be copyright and of which an entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to demand delivery up to him of all existing copies, and to sue for and recover the same, or damages for the detention or conversion thereof, in an action against the party who shall detain the same.

8. [Repealed by Act 4, 1888.]

Interpretation of terms.

9. In the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, and map, chart, or plan separately published; the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any book; and the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book and whether acquired by sale, donation, legacy, or by operation of law or otherwise.

Short title.

10. This Act may be cited for all purposes as the "Copyright Act of 1873."

No. 3—1873.]

[June 26, 1873.]

ACT

To Remove Doubts as to the Ownership of Immovable Property held in Trust for Unincorporated Joint-stock Companies and other Bodies, and for the Appointment, when necessary, of Trustees for such Companies or Bodies.

Preamble.

WHEREAS in and by the trust deeds or deeds of settlement of divers unincorporated joint-stock companies formed in this Colony for trading purposes, it is amongst other things provided that all and singular the properties and effects belonging to such companies, respectively, shall be, and that the same are thereby, vested in trustees, to be from time to time appointed in manner and form as in the said deeds, respectively, set forth: And whereas as often as any such company purchases, or becomes otherwise entitled to, any immovable property for its use or benefit, the practice in this Colony has been to transfer such immovable property to the trustees of such company and to the trustees thereof for the time

being : And whereas immovable property, acquired for the uses and purposes of religious, charitable, and educational associations, has been from time to time granted or transferred to certain office-bearers or other trustees for such associations, and to such office-bearers or other trustees for the time being : And whereas doubts have recently arisen whether, in regard to such joint-stock companies and to such associations, it is not necessary, in order that the ownership of immovable property granted or transferred in manner aforesaid shall pass to and vest in the trustees or office-bearers for the time being, that the out-going office-bearers or other trustees should make transfer in the Deeds Registry to their successors as often as any change in the persons of such office-bearers or other trustees takes place : And whereas it is expedient to remove such doubts by declaring that no such successive transfers shall be necessary : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. In the interpretation of this Act the terms following shall have the meanings respectively assigned to them : Interpretation of terms.

1. The term "company" shall comprise any company or co-partnership carrying on any trade or business in this Colony, whereof the capital stock shall be divided into shares transferable without express consent of all the shareholders or co-partners and any mutual assurance society, and whereof the shareholders or co-partners shall consist of not fewer than twenty-five persons.
2. The term "association" shall comprise any congregation, society, or denomination, Christian or otherwise, united for the public worship of Almighty God, as also every missionary society or other agency engaged in promoting the spread of religion and civilization amongst the native races ; and every school for the education of the poor, and every hospital for the relief of the sick, and every library, and every museum, which school, hospital, library, or museum shall be supported wholly or in part by subscriptions or donations, and be under the management of a committee or other board periodically chosen by the subscribers or donors. The term "association" shall also comprise every benefit society, masonic body, or other institution, not carrying on any trade or business, and consisting of not fewer than twenty-five members.
3. The term "office-bearers" shall, in regard to associations for the public worship of Almighty God, and in regard to missionary societies and other agencies for the spread of Christianity and civilization amongst the native races, comprise bishops of Episcopal churches, moderators of Presbyterian churches, ministers of Congregational

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churches, general superintendents of Wesleyan districts, and superintendents of Wesleyan circuits, consistories, elders, deacons, and generally all functionaries by whatsoever name called who hold office in any church or denomination, whether Christian or not, or in any missionary society, or who form or act for any other such agency as aforesaid.

4. The term "trustee" shall comprise the persons in whom by the provisions of any trust deed or deed of settlement of any such company as aforesaid, the property, estate, and effects of such company shall for the time being be vested in trust for such company; and all persons not designated as office-bearers, in whom the property, estate, and effects of any such association as aforesaid shall for the time being be vested in trust for such association, as also the persons in whom the property, estate, or effects belonging to any such school, hospital, library, or museum as aforesaid shall by the rules and regulations thereof as agreed upon or established by the subscribers or donors to such school, hospital, library, and museum, be vested for the purposes thereof.

Trustees for the time being of any "company" to be owners of property held in trust without fresh transfer.

2. As often as any immovable property shall be or shall have been granted or transferred to the trustees of any company, in their capacity as such trustees, and to the trustees of such company for the time being, the trustees for the time being of such company shall be, and they are hereby declared to be, the owners in their said capacity of such property, as fully and absolutely as if the transfer of such property had been originally made to them, in their said capacity, by their own proper names; and no transfer in the Deeds Registry from any former trustee to any new trustee shall be necessary.

Office-bearers of any association to be owners in like manner.

3. As often as any immovable property shall be, or shall have been, granted or transferred to any office-bearer or office-bearers of any association, and to the bearer or bearers of such office or offices for the time being for the objects or purposes of such association, or to any trustees of or for any association, and to the trustees for the time being, for the objects or purposes aforesaid, such office-bearer or office-bearers or such trustees for the time being shall be, and they are hereby declared to be, the owner or owners, in his or their capacity, of such property, as fully and absolutely as if the grant or transfer of such property had been originally made to him or them in their said capacity, by his or their own proper name or names; and no transfer in the Deeds Registry from any former office-bearer or trustee to any new office-bearer or trustee shall be necessary.

Governor in Council may extend the provisions of the pre-

4. It shall be lawful for the Governor, with the advice of the Executive Council, to extend the provisions of the last preceding

section so as to embrace the office-bearer or office-bearers, or the trustees of any charitable or educational association, not being such a school, hospital, library, or museum as aforesaid, to which association it shall seem right and proper, and in unison with the spirit of this Act, to extend such provisions; and a certificate signed by the Colonial Secretary and deposited in the Deeds Registry, to the effect that the association named in such certificate has been by the Governor, with the advice of the Executive Council, placed under the provisions of the last preceding section of this Act shall for all purposes be conclusive evidence that such association has been so placed.

5. Nothing in this Act contained shall extend to any company or association which shall, at the time of the taking effect of this Act, be regulated or managed under the provisions of any Ordinance or any Act of Parliament, or which may hereafter be regulated or managed under any such Act.

And whereas it is expedient that provision should be made for the appointment by the Court of new trustees for any such company or association as aforesaid which may stand in need of such new trustees, and be without other means of lawfully appointing them, be it enacted as follows:—

6. As often as by death, unsoundness of mind, resignation, failure to elect, absence from the Colony, or other cause, the trustees, or any of them of any such company or the office-bearers or other trustees of any such association as is in this Act described, or of any association which, under the provisions of the fourth section of this Act shall be placed under the provisions of this Act, shall become incapable of acting in the execution of the trusts for such company or association, it shall be lawful for any person who shall be a member of or interested in such company or association to apply by petition to the Supreme Court, or (in case such company or association shall be one established within any of the districts over which the Court of the Eastern Districts has jurisdiction) to the Court of the Eastern Districts, for such order as he shall conceive himself entitled to, and he may by affidavit give such evidence in support of such petition as he shall think fit, and may serve notice of such petition upon such person or persons as he may think it needful or expedient to serve with such notice: Provided that upon or before the hearing of such petition the Court in which it shall be pending may order service of notice of such petition upon any person or persons whom the Court shall think fit, and may order such notice to be published in the *Government Gazette*.

7. Upon the hearing of such petition the Court may take such evidence by affidavit or *viva voce* as such Court shall deem necessary, and by order appoint trustees for the time being for such company or association, and may by such order direct how new trustees for such company or association shall be afterwards from time to time

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ceding section in certain cases.

This Act not to extend to companies managed by any Ordinance or Act of Parliament.

Supreme or Eastern Districts Court may be moved to appoint new trustees when no other means of supplying vacancy exists.

In such cases Court may appoint trustees, and regulate future appointments.

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appointed; and the trustees for the time being may be nominated and appointed by their proper names, or may be described as persons filling for the time being certain specified offices or positions, according as the Court having regard to the nature and circumstances of the company or association then in question shall deem expedient and direct; and the Court may by such order make such provision, if any, as may in the particular case appear to be required for the more effectual performance by the trustees of the trusts reposed in them.

Mode in which trustees may be appointed to unincorporated societies.

8. If in any case it shall happen that any immovable property shall have been granted or transferred to any unincorporated society or body established for religious, charitable, or educational purposes by the name borne by such society or body, and not through the instrumentality or intervention of office-bearers or other trustees acting for and representing such society or body, it shall be lawful for any person who shall be a member of, or interested in, such society or body, to apply by petition in manner and form as hereinbefore in the sixth section of this Act mentioned for the appointment of trustees for such society or body; and the Court to which such petition shall be presented, proceeding in manner and form as in the sixth and seventh sections of this Act mentioned, may, if satisfied that the appointment of trustees to act for and represent such society or body is expedient, appoint such trustees; and the provisions of the seventh section shall in substance apply to the appointment of such trustees, and to the power of providing how new trustees shall be afterwards from time to time appointed and to all other matters in the said seventh section contained.

Trustees appointed under 7th and 8th sections to be owners of property as in the 2nd and 3rd sections of this Act.

9. The trustees for the time being appointed under or in conformity with the provisions of the seventh or eighth sections of this Act shall be and are hereby declared to be the owners in trust of all the immovable property granted or transferred to, or for the benefit or purposes of, the company, association, society, or body for which such trustees shall have been appointed agreed to in like manner as is hereinbefore in the second and third sections provided in regard to the trustees and office-bearers therein mentioned; and shall also be, and are hereby declared to be, the owners in trust of all movable property belonging to such company, association, society, or body; and shall also be, and are hereby declared to be, invested in trust with all the rights, and entitled to all the claims, of such company, association, society, or body, and to be subject as such trustees to all the liabilities of and demands against the same.

And invested in trust with all rights and liabilities of such company, &c.

Short title.

10. This Act may be cited for all purposes as "The Companies' and Associations' Trustees Act, 1873."

No. 4—1873.]

[June 26, 1873.

ACT

To Repeal the Eighteenth Section of Act No. 22 of 1872, and to enable the Commissioners of Table Bay Docks to fix the Tonnage of Goods subject to Dues.

WHEREAS it is expedient to repeal the eighteenth section of Act No. 22 of 1872, and to substitute certain other provisions in lieu thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

Preamble.

1. The eighteenth section of Act No. 22 of 1872, intituled "An Act for the Management of the Docks and Breakwater of Table Bay," is hereby repealed.

Section 18 of Act No. 22 of 1872 repealed.

2. It shall be lawful for the commissioners provided for by the said Act from time to time to fix the scale of tonnage, either by weight or by measurement, of any goods, being solids, whereon dock dues shall be payable under and by virtue of the provisions of the said Act: Provided, however, that such scale of tonnage shall not be valid or binding unless and until it shall have been approved of by the Governor with the advice of the Executive Council, and published in the *Government Gazette*: Provided, further, that of solids in regard to which no scale of tonnage shall have been fixed, approved of, and published in manner aforesaid, two thousand pounds by weight or forty cubic feet by measurement, whichever shall be of least bulk, and of all liquids, two hundred gallons, shall for the purposes of the said Act be deemed to be a ton.

Commissioners of Table Bay Docks to fix the scale of tonnage subject to certain provisions.

No. 5—1873.]

[June 26, 1873.

ACT

To amend Act No. 16 of 1859, by enabling the Commissioners for Improving the Port and Harbour of Algoa Bay to make Regulations for the better Management of the Breakwater and the Wharfs, Jetties, and Approaches belonging thereto.

WHEREAS it is expedient that the Commissioners for improving the Port and Harbour of Algoa Bay should be enabled from time to time to make regulations for the preservation of good order on the beach of Algoa Bay and on the breakwater, wharfs, jetties, and approaches belonging thereto: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Subject to the provisions contained in the Act No. 16 of 1859, it shall be lawful for the said commissioners from time to time,

Commissioners for improving the port and harbour of Algoa

No. 6—1873.

Bay to make certain regulations subject to approval of the Governor and publication in *Gazette*, &c.

with the approval of the Governor, to make all such necessary regulations to preserve good order on the beach of Algoa Bay and on the breakwater, wharfs, jetties, and approaches belonging thereto, as to the said commissioners shall appear proper; and with the like approval to alter and amend any such regulations: Provided, however, that all such regulations so approved of shall after the approval of the Governor be forthwith published in the *Government Gazette* and in one or more newspapers published in Port Elizabeth.

Penalties for contravening such regulations.

2. Any person contravening any such regulation as aforesaid shall be liable on conviction to such and the like penalty as in the said Act No. 16 of 1859 is provided.

No. 6—1873.]

[June 26, 1873.]

ACT

For Regulating the use of Locomotives on Turnpike and other Roads, and the Tolls to be levied on such Locomotives and on the Wagons and Carriages drawn or propelled by the same.

Preamble.

WHEREAS it is desirable that the use of locomotives on the public roads of the Colony should be regulated by uniform general provisions, and that the tolls should be levied upon such locomotives and the wagons or carriages drawn by such locomotives upon the said roads: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Tolls may be demanded.

1. From and after the taking effect of this Act all Divisional Councils and other public bodies or authorities, acting lawfully in the management, custody, and maintenance of any public road in this Colony, and entitled to demand tolls thereon in respect of vehicles drawn by animal power, may demand and take tolls at any toll-bar or place at which they may respectively be entitled to demand tolls, not exceeding the following, that is to say—

Rate for locomotives.

For every locomotive containing within itself the machinery for its own propulsion, a toll equal to four times the amount of toll which would be legally payable in respect of such locomotive at such toll-bar or other such place as aforesaid if the said locomotive were an ordinary vehicle running on wheels and drawn by horses, mules, or other cattle.

Rate for wagons, &c., drawn by same.

For every wagon, cart, or other vehicle drawn or propelled by such locomotive, as aforesaid, a toll of the like amount as would be payable in respect of such wagon, cart, or other vehicle if the same were drawn by horses, mules or other cattle.

2. It shall not be lawful for the owner or driver of any locomotive to drive it over any suspension bridge, nor over any bridge on which a conspicuous notice has been placed by the authority of the persons or public body liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of such persons or public body, and in case such owner of the locomotive and such person or public body as aforesaid shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed on the application of either party by the Governor, whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge.

3. Where any public roads upon which locomotives are or hereafter may be used, pass, or are, or shall be carried over or across any stream or watercourse, river, canal, or railway, by means of any bridge or arch, whether stationary or movable, and such bridge or arch, or any of the walls, buttresses, or supports thereof shall be damaged by reason of any locomotive or any wagon or carriage drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, every such damage shall be forthwith repaired to the satisfaction of the persons or public body liable to the repair of such bridge or arch by and at the expense of the owner or owners of, or the person or persons having the charge of such locomotive at the time of the happening of such damage: Provided, always, that if the repair be not done forthwith it shall be in the power of the body having the management of the road and bridge to have the repair done at the expense of the owner of the locomotive having done the damage.

4. Nothing in this Act contained shall authorise any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive. But any locomotive not being such a nuisance as aforesaid may, except as hereinafter is excepted, lawfully be used on any public road.

5. Upon receipt of a report from the divisional council of any division to the effect that the use of such locomotive as aforesaid upon any mountain pass within such division would be dangerous to the public safety, it shall be lawful for the Governor, with the advice of the Executive Council, if upon inquiry such report should be found to be correct, to order, by a notice to be published in the *Government Gazette*, that no such locomotive shall be used upon such mountain pass, and any person who shall after the date of such notice use any locomotive on such pass, shall for or in respect of each occasion on which he shall use the same be liable to a penalty of ten pounds sterling.

6. This Act may be cited as "The Locomotives Act, 1873."

No. 6—1873.

Locomotives not to be driven over certain bridges without consent.

Officer to be appointed by Governor in case of dispute.

Damage to any bridge to be repaired by owner of locomotive.

Locomotive not to be so constructed or used as to be a nuisance.

Damages may be recovered for injury.

Governor in Council on report of divisional council may order that locomotives are not to be used on any mountain pass.

Short title.

1274

DIVISIONAL POLICE.

No. 7—1873.]

[June 26, 1873,

ACT

To Repeal the Twenty-third Section of Ordinance No. 73 of 1830, intituled "An Ordinance for explaining, altering, and amending the Ordinance No. 40."

Preamble.

WHEREAS it is expedient to repeal the twenty-third section of Ordinance No. 73 of 1830, and to re-enact the sixtieth section of Ordinance No. 40 of 1828: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repealing section 23 of Ordinance 73 and re-enacting section 60 of Ordinance 40.

1. The twenty-third section of Ordinance No. 73 of 1830 is hereby repealed, and the sixtieth section of Ordinance No. 40 of 1828 is hereby re-enacted.

No. 8—1873.]

[June 26, 1873.

ACT

For Enabling the several Divisions of this Colony to obtain a Force or Additional Force of Police by contributing towards the Expenses thereof.

Preamble.

WHEREAS it is expedient that the several divisions of this Colony should be enabled, if so willing, to obtain the services of a force or an additional force of police, as the case may be, by contributing towards the expense of raising and maintaining such force or additional force: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may, on petition, arrange with divisional council the number of police required, and furnish said council with estimate of cost for one year.

1. On the receipt of a petition from the Divisional Council for any division signifying the desire of such council that a force or an additional force, as the case may be, of police, mounted or unmounted, or partly mounted and partly unmounted, should be raised and maintained for the purpose of preserving order and repressing crime within such division, the Governor may arrange with the council preferring such petition the number or additional number of men which will be required for the purpose aforesaid, and furnish such council with an estimate of the cost of raising and maintaining such force or additional force for the year next ensuing the raising of the same.

On payment of one-third of estimated cost by divisional council.

2. (1) If the Divisional Council shall, on receipt of such estimate, be willing to contribute one-third of the estimated amount, it shall pay to the Civil Commissioner for the behoof of Her Majesty, in her colonial revenue, such third of such estimated amount, and the Civil Commissioner shall forthwith grant his receipt for the same, and shall inform, or the Divisional Council may inform, the

¹ Contributions of Council are payable quarterly in advance. See Act 23, 1885.

Governor that such amount has been so paid as aforesaid, and on the Governor being satisfied of such payment, it shall be lawful for him to authorise the appointment and employment by the Resident Magistrate of the district of such force or additional force in and for such division as the Governor shall have approved of during the year next ensuing such payment as aforesaid: Provided that in any division where there is more than one Resident Magistrate, the Divisional Council shall apportion the number of the police force to be appointed by each Magistrate in such division.

No. 8—1873.

Governor may authorise resident magistrate to appoint police force.

Divisional council to apportion when more than one magistrate in division.

3. A true and correct account shall be kept of the costs in each division of the police force or additional police force raised and maintained under the provisions of this Act, and a copy or abstract of such account, or of such part thereof as relates to each division, shall be furnished to the Divisional Council of such division at the expiration of the year, reckoning from the date of such payment as aforesaid to the Civil Commissioner; and if the third of such actual expenditure shall exceed the amount so paid as aforesaid to the Civil Commissioner, then the Divisional Council shall make good the excess of the third of the actual expenditure over the amount so paid as aforesaid, by paying such excess to the Civil Commissioner on behalf of the Colonial Treasury; but if the third of such actual expenditure shall fall short of the amount so paid as aforesaid, then the balance shall be repaid by the Colonial Treasury to the Divisional Council which shall have paid such amount as aforesaid, or shall be allowed in account by the Civil Commissioner to such Divisional Council on its next payment, if any, under the provisions of this Act.

Accounts to be furnished to divisional council annually.

Mode of procedure if estimate be exceeded or otherwise.

4. As to every year succeeding the first in which any such payment as aforesaid shall have been made by any Divisional Council to the Civil Commissioner for the purposes of this Act, the Governor shall, within the first three months after the commencement thereof, dating from the time of such first payment as aforesaid, furnish such council with an estimate of the cost of maintaining such force, or additional force, as the case may be, for the succeeding year, and if the third of such estimated cost shall be paid by such council to the Civil Commissioner on or before the termination of three calendar months from the anniversary of such payment as aforesaid, as well as any excess by which the third of the actual expenditure occasioned by such force or additional force, as the case may be, shall have exceeded the third of the original estimate so paid as aforesaid then it shall be lawful for the Governor to maintain the like force to be stationed within such division during the year next ensuing the anniversary of such first payment as aforesaid; but if such sum and such excess, if any, or any part thereof, respectively, shall not be paid as aforesaid, then such force shall be disbanded or withdrawn from such division, and such council shall immediately be compelled to pay to the Colonial

In succeeding years new estimate of cost to be furnished and one-third paid by divisional council with excess, if any.

Force to be disbanded or withdrawn on non-payment.

No. 8—1873.

Treasury all such excess as last aforesaid, and further one-twelfth part of the estimated cost of such force or additional force, as the case may be, for the year whereof such three months as aforesaid shall have expired, unless such notice as is hereinafter provided of the intention of such division to discontinue the maintenance of such force shall have been duly given.

Course to be adopted in years succeeding the first year.

5. A like account shall be kept and rendered as to every year succeeding the first year in which any such force shall be maintained as is hereinbefore provided regarding the first year, and the like course shall be followed as to any difference or balance, if any, between the third of the estimate paid and the third of the actual expenditure for the past year, as is provided in respect of the first year in which such force shall be maintained under the provisions of this Act.

What notice, &c., necessary when divisional council desirous to cease to maintain such force.

6. If any Divisional Council shall be desirous to cease to maintain such force or additional force as aforesaid, or any portion thereof, such council may, by resolution duly forwarded by address to the Governor, make known the wish of such council at any time not less than three months before the expiration of the year for which provision shall have been already made, and the Governor shall on the receipt of such address within such three months, make provision for disbanding or otherwise disposing of the said force or additional force, or portion thereof, as the case may be; and if such notice shall have been duly forwarded in proper time as aforesaid, the Divisional Council shall be bound to pay to the Colonial Treasury only the sum, if any, by which the third of the actual expenditure for the current year may exceed the third of the estimated expenditure therefor already paid in respect of such force, or additional force, as the case may be, and any payment to be made for the succeeding year shall be only for such force as such divisions shall desire to continue to maintain, if any.

Divisional council may levy a special rate if necessary.

7. The Divisional Council for every division within which any force or additional force of police shall be stationed under the provisions of this Act may, out of funds at its disposal, make such payments to the Civil Commissioner as hereinbefore are provided to be made, or, if necessary, levy a special rate for this purpose, and such rate shall be assessed and levied by such Divisional Council in like manner as road rates are assessed and levied.

Police to be under orders of magistrate, subject to certain rules.

8. The police or additional police to be raised and maintained under the provisions of this Act shall, save as is hereinafter excepted, be deemed to be under the orders and directions of the Resident Magistrate of the district to which the same belongs, subject to such rules and regulations as the Civil Commissioner of the division, in concurrence with the Divisional Council of the division, shall frame, and the Governor shall approve of.

Powers and duties of police.

9. All such police as aforesaid shall, save as is hereinafter excepted, be deemed and taken to be appointed under the Ordinance No. 25 of 1847, intituled "An Ordinance for Improving

the Police of the Colony," and shall possess all the powers and perform all the duties belonging to the members of the police force in the said Ordinance mentioned.

No. 8—1873.

10. It shall be lawful for the Governor, in the case of any war or other emergency, to employ any of the police raised under the provisions of this Act for the purpose of assisting in the defence of the Colony, and to place such police under the orders and directions of such person as the Governor shall appoint in that behalf, and such police while so employed shall possess the powers and be subject to the rules and regulations appertaining to the force of Armed and Mounted Police: Provided, however, that, at the expiration of any year during which any police shall have been so employed by the Governor for any period the Divisional Council which shall have contributed towards the expenses of such police under the provisions of this Act shall be entitled to receive from the Colonial Treasury a sum of money equal to one-third of the estimated cost of maintaining such police within such division for such period of employment as aforesaid; but if the Divisional Council of any division shall offer and agree to pay, and shall pay, one-half of the expense for raising and maintaining such police force or additional police force for such division, it shall not be lawful to remove such police force from such division for employment elsewhere without the concurrence and consent of such Divisional Council, signified by resolution adopted at any meeting of the same.

Police may be employed in colonial defence.

Expense whilst so employed to be borne by general revenue.

If divisional council pays half the expense of police, they are not to be removed without consent of such council.

11 This Act may for all purposes be cited as "The Divisional Police Act, 1873."

Short title.

No. 9—1873.]

[June 26, 1873.]

An Act for Authorising certain Expenditure not provided for by Parliament in the Year 1871.

[Spent.]

No. 10—1873.]

[June 26, 1873.]

An Act for Authorising certain Expenditure not provided for by Parliament in the Year 1872.

[Spent.]

No. 11—1873.]

[June 6, 1873.

ACT

To provide for lodging the Accounts of Executors, Tutors, Curators, and Trustees in the Offices of the Resident Magistrates of the respective Districts in which the Estates administered are situated.

Preamble.

WHEREAS by the thirty-third section of the Ordinance No. 104 it is enacted and provided that every executor, whether testamentary or dative, shall so soon as the estate under his administration shall have been fully administered and distributed, lodge with the Master of the Supreme Court and the Resident Magistrate of the district in which such estate was situated a full and true account of the whole administration and distribution of such estate; and whereas the provision of the said section, so far as relates to lodging such accounts as aforesaid with the Resident Magistrate, has not hitherto been generally observed: And whereas it is expedient to provide for more effectually carrying the object of the said section into effect, and at the same time to make similar provision in regard to the accounts of tutors, curators, and trustees administering insolvent estates, and otherwise to provide for better means of information in the country districts in regard to the estates of deceased and absent persons, minors, and lunatics: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the Ordinances numbered 104 and 105 respectively, and of the Ordinance numbered 6, 1843, as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Certain accounts to be lodged with Master in duplicate.

2. Every executor, whether testamentary or dative, who shall pursuant to the provisions of the thirty-third section of the Ordinance No. 104, and every tutor, either testamentary or dative, and every curator, either nominate or dative or bonis, who shall, pursuant to the provisions of the thirty-eighth section of the Ordinance No. 105, be bound to lodge with the Master of the Supreme Court the certain accounts in the said sections of the said Ordinances respectively mentioned; and every trustee who shall pursuant to the provisions of the 108th and 114th sections respectively of the Ordinance No. 6, 1843, be bound to frame and lay before the Master of the Supreme Court an account and plan of distribution of the assets of any insolvent estate, shall at the same time lodge with the said Master a duplicate, or otherwise a copy, of every such account or account and plan of distribution, as the case may be; and every such executor, tutor, curator, or trustee who shall fail or neglect to lodge such duplicate or copy as aforesaid shall be deemed and taken to be in the like plight and condition as if no

Consequence of failure to lodge account in duplicate.

account had ever been lodged or tendered at all: Provided that in regard to any such executor as aforesaid the lodging of such duplicate or copy with the Master shall be in place and instead of lodging an account with the Resident Magistrate, as required by the thirty-third section of the Ordinance No. 104.

No. 11—1873.

Such lodgment by an executor to be instead of lodgment with magistrate.

3. The Master of the Supreme Court shall, when any such account as is in the last preceding section mentioned has been approved and filed in his office, endorse upon every duplicate or copy the date upon which such account was filed, or in regard to any insolvent estate the date upon which such account was confirmed by order of the Supreme Court; and as to every copy lodged as aforesaid shall cause the same to be examined and authenticated with his signature.

Master to endorse date of filing and confirmation of accounts, and to examine and sign same.

4. The Master aforesaid shall, as soon as may be after the expiration of every month forward the duplicates, or copies authenticated as aforesaid, of all accounts lodged with and filed by him in his office, to the Resident Magistrates of the respective districts in which the estates to which such accounts, respectively, relate were situated.

Master to forward duplicates to magistrates.

5. Every person who shall by virtue of the third, ninth, and eighteenth sections, respectively, of the Ordinance No. 104 be bound and obliged to deliver or transmit to the Resident Magistrate of the district in which he shall reside, either directly or through the Field-cornet of the Field-cornetcy in which any death shall occur, any deed being or purporting to be the last will, codicil, or other testamentary instrument of any deceased person, or any notice of the death, or inventory of the goods or effects of such deceased person, shall at the same time deliver or transmit, as the case may be, a duplicate or otherwise a copy fairly written of every such deed, death notice, or inventory aforesaid; and every Resident Magistrate receiving any such deed, death notice, or inventory, and a duplicate or copy thereof, shall cause every copy to be examined and compared with the original, and, if need be, corrected, and shall authenticate such duplicate or copy with his signature.

Wills, codicils, death notices, inventories, &c., to be lodged in duplicate with magistrate, who shall examine and sign same.

6. Every Resident Magistrate receiving such duplicates or copies of documents as are hereinbefore in this Act mentioned shall cause the same to be preserved and registered; and any person may on any day, Sundays and holidays excepted, inspect and take copies thereof.

Magistrates to register such duplicates for inspection.

7. Whenever any duplicate original document shall, under the provisions of this Act, have been lodged in the office of any Resident Magistrate, a copy or extract thereof, signed and certified as a true copy or extract by the Resident Magistrate having the custody of such document, and every such copy authenticated by the Resident Magistrate or Master of the Supreme Court, as the case may be, as shall under the provisions of this Act have been lodged in the office of any Resident Magistrate, shall be admissible

Copy authenticated by magistrate or Master to be admissible in evidence.

No. 11—1873.

in evidence in any Court of Justice, or before any person having by law or consent of parties authority to hear, receive, and examine evidence.

Short Title.

8. This Act may be cited for all purposes as the "Executors' and Trustees' Accounts Act, 1873."

No. 12—1873.]

[June 26, 1873.

ACT

To Provide for the Granting of Titles in Freehold to the Inhabitants of certain Missionary Institutions, and for the better Management of such Institutions. (1)

Preamble.

WHEREAS divers tracts of land in this Colony have at various times and in various ways been acquired by the London Missionary Society for the purpose of founding certain missionary institutions, and it is desirable to give to the inhabitants of the said institutions on certain conditions, titles in freehold of the portions of land heretofore respectively occupied by them, free of transfer dues and expenses of survey; and whereas the inhabitants of the said institutions have hitherto been under the secular as well as the religious control of the missionaries of the said society, and it is desirable that the connection in secular matters between the said society and the said inhabitants should cease, and that under such altered circumstances, new rules and regulations should be framed for the better management of the said institutions in lieu of those heretofore in force: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor to appoint surveyors to divide and allot land of certain missionary institutions.

1. It shall be lawful for the Governor to authorise and appoint one or more duly qualified land-surveyors to survey and divide such tracts of land in this Colony as shall, at the time of the passing of this Act, be in the lawful occupation of the missionary institutions of the London Missionary Society, and such surveyor or surveyors, acting under such instructions as they shall from time to time receive from the Governor, shall divide the said tracts of land in such a manner as to allot to the respective occupiers thereof such portions of land as they shall at the time of such survey be entitled to occupy under and by virtue of the customs in force in such institutions respectively; and in case there shall be any dispute as to whether any person is entitled as aforesaid to any allotment of land, or as to the extent of land which ought to be allotted to any occupier, it shall be lawful for the Governor to decide whether any and what extent of land ought to be allotted to such person or occupier.

Disputes to be decided by Governor

¹ See Acts 14, 1886; 28, 1892.

2. It shall be lawful for the Governor to cancel and annul the grant of a certain tract of land occupied by the missionary institution of Zuurbraak to the London Missionary Society in trust for the native races belonging to the said institution of Zuurbraak, dated the eleventh day of December, 1858, and the grant of a certain tract of land occupied by the missionary institution of Dysselsdorp to the missionary institution of Pacaltsdorp, dated the twelfth day of April, 1849, and to grant, free of quitrent, but subject to all other reservations usual in quitrent grants of Crown land in this Colony, to the respective occupiers of land in the said institutions of Zuurbraak and Dysselsdorp, and of the institutions of Pacaltsdorp and Bethelsdorp, such portions of such land as aforesaid as shall, under and by virtue of the last preceding section have been respectively allotted to them, or in case of dispute, as the Governor shall decide ought to have been so allotted.

3. It shall be lawful for the board of directors of the London Missionary Society, by a resolution, in writing, signed by the chairman and secretary of the said board, to authorise and appoint one or more persons to transfer the tracts of land occupied by the missionary institutions of Hankey and Kruisfontein, and belonging to the said society and the person or persons so authorised and appointed shall forthwith transfer to the respective occupiers of the said institutions of Hankey and Kruisfontein such portions of land as shall have been respectively allotted to them, and the effect of such transfer shall be to vest in the respective transferees as full right and title to the portions of land respectively transferred to them as was vested in the said board of directors, or other the transferees of the farm Gamtoos River Wagondrift, and one-fourth share of the farm Fenstershoek, forming together the institution of Hankey, and the farm Kruisfontein, respectively, under and by virtue of the deeds of transfer to them of those lands, dated respectively the twenty-ninth day of March, 1822, the fifth day of September, 1845, and the second day of July, 1857: Provided that the said board of directors of the London Missionary Society, and all persons to whom any portion of land in the institution of Hankey shall be let by the said directors or shall be transferred as aforesaid, shall have the full right of grazing their sheep and cattle upon such tract of Crown land adjoining the institution, and called Zoetekloof, as shall hereafter be defined by the Governor, by proclamation in the *Government Gazette*, subject to such regulations as are hereinafter mentioned: Provided, also, that all persons to whom any portion of the land heretofore used as an outspan-place for the use of the public shall have been transferred, shall have the full right to occupy, cultivate, and build upon their respective portions: Provided, however, that after such transfer as aforesaid, the whole of the land heretofore used as commonage shall be and become a free outspan-place for the use of the public. (1)

No. 12—1873.

Governor to cancel grants of certain lands to missionary institutions and grant titles to individual occupiers of such land as allotted under first section.

London Missionary Society authorised to appoint persons to transfer lands at Hankey and Kruisfontein to individual occupiers.

Occupiers of land at Hankey to have certain rights of grazing, subject to regulations.

¹ See Act 28, 1892.

No. 12—1873.

Survey expenses to be paid out of general revenue and transfer dues remitted.

Not to apply to Hankey and Kruisfontein.

Land so granted not to be alienated for ten years without Governor's consent.

Licence for selling wines, &c., in missionary institutions not to be granted for ten years without the assent of three-fourths of the occupiers of the land in such institutions.

Governor in Council to make regulations for such institutions.

4. It shall be lawful for the Governor to pay out of Her Majesty's colonial revenue to such land surveyors as aforesaid the expenses of survey which shall be incurred for the purpose of carrying out the provisions of this Act, and to remit to the persons to whom any portion of land shall be granted or transferred, under and by virtue of the provisions of this Act, all duties otherwise due and payable to Her Majesty's colonial revenue in respect of any such grant or transfer as aforesaid: Provided, however, that nothing in this section contained shall be held to apply to any expenses of survey or to the remission of any duties on any land which may be granted or transferred in connection with the institutions of Hankey and Kruisfontein.

5. In all grants made or deeds of transfer passed under the provisions of this Act there shall be inserted a condition to the effect that the land so granted or transferred in any missionary institution shall not for a period of ten years from and after the taking effect of this Act be alienated or transferred to any person unless consent of the Governor shall have been first had and obtained.

6. For a period of ten years after the taking effect of this Act no licence shall be granted authorising the sale of wines or spirituous or fermented liquors on any portion of the lands which shall be granted or transferred under the provisions of this Act, unless three-fourths in number of the occupiers of land, situate within the limits of what at the time of the taking effect of this Act formed the missionary institution in which the land whereon it is desired to carry on such sale of wines or spirituous or fermented liquors as aforesaid is also situate, shall have signified their assent, in writing, to the granting of such licence, and any licence which may purport to have been granted by or in consequence of the determination of any licensing board in contravention of this provision shall, for all purposes, be null and void; but nothing in this section contained shall interfere with the right of any licensing board to refuse any application for a licence to retail wines or spirituous or fermented liquors on such lands as aforesaid.

7. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to make, alter, and amend all such regulations as may be required for the preservation of the health of the community in any of the said missionary institutions, for the proper control and equitable distribution of all streams and springs of water, and of the salt in salt pans belonging to such community or to the use of which such community may be entitled, or which such community has possessed, for the due management of the commonage and regulation and protection of the rights of pasturage thereon, for the preservation of the timber and brushwood growing on such commonage, and for the prevention and removal of nuisances within the limits of any such

institution as aforesaid, due regard being had to the customs heretofore in force in such institutions.

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8. It shall be lawful for the Governor, by such regulations as aforesaid, to provide that any persons contravening any such regulations may, on conviction by the Resident Magistrate of the district in which such contravention shall take place be sentenced to pay a fine not exceeding five pounds sterling, or in default of payment thereof to imprisonment with or without hard labour for any term not exceeding one month.

Governor may impose certain penalties for contravention of such regulations.

9. All regulations and alterations and amendments thereof which shall be made in conformity with the provisions of this Act shall be published in the *Government Gazette*, and shall thereupon have the force of law for all purposes mentioned therein and allowed thereby.

Regulations to be published in Gazette

10. Nothing in this Act contained shall be deemed or construed to take away, alter, or affect any private rights or privileges which may, at the time of the promulgation of this Act, be lawfully vested in any individual occupiers of land in any of the said missionary institutions.

Private rights of individual occupiers not to be affected by this Act.

11. Wherever in this Act the terms "missionary institution" or "missionary institutions" are used without specifying any particular institution, the terms shall be deemed and taken to denote and include the following institutions, to wit :

Interpretation clause.

Bethelsdorp, in the Division of Port Elizabeth,
Dysselsdorp, in the Division of Oudtshoorn,
Pacaltsdorp, in the Division of George, and
Zuurbraak, in the Division of Swellendam.

12. This Act may be cited for all purposes as the "London Missionary Society's Institutions Act, 1873."

Short title.

No. 13—1873.]

[June 26, 1873.]

ACT

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

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

Preamble.

1. The Governor shall, as soon as conveniently may be after the passing of this Act, cause to be constructed, equipped, maintained, and worked the railways in the preamble of this Act mentioned,

Railways to be constructed and worked from Port Elizabeth to Busman's River and from Wellington

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to Worcester, and officers appointed by Governor.

Lands may be entered upon subject to compensation to owners.

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

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

Injuries to railway lines to be regulated by provisions of Act 9 of 1858, as to main roads.

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

Loan of £660,000 to be raised, £345,000 to be applied to Port Elizabeth railway

and shall appoint such engineers and other officers, and do and perform all such acts, matters, and things as he may deem necessary or expedient for the said purposes.

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

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

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

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

6. For the purpose of constructing the said railway from Port Elizabeth to Bushman's River, for which the sum of thirty thousand and one hundred thousand pounds respectively have

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

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and £315,000 to Worcester railway.

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

Loan to be raised by debentures or stock.

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

Mode of issuing debentures.

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

Provisions under which stock shall be issued.

1. [Repealed by Act 17, 1888.]

2. Such stock shall bear interest after the rate of four pounds and ten shillings per centum per annum on the nominal amount of such stock, from the 15th day of April or the 15th day of October next preceding the issue of the said scrip certificates, which shall last happen, (1) the first of such payments to be made on the half-yearly day which shall happen next after the opening of such credit in the books of the said Treasurer as aforesaid, and shall be paid on such days, respectively, or so soon thereafter, as demands shall be made therefor by the lawful holder for the time being of such stock, to such lawful holder or his duly authorised attorney, at the office of the Treasury in Cape Town.

To bear interest at 4½ per cent.

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

Stock and interest to be paid out of general revenue.

4. [Sub-sections 4-6 repealed by Act 17, 1888.]

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Accounts to be kept.

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

Debentures to be subject to Debt Consolidation Act.

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

Accounts to be laid before Parliament annually.

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

Short title.

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

No. 14—1873.]

[June 26, 1873.]

An Act to regulate the Disposal of certain Diamonds and other Property.

[Spent.]

No. 15—1873.]

[June 26, 1873.]

An Act to Amend in certain respects Ordinance No. 105 of 1833, and to Repeal Ordinance No. 3 of 1837, to endure for One Year from the taking effect thereof.

[Spent.]

No. 16—1873.]

[June 26, 1873.]

ACT

To Establish and Incorporate an University at the Cape of Good Hope.

Preamble.

WHEREAS it is expedient, for the better advancement of sound learning amongst all classes of Her Majesty's subjects in this Colony, to establish and incorporate an University at the Cape of Good Hope, and thereupon to dispense with the services of the existing Board of Public Examiners: Be it enacted by the Governor of the Cape of

Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows ⁽¹⁾ :—

1. An University, consisting of a chancellor, a vice-chancellor, a council, and graduates shall be established at the Cape of Good Hope, and shall be a body politic and corporate by the name of "The University of the Cape of Good Hope," and by such name shall have perpetual succession, and shall adopt and have a common seal, and shall be capable both to purchase and to hold property, movable and immovable, and to sell, transfer, lease or otherwise dispose of any such property, and also to do all other matters or things incidental or appertaining to a body politic: Provided that it shall not be lawful for the said university to sell, transfer, lease, or otherwise dispose of any immovable property to which it may become entitled, unless with the previous consent of the Governor.

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Of whom university to be established shall consist.

Its name and powers.

2. The council of the said university shall consist of twenty members, who shall, within three months after the taking effect of this Act, be appointed by the Governor by proclamation, and the said Governor shall in the proclamation appointing such council fix the place, day, and hour for the first meeting of the same.

First council to be appointed by Governor.

3. The council so first appointed as aforesaid shall continue in office for six years; and at all meetings thereof, five members, including the vice-chancellor or other presiding member, shall form a quorum.

Council to continue for six years.

Quorum.

4. Not sooner than six months nor later than three months next before the expiration of the said term of six years, ten members of council shall be appointed by the Governor by proclamation, and ten other members shall be elected by the convocation hereinafter mentioned, to form the new council to replace the council about to expire by effluxion of time: Provided that the ten members to be appointed by the Governor shall be so appointed not less than thirty-one days before the holding of the meeting of convocation for the election of the ten remaining members. And such new council shall continue in office for six years, and be succeeded by another council, to be appointed in like manner, and so on for ever.

Succeeding council to be appointed partly by Governor and partly by convocation.

New council to continue for six years.

5. In case any member of the said council shall die, or resign, or be absent from the Colony for the space for six months, his office shall become vacant. All vacancies occurring under the provisions of this section shall be filled alternately by the Governor and the convocation hereinafter mentioned, the Governor being entitled to fill the first of the vacancies which shall so occur, and the convocation the next, and so on alternately; and any member so elected to fill any such vacancy shall be appointed or elected, as the case may be to hold office until the expiration, by effluxion of time, of the term of office of the then existing council.

Casual vacancies how to be filled up.

¹ See Act No 9, 1875.

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Council to elect vice-chancellor, who shall be chairman.

6. The said council shall, at the first meeting thereof, elect from amongst its own members the vice-chancellor of the university, who shall in the absence of the chancellor perform all duties and functions appertaining to the office of Chancellor, and who shall when present, preside at all meetings of the council: Provided that any meeting of such council at which the vice-chancellor shall not be present may elect its own chairman.

Vice-chancellor to continue in office for two years.

7. The vice-chancellor shall continue in office for two years, unless during that time he shall die, resign, cease to be a member of the council, or be absent from the Colony for the space of three months, in any of which cases his office shall become vacant, and another member of the council shall be elected in his room and stead, who shall in turn continue in office for the term of two years, or until the expiration, by effluxion of time, of the term of office of the then existing council, whichever shall be the shorter period, but subject to the aforesaid conditions, and so on for ever.

Council to confer degrees subject to regulations.

8. The council shall have power to confer, after examination, and according to the by-laws and regulations of the university, the several degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Doctor of Laws, Bachelor of Medicine, and Doctor of Medicine: Provided, always, that it shall be lawful for the said council to frame such by-laws and regulations as it may deem fit for the admission without examination to any such degree of persons who have graduated in any other university; and provided, also, that the degree of Bachelor of Laws shall not be conferred on any person who shall not have obtained or been admitted to the degree of Bachelor of Arts in the university of the Cape of Good Hope, or who otherwise is not a holder of the second-class certificate in literature and science: Provided, further, that it shall be lawful by any such by-laws or regulations as aforesaid to provide that every person holding the certificate granted by the said board of having passed the second-class examination in literature and science in the third order of merit shall be entitled to proceed to the examination for the degree of Master of Arts without being subjected to the examination for the degree of Bachelor of Arts.

Holders of second-class certificates of Board of Examiners in Literature and Science may have certain privileges.

Council to appoint examiners.

9. It shall be the duty of the council to appoint examiners for the examination of persons desiring to matriculate in the university or to obtain any degree, certificate, or distinction from the university, and the said council, in appointing such examiners, shall avoid, as much as may be, appointing any person to be an examiner of any candidate who shall have been under the tuition of such examiner at any time during the two years next before the examination. Every examiner shall hold office as such for a term not exceeding a year, and shall cease to hold office on some date to be fixed by the by-laws in the next succeeding section mentioned.

Council to frame by-laws as to examinations.

10. The council shall from time to time frame the by-laws and regulations for the conduct of examinations, and for establishing, in regard to the subjects of examination, the tests and standards of

qualification to be applied to the candidates, and shall appoint the times and places for holding examinations; as also the subjects of the various examinations for degrees, and for such other distinctions and certificates as the university is empowered to grant.

11. The council, on receiving the reports of the examiners, shall, accepting as conclusive the results of such reports, finally ascertain and decide what candidates are qualified to receive any degree, distinction, or certificate from the university.

12. It shall be lawful for the council, from time to time, to frame by-laws and regulations fixing reasonable fees to be paid for or in respect of matriculation examinations, degrees, and certificates, as well as for any other purpose regarding the university; but no by-law or regulation framed under this Act shall be repugnant to any of the provisions thereof, nor shall the same be of any force or effect until it shall have been approved of by the Governor and published in the *Government Gazette*.

13. The convocation of the university shall consist of all graduates of such university and of the persons holding certificates in literature and science, granted by the Board of Public Examiners in this Colony under the ninth section of Act 4, 1858. Meetings of convocation may be called by the vice-chancellor at his own instance, and shall be called by him as often as a requisition signed by ten members, or more, of convocation shall be delivered to him requesting him to call such meeting, and stating the subject or subjects proposed to be considered thereat. Every meeting of convocation shall be called by a notice to be published in the *Government Gazette* for not less than twenty-one days before the day appointed for holding such meeting: Provided that the term "graduate" shall mean any person upon whom the university shall have conferred any degree after examination, and also any graduate of another university whom the council shall, in the exercise of the power in that behalf hereinbefore bestowed, have admitted to any degree: Provided also that at all meetings of convocation, members thereof resident at a greater distance from Cape Town than ten miles may vote by proxy, under such by-laws and regulations in that behalf as shall be established.

14. As soon as the members of convocation shall have reached the number of one hundred, but not sooner, the vice-chancellor shall call a meeting of such convocation for the purpose of electing the chancellor of the university, and the chancellor so elected shall hold office for life, unless he shall sooner resign such office; and when by death or resignation a vacancy shall occur in the office of chancellor, then a meeting of convocation shall be called for the election of a successor, who shall hold office in like manner and under like conditions as his predecessor, and so on for ever.

15. The chancellor, or should he be absent, or should there be none, the vice-chancellor, shall, in the name of the university, confer degrees, in the presence of the council and the convocation.

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Council to decide upon reports of examiners as to success of candidates.

Council to fix fees to be approved by the Governor and published in Gazette.

Of whom convocation shall consist.

Meetings when and how called.

Term "graduate."

Who may vote by proxy.

Chancellor to be appointed when convocation consists of 100 members.

By whom degrees are to be conferred.

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Property of board
to vest in the council.

16. All and singular the moneys, records, and other property which shall be vested in or belonging to the Board of Public Examiners at the time of the taking effect of this Act shall thereupon vest in and belong to the council of the university, in like manner and upon the like trusts, in all respects as if the said council were the said board.

Registrar and other
officers to be appoint-
ed by council.

17. The council shall appoint, during its pleasure, an officer to be styled "The Registrar of the University of the Cape of Good Hope," who shall be charged with such duties as shall be assigned to him by the said council; and the said council shall also appoint, during pleasure, such other officers or persons as the service of the university shall require.

Vice-chancellors,
councillors and exam-
iners eligible for
re-election.

18. Vice-chancellors, councillors, and examiners going out of office by effluxion of time, or councillors vacating their office by reason of absence from the Colony, under the provisions of this Act, shall be eligible for re-appointment or re-election, as the case may be.

Council may grant
certificates of profici-
ency in law and juris-
prudence.

19. (1) Besides being empowered as aforesaid to grant degrees in law, the council of the university is also empowered to grant after examination certificates of proficiency in law and jurisprudence. The nature of the subjects of such examination and the degree of proficiency to be required from candidates for such certificates shall generally and in substance correspond with the practice in those respects of the Board of Public Examiners, during its existence, in regard to the lower or second-class certificates of proficiency in law and jurisprudence granted by such board. But no person shall, except as hereinafter excepted, be admitted to be a candidate for any such certificate as is in this section mentioned who shall not have passed the matriculation examination in the said university, or shall not be the holder of a third-class certificate in literature and science granted by the Board of Public Examiners: Provided that it shall not be necessary for any person to pass the matriculation examination aforesaid who shall at the time of the taking effect of this Act be serving as an apprentice or clerk under any such contract as is in the third section or in the fifth section of the Act No. 12, 1858, described.

Who eligible as
candidates.Bachelors of laws
to be eligible to be
enrolled as barris-
ters, &c.

20. Persons who shall have obtained or been admitted to the degree of Bachelor of Laws in the said university shall, for the purpose of the second section of the Act No. 12, 1858, intituled "An Act for regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers," be eligible to be enrolled as barristers or advocates of the Supreme Court, in like manner, precisely as if such persons had obtained the certain certificates in the said section mentioned.

Position of persons
obtaining the certi-
ficate of proficiency
in law and jurispru-
dence under this Act

21. Persons who shall have obtained the certificate of proficiency in law and jurisprudence in the nineteenth section of this Act mentioned shall, for the purpose of the third and the fifth sections

¹ See § 4 sub § (b) Act 30, 1892, and § 7.

of the Act No. 12, 1858, in the last preceding section mentioned, be deemed to be, in all respects, in the same plight and condition as if they had obtained one or other of the certificates in law and jurisprudence in the said third and fifth sections of the said Act described.⁽¹⁾

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in regard to the provisions of the 3rd and 5th sections of Act No. 12 of 1858.

22. The council of the university is hereby empowered to grant certificates of proficiency in the theory of land surveying, and should the council deem it expedient so to do, in the theory of civil engineering, and in the theory and principles of navigation, in like manner as the Board of Public Examiners was, during its existence, by the seventeenth, eighteenth, nineteenth, twentieth, and twenty-first sections of the Act No. 4, 1858, empowered to grant similar certificates.

Council may grant certificates in land surveying, engineering, and navigation.

23. The council aforesaid shall also cause to be examined candidates for admission into the public service who may be authorised by the Governor to present themselves for examination in such subjects and under such regulations as may from time to time be appointed and fixed by the council, with the consent of the Governor.

Council may examine candidates for the civil service.

24. No religious test shall be administered or proposed to any person in order to entitle him to be admitted as an undergraduate of the university of the Cape of Good Hope, or to hold office therein, or to graduate thereat, or to enjoy any advantage or privilege thereof.

No religious test to be required.

25. No vacancy in the office of chancellor or vice-chancellor of the said university nor any deficiency in the number of members of the council thereof shall be deemed or taken to impair or affect the corporate existence or powers of the said university: Provided that no meeting of the council shall be held at which the quorum in the third section of this Act mentioned shall not be present.

Vacancies not to affect the corporate powers of the university.

Quorum necessary.

26. The council shall annually furnish to the Governor a report of the proceedings of the university, together with a complete statement of the receipts and expenditure of the university, which report and financial statement shall be laid before each House of Parliament.

Report and accounts to be laid before Parliament annually.

27. Upon and from and after the taking effect of this Act, the Act aforesaid No. 4, 1858, Act No. 13, 1860, intituled "An Act for amending Act No. 4, 1858, creating a Board of Public Examiners," Act No. 4, 1863, intituled "An Act to amend Act No. 4 of 1858, constituting the Board of Public Examiners," and Act No. 10, 1868, intituled "An Act to repeal the third section of the Act No. 4 of the year 1858," shall be and the same are hereby repealed.

Acts repealed

28. This Act may be cited for all purposes as "The University Incorporation Act, 1873."

Short title.

¹ See § 1 Act 30, 1892.

No. 17—1873.]

[June 26, 1873.

ACT

To Remove Doubts as to the necessity of Restamping certain Deeds and to Amend the Stamp Act, 1870, in so far as relates to the mode of Stamping Deeds executed before the Registrar of Deeds.

Preamble.

WHEREAS it has heretofore been customary in this Colony to cover deeds of transfer, mortgage bonds, and other deeds executed before the Registrar of Deeds with stamped paper of the value required for such deeds respectively: And whereas such stamps have in many cases become detached from the deeds to which they belong, and have been either lost or destroyed: And whereas doubts have arisen as to the necessity of such deeds being restamped when produced in the course of legal proceedings, or at the office of the Registrar of Deeds, without the covering stamp: And whereas it is expedient to remove such doubts, and also to amend the law relating to the mode of stamping such deeds in future: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. The first clause of the explanations or provisions contained in Tariff No. 8 in the Schedule in the "Stamp Act, 1870," relating to "transfers, bonds, &c.," and so much of any other law or custom in force in this Colony as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same is hereby repealed.

Deeds already executed before Registrar of Deeds to be deemed to have been duly stamped.

2. Every deed of transfer, mortgage bond, or other deed heretofore executed before the Registrar of Deeds of this Colony shall be deemed to have been duly stamped at the time of the execution of the same, and shall not in any place or for any purpose require to be stamped afresh.

Adhesive stamps on deeds to be cancelled by officer duly appointed.

3. Every such deed as aforesaid executed after the passing of this Act shall, if not written upon paper impressed with a stamp of the required value, have affixed thereto an adhesive stamp or adhesive stamps, and such adhesive stamps shall be defaced and cancelled by such person and in such manner as the Governor shall from time to time direct.

Short title.

4. This Act may be cited for all purposes as the "Deeds Stamp Act, 1873."

No. 18—1873.]

[June 26, 1873.

AN ACT

To Amend No. 15, 1856, intituled "An Act to Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices." (¹)

WHEREAS it is expedient to amend the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices": Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble

1. The fourth section of chapter two of Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices," shall be and the same is hereby repealed: and from and after the promulgation of this Act no written contract of service entered into in this Colony shall be valid or binding for a longer period than one year from the date thereof, nor shall any contract for service in writing be valid or binding in any case on any servant, unless the service so contracted for shall be stipulated to commence within the period of one month from the date of the contract, except the contract be signed with the name, or, in case of illiterate persons, with the mark of the contracting parties, in the presence of a Magistrate, or other proper officer, described in the second section of Act No. 15 of 1856, who shall satisfy himself by enquiry of the servant or apprentice that the contract was entered into by the parties voluntarily, and with a clear understanding of its meaning and effect, and shall then, and not till then, subscribe such written contract in attestation of that fact.

Fourth section of chapter 2 of Act 15 of 1856 repealed.

Written contract of service not valid for more than one year except on certain conditions.

2. (²) Any servant or apprentice may be fined any sum not exceeding one pound sterling, and in default of payment of the same may be imprisoned, with or without hard labour for any period not exceeding one month, in case he shall be convicted of any of the following acts or instances of misconduct, that is to say:

Definitions of punishment for certain acts of misconduct committed by servants or apprentices.

1. If he shall, after having entered into a contract, fail or refuse, without lawful cause, to commence the service at the stipulated time.
2. If he shall, without leave or other lawful cause, absent himself from his master's premises, or other place proper and appointed for the performance of his work.

¹ See Acts 28, 1874; 7, 1875; 35, 1886; 8, 1889; 30, 1889; 24, 1895, § 17. Extended by Proclamation No. 206 of 1893 to all the Native Territories, and by Proclamation 340 of 1894 to East and West Pondoland.

² Special J.P. has jurisdiction to try offences against this section. See § 22, Act 40, 1882.

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3. If he shall, during working hours unfit himself for the proper performance of his work by becoming or being intoxicated.
4. If he shall neglect to perform any work which it was his duty to have performed, or if he shall carelessly or improperly perform any work which from its nature, it was his duty, under his contract to have performed carefully and properly.
5. If he shall without leave and for his own purposes, make use of any horse, vehicle, or other property belonging to his master.
6. If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey.
7. If he shall make any brawl or disturbance in or at his master's dwelling house, or on his master's farm, and after being, by his master or any other person placed by his master in authority over him, desired to desist, shall, notwithstanding, continue making such brawl or disturbance.
8. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace.

Definition of punishment under either the next ensuing section or the last preceding section in case of a second or further conviction.

3. In case of a second conviction under the last preceding section or of more such convictions than a second, within the space of six months next after any former conviction, the offender may, in regard to such second or any further conviction, be fined any sum not exceeding three pounds sterling, and in default of payment thereof may be imprisoned and kept at hard labour for any period not exceeding six weeks, and shall be liable during such imprisonment (or so much thereof as the convicting Magistrate shall adjudge) to be kept in solitary confinement with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter is mentioned, and upon a conviction under the next ensuing section of this Act followed within six months by a conviction under the last preceding section, the offender shall be liable to the like punishment, as if both convictions have been had under the last preceding section.

Definitions of punishment for acts of misconduct of a more serious nature committed by servants or apprentices.

4. Any servant or apprentice may be fined any sum not exceeding three pounds sterling, and in default of payment, may be imprisoned, with or without hard labour, for any period not exceeding two months, or may be imprisoned without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding two months, and during such imprisonment as in this section is mentioned, may be kept in solitary confinement with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter in the

nineteenth section is mentioned, in case he shall be convicted in any of the following acts or instances of misconduct, that is to say :

1. If he shall by wilful breach of duty, or by neglect of duty or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.
2. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, refuse or omit to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.
3. If being employed as a herdsman, he shall fail to report to his master the death or loss of any animals placed in his charge, which he shall allege to have died or been lost, on the earliest opportunity for so doing after he shall have discovered or in the course of duty was bound to have discovered, such death or loss, or if he shall fail to preserve for his master's use or inspection any part or parts of any such animal as he shall allege to have died which part or parts he shall by his master have been directed to preserve, unless such herdsman shall prove to the satisfaction of the Court the death of such animals, or if it shall be made by his master to appear that any such animal or animals alleged by him to have strayed away or otherwise become irrecoverably lost, could not, under the circumstances of the case, have become irrecoverably lost without his act or default.
4. If, being employed in any capacity other than that of a herdsman, he shall allege the loss of any property placed in his charge by or for his master, and it shall be made by his master to appear that the property in question could not have been lost without his act or default.
5. [Repealed by § 4, Act 7, 1875.]
6. ⁽¹⁾ If he shall, without lawful cause, depart from his master's service, with intent not to return thereto.

5. In case of a second conviction under the last preceding section, or of more such convictions than a second, within the space of six months next after any former conviction, the offender may, in regard to such second or any further conviction, be fined any sum not exceeding five pounds sterling, and in default of payment thereof may be imprisoned and kept at hard labour for any period not exceeding three months, or may be imprisoned,

Definition of punishment under either the last preceding section or the second section in cases of a second or further conviction.

¹ See § 2, Act 7, 1875, and Act 30, 1889.

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without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding three months, and shall be liable during such imprisonment as in this section is mentioned, or so much thereof as the convicting Magistrate shall adjudge, to be kept in solitary confinement, with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter mentioned; and upon a conviction under the second section of this Act, followed within six months by a conviction under the last preceding section, the offender shall be liable to the like punishment as if both convictions had been had under the last preceding section.

No fine or imprisonment shall have the effect of cancelling a contract.

Certain exception from the second to sixth section, inclusive, and the ninth section.

Provision for the punishment of servants and apprentices other than those engaged in agriculture or employed to work on farms.

6. No fine paid or period of imprisonment undergone under this Act by a servant or apprentice shall have the effect of cancelling the contract of service or apprenticeship.

7. (1) Nothing in any of the preceding sections from second to sixth, both inclusive, nor in section nine, shall extend or apply to servants or apprentices under the age of sixteen years, or to servants or apprentices other than those engaged in agriculture or employed to work on farms: Provided, however, that any servant or apprentice other than those engaged in agriculture or employed to work on farms as last mentioned, not being under sixteen years of age may:—

1. If he shall, after having entered into a contract, fail or refuse without lawful cause to commence the service at the stipulated time:
2. If he shall, without leave or other lawful cause, absent himself from his master's premises, or other place proper and appointed for the performance of his work:
3. If he shall, during working hours, unfit himself for the proper performance of his work by becoming or being intoxicated:
4. If he shall neglect to perform any work which it was his duty to have performed, or if he shall carelessly or improperly perform any work which from its nature it was his duty, under his contract, to have performed carefully and properly:
5. If he shall, without leave or for his own purposes, make use of any horse, vehicle, or other property belonging to his master:
6. If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey:
7. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master:

¹ See note to § 2.

8. If he shall by wilful breach of duty, or by neglect of duty or through drunkenness refuse or omit to do any lawful act proper and requisite to be done by him for forwarding in safety any property placed by his master in his charge for delivery to or on account of his master :

9. ⁽¹⁾ If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace :

be fined any sum not exceeding two pounds, and in default of payment be sentenced to be imprisoned for any period not exceeding one month ; but if it shall appear that such servant or apprentice is able to pay the damage caused by such act or default as in this section aforesaid, it shall be competent for the Magistrate, whether the master shall agree thereto or not, to proceed under section thirteen, chapter five, of Act No. 15, 1856.

8. No servant or apprentice shall be convicted under any of the foregoing sections of this Act unless the master shall lodge his complaint within one month next after the day on which he became cognizant of the offence or alleged offence.

Complaints under foregoing sections to be lodged within one month.

9. ⁽²⁾ In order to save time and expense, the master of any servant or apprentice alleging matter of complaint against such servant or apprentice may warn and order such servant or apprentice to appear before the Magistrate of the district, on some day and hour to be named by such master, there to answer some certain charge, of the nature of which such complainant shall inform such defendant ; and should the defendant fail to attend, in pursuance of such warning, the Magistrate, upon an application of the complainant, and upon proof by affidavit that such defendant received such warning, and received the same a reasonable time before the time fixed for his appearance, and that to the best of the deponent's knowledge and belief, such defendant has no lawful cause for not appearing, may issue his warrant for the apprehension of such defendant, in order to the trial of the complaint ; and on such trial, and if the servant or apprentice shall be convicted of the offence with which he shall be charged, the Magistrate may (if he shall be satisfied that the defendant had no good and sufficient cause for failing to attend), in addition to the punishment to which the defendant may be sentenced, adjudge the said defendant to pay to his master such reasonable costs and expenses, not being more than those allowed in criminal cases, to which his master may have been put in consequence of the defendant having failed to attend as aforesaid : Provided, always, that on issuing such warrant as aforesaid, the defendant shall be warned by summons to answer the charges brought against him, and to show cause why

Servant to appear before a magistrate on order of master, and failing to appear to be liable to expenses on conviction.

¹ 9th paragraph added by Act 7 of 1875.

² See § 3 Act 30, 1889.

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he shall not be adjudged to pay such expenses as aforesaid in consequence of his default in attendance.

Master having warned and ordered his servant to appear before a magistrate, upon failing to appear himself to be liable to expenses, and to penalties on failure to pay them.

10. Should any complainant who shall have warned any such defendant as aforesaid to appear as aforesaid himself fail to appear at the time fixed by him for the appearance of such defendant then and there to prosecute his complaint, the Magistrate, upon proof by affidavit that such defendant was warned by such complainant to appear at the said time to answer a charge of a certain nature, shall, unless satisfied that such complainant had a good and sufficient reason for failing to appear at such time, ascertain the distance which such defendant shall have travelled, and the distance which any person or persons shall have travelled whom such defendant shall have brought with him as witnesses, and shall, upon being satisfied that such witnesses would or might have been necessary for his defence, make an order in writing against such complainant for the payment of the expenses of such defendant and his witnesses, if any, at and after the same rate as if each of the said persons had been a witness summoned at the instance of the public prosecutor, and attending to give evidence in the Court of such Magistrate upon a criminal case; and if such complainant shall, upon presentation to him of such order by the person or persons in whose favour the same shall have been made, refuse or neglect to comply therewith, he shall incur and be liable to a fine not exceeding five pounds sterling, and in default of payment of the same, to imprisonment, with or without hard labour, for any period not exceeding one month: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid, or separate orders may be delivered to one or more of such persons, as may be most convenient.

Servant or apprentice having complained against his master, failing to appear at time fixed to be liable to expenses, and to penalties on failure to pay them.

11. Should any servant or apprentice who shall have complained against his master for or on account of any offence against any of the provisions of this Act fail to appear at the time fixed by the Magistrate for the appearance of the defendant then and there to prosecute his complaint, the Magistrate may, unless satisfied that such complainant had a good and sufficient reason for failing to appear at such time, ascertain in the manner in the last preceding section mentioned the expenses and costs which the defendant has reasonably incurred in appearing to answer such complaint, and he shall in the manner in the last preceding section mentioned order the payment by the complainant of such costs and expenses; and if, on the presentation to him of the order therein mentioned by the person in whose favour it is made, such complainant shall refuse or neglect to comply therewith, he shall incur and be liable to the same fine, and in default of payment thereof, to the same punishment, as is fixed in the last preceding section: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid, or

separate orders may be delivered to one or more of such persons, as may be most convenient.

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12. No servant or apprentice who shall leave the place of his service for the purpose merely of lodging any complaint which he may have against his master, after leave for that purpose shall have been unreasonably refused, shall by reason only of his so leaving be deemed to have deserted his master's service, or to have in any wise contravened this Act.

Servant or apprentice may leave his place of service to lodge complaint.

13. A servant or apprentice summoned to answer for an offence alleged in the summons to be in contravention of the second section of this Act, should the proof given in the case show that he is guilty of contravening not the second but the fourth section of this Act, may be convicted and sentenced according to the evidence; and, in like manner, a servant or apprentice summoned to answer for an offence alleged in the summons to be in contravention of the fourth section aforesaid, should the proof given show that he is guilty of contravening not the fourth but the said second section, may be convicted and sentenced according to the evidence: Provided, however, that the punishment to be awarded upon a conviction in either of these cases shall not exceed the punishment provided by the said second section: Provided, also, that the servant or apprentice shall have had in every case sufficient notice of the nature of the charge which he was called upon to answer.

Servant or apprentice summoned under the second section may be found guilty under the fourth section and vice versa.

14. As often as the master of any servant or apprentice shall be convicted of the offence of withholding the wages of such servant or apprentice without reasonable and probable cause for believing that the wages so withheld were not really due, he shall be fined any sum not exceeding five pounds sterling, and in default of payment shall be imprisoned, for any period not exceeding one month; and the convicting Magistrate shall, besides passing the said sentence, give judgment for the amount of the wages so wrongfully withheld, and for the costs of the proceedings, which costs shall be the same as in a civil case before the said Court; and the said wages and costs shall, if not paid, be levied of the movable property of the master, under and by virtue of a warrant under the hand of the said Magistrate, together with the cost of such levy: Provided, however, that when and as often as the Magistrate shall acquit the master of the aforesaid offence, but shall yet find that wages are due by such master to such servant or apprentice which have been retained by such master, it shall be lawful for such Magistrate, and he is hereby required, forthwith to give judgment for the amount of wages which he shall find to be due to such servant, and make such order as to the payment of costs, should he award any, by the master, as shall seem to such Magistrate to be in accordance with real and substantial justice.

Definition of punishment for withholding wages by master.

Judgement may be given for wages alone with or without costs.

15. (1) As often as the master of any servant or apprentice shall

Definition of punishment for refusing

¹ See also Act 14, 1870.

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to deliver servant's
property.

be convicted of the offence of having, either before or after the expiration of the contract of service of apprenticeship, upon demand made and without lawful cause, refused to deliver or permit to be taken away any of such servant's or apprentice's cattle, sheep, goats, or other animals, lawfully remaining or being upon such master's land without reasonable and probable cause for believing that the animals in question were lawfully detained, such master shall be fined any sum not exceeding one pound sterling for every animal so unlawfully detained; provided, however, that the total amount of a fine so payable shall not exceed the sum of five pounds sterling altogether; and in default of payment, shall be imprisoned for any period not exceeding one month; and the convicting Magistrate shall, besides passing the said sentence, give judgment for the delivery of the said animals, and for costs, as in a civil action before the said Court, which costs, if not paid, shall be levied in the same manner as in the fourteenth section directed; but the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired shall not be deemed or taken to be of itself reasonable or probable cause for such detention: Provided, however, that nothing herein contained shall impair the effect of any express contract of a lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.

Penalty for default
of payment of fine.

Definition of punishment for master failing to supply articles stipulated for in contract.

16. As often as the master of any servant or apprentice shall be convicted of the offence of failing, upon demand, to supply or deliver to such servant or apprentice the food, bedding, or other articles stipulated for in any written contract of service or apprenticeship, or of supplying or delivering food, bedding, or other articles not conformable to the said contract, he shall be liable to be fined any sum not exceeding five pounds sterling, and in default of payment to imprisonment for any period not exceeding one month.

Contract may be cancelled if the master has not faithfully performed his part thereof.

17. As often as it shall be made to appear to the Magistrate, in any case instituted by any servant or apprentice against his master, that the master has not fairly and faithfully performed his part of the contract of service or apprenticeship, the Magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of such contract of service or apprenticeship, and the same shall be cancelled accordingly.

Costs for compelling parties accused under this Act, and their witnesses, to attend the magistrate's court to be paid at the public charge under certain exceptions.

18. As often as any master shall complain against his servant or apprentice, or any servant or apprentice shall complain against his master, for or on account of any offence against the provisions of this Act, the process of the Court of the Resident Magistrate for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of Court: Provided always, that if at the trial the charge shall appear to have been brought without reasonable or probable cause, the party complaining shall be liable to a fine not exceeding

Penalties for bringing charge without reasonable cause.

five pounds, and also to defray the costs of process and of the witnesses in the case; and in default of payment of such fine and costs, shall be liable to be imprisoned for any period not exceeding one month: Provided, also, that such fine may be imposed upon the occasion of such trial, and without any fresh action or proceeding for the recovery thereof.

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19. In regard to the infliction of spare diet and solitary confinement under this Act, the Resident Magistrate shall observe and conform to such regulations and restrictions as shall have been or shall from time to time be issued by the Governor under the Act No. 20 of 1856.

Regulations as to spare diet and solitary confinement.

20. All fines under this Act shall, when recovered, be paid into the Public Treasury.

Fines to be paid into Treasury.

21. Sections 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 25, and 26 of the fifth chapter, and so much of any other portion of Act No. 15 of 1856, as is inconsistent with or repugnant to any of the provisions of this Act, shall be and the same are hereby repealed.

Certain sections of Act 15 of 1856 repealed.

22. This Act may be cited for all purposes as the "Masters and Servants Law Amendment Act, 1873."

Short title.

No. 19—1873.]

[June 26, 1873.]

An Act for Promoting the Construction and Maintenance of a Line of Submarine Telegraph between the Colony of the Cape of Good Hope and Aden.

[Repealed by Act 19, 1878.]

No. 20—1873.]

[June 26, 1873.]

An Act for Applying a Sum not exceeding Six Hundred and Fifty-eight Thousand Three Hundred and Forty-seven Pounds Fifteen Shillings and Nine Pence Sterling, for the Service of the Year 1873.

[Spent.]

No. 21—1873.]

[June 26, 1873.]

An Act for Applying a Sum not exceeding Two Hundred and Eighty-one Thousand Five Hundred and Fifty-two Pounds Eight Shillings and Six Pence Sterling for the Service of the Year 1874.

[Spent.]

No. 22—1873.]

[June 26, 1873.]

An Act to Amend the Laws relating to the Construction and Maintenance of the Main Roads of the Colony.

[Repealed by Act 40, 1889.]

No. 23—1873.]

[June 26, 1873,

ACT

For enabling the Municipality of Worcester to borrow a Sum of Money not exceeding Four Thousand and Two Hundred Pounds (£4,200) Sterling, for the purpose of providing a Supply of Pure Drink Water for the use of the Inhabitants of the Town of Worcester and the Locations of the Poorer Classes adjoining thereto; and laying down Water Pipes throughout said Town of Worcester, and erecting a Reservoir and Filtering Bed for such purpose. (¹)

Preamble.

WHEREAS it is expedient to provide the inhabitants of the town of Worcester and the locations of the poorer classes adjoining thereto with a supply of pure water, and to extend and improve the waterworks of the municipality of Worcester: And whereas at a public meeting of the resident householders convened for the above purpose on the 21st day of August, 1872, it was resolved by a majority of such resident householders then present that the commissioners of the said municipality of Worcester be authorised to carry out the object as before mentioned, at an expense not exceeding the sum of two thousand and two hundred pounds sterling: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Commissioners authorised to borrow £2,200 for water-works.

1. It shall be lawful for the commissioners for the time being of the municipality of Worcester to borrow from time to time such sum or sums of money, not to exceed in the whole the sum of four thousand and two hundred pounds sterling, for the purpose of erecting a reservoir and filtering bed, and providing and laying certain pipe or pipes from the main watercourse flowing to the town of Worcester, and issuing from the Hex River, for the conveyance of water to any house, building, or other place situated within the said municipality; and to construct dams, tanks, drinking fountains, and fire plugs wherever the same may be required within the said municipality; and, further, for doing all such other matters or things as shall, or may be required for improving and extending the waterworks of the said municipality, and leading the water from the Hex River as aforesaid into the town of Worcester.

Rate to be imposed.

2. It shall be lawful for the commissioners of the said municipality to impose, for the purpose of providing for the payment of the principal or interest or principal and interest of the moneys aforesaid, a certain rate or tax upon any private waterleadings which may be required by any of the inhabitants as aforesaid.

¹ Printed as amended by Act 34, 1877.

and every rate or tax so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner as if it had been a rate or tax imposed under the provisions of Ordinance No. 9 of 1836.

3. Every ratepayer shall be entitled, at his own expense, to have a private service pipe laid on to the main or branch pipe, for the supply of water for domestic purposes, on payment of such special or extra rate as may be fixed by the commissioners aforesaid, such special or extra rate to become due and payable in advance.

4. It shall be lawful for the commissioners of the said municipality from time to time to make such regulations as regards the quantity of water to be supplied to the inhabitants, and the time or times at which such supply is to be received, and further to make such arrangements as they the commissioners may deem expedient for levying and enforcing the payment of any rate or tax for any private waterleadings as aforesaid.

5. The aforesaid sum of four thousand and two hundred pounds sterling is hereby charged upon and made payable out of all and singular the rates and general revenues of the said municipality: Provided that it shall be lawful for the said commissioners to apply to the payment of interest or principal or interest and principal of the moneys aforesaid, any funds or moneys coming to the said commissioners from any source whatever, and not specially appropriated for any other object.

6. The said commissioners shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the sum of four thousand and two hundred pounds sterling, which acknowledgment shall in substance be in the form given in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, appointed for that purpose by a resolution of the board of commissioners of the said municipality, and of which three the chairman of the said board shall be one.

7. All debts lawfully incurred by the said commissioners for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

8. All moneys received from the water rate, and to be borrowed and taken up at interest by virtue of this Act, shall be applied for the purposes of this Act, and shall not be spent upon or applied to any other purpose.

9. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and shall yearly and every year, so long as any part of any debt contracted under and by virtue of this Act shall be in existence, prepare and deposit in

No. 23—1873.

Rate to be levied as in Ordinance No. 9 of 1836 directed.

Ratepayers entitled to have a private service pipe laid on, on payment of an extra rate.

Commissioners to make regulations as to water supply and levy of rate.

Loan to be charged upon general revenue

Acknowledgment for loan to be in form given in schedule.

To be signed by the chairman and two commissioners.

Debts to be subject to the Public Bodies Debts Act, 1867.

Manner in which moneys received under this Act shall be applied.

Separate account to be made up annually of moneys borrowed under this Act, and submitted for inspection of resident householders.

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the office of the said municipality for the inspection, at all reasonable times, of any resident householder of the said municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said municipality not later than the 1st day of March of the year next succeeding.

Costs of this Act to be paid out of general revenue.

10. It shall be lawful for the said commissioners to pay the necessary costs, charges, and expenses of obtaining this Act, and carrying the provisions thereof into effect, out of the general revenues of the said municipality.

Short title.

11. This Act may be cited for all purposes as "The Municipality of Worcester Loan Act, 1873."

SCHEDULE.

We, the undersigned, commissioners of the Municipality of Worcester, duly authorised thereto by the board of commissioners of the said municipality, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to _____ in the sum of _____, for so much money borrowed by the said commissioners for the purposes set forth in the "Municipality of Worcester Loan Act, 1873," and certify that the said sum is secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage, in our said capacity, that the principal and interest of the said debt shall be payable and paid in manner following, that is to say: (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Worcester, this _____ day of _____ 187—.

A. B., Chairman.
C. D., }
E. F., } Commissioners.

Witnesses:

G. H.
I. K.

No. 24—1873.]

[June 26, 1873.

ACT

To Authorise the Cape Copper Mining Company (Limited) to construct and work a Tramway or Railway from Kookfontein to O'okiep. ⁽¹⁾

WHEREAS it is desirable and expedient that the Cape Copper Mining Company (Limited) should be authorised to construct the tramway or railway hereinafter described: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Cape Copper Mining Company (Limited) is hereby empowered to construct, maintain, and work for the purposes of the said company in relation to its mines a tramway or railway for a distance of thirty-eight miles or thereabouts, commencing from the terminal point near Kookfontein Mission Station, and proceeding from such point in a south-westerly direction near Paardewaterbank, Ballatrap, and Staalkraal, to the said company's lands at Nababiep, and thence to a terminal point at O'okiep, in accordance with plans and sections deposited in the office of the Clerk of the House of Assembly.

Company empowered to construct thirty-eight miles of tramway or railway.

2. The said company is hereby authorised to enter upon, and to take possession of and retain all such land within the limits of deviation as shown by the said plans, and also to dig for, excavate, and carry away all such stones, clay, or other materials within or from waste Crown lands near to the said limits as may be required for the construction and maintaining of the said tramway or railway: Provided that the extent of land taken or used for the said tramway or railway shall not exceed the width of thirty feet, with sufficient additional width for slopes, drainage, stations, stopping places, approach roads, and all other matters and things which may be requisite or necessary for the efficient construction and working of the said tramway or railway: Provided, also, that the proprietors, lessees, or other persons, holding from and under the Crown any lands so taken possession of, or of the materials so carried away and used, shall be paid by the said company the just value by way of recompense or compensation for the interests of the said proprietors, lessees, or others holding from and under the Crown as aforesaid, for such land or materials, or for any damage which may be done by reason thereof; such recompense or compensation to be settled in manner provided in and by the third section of Act No. 4 of 1869, which for this purpose shall be taken to be embodied herein.

Company authorised to enter upon and take possession of lands, &c.

Compensation to proprietors, &c., to be settled under provisions of 3rd section of Act No. 4 of 1869.

3. The said company is hereby authorised to enter upon and take possession of, and to hold and retain for all the purposes of

Company authorised to enter upon and take possession of Crown lands, &c.

¹ See Act 15, 1865.

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this Act, free of any charge, so much of any Crown lands as shall be required for the construction and maintaining of the said tramway or railway, or for any other purpose relating to the execution of this Act, and also to enter upon all Crown lands not previously leased by the Government to any lessee lying convenient to the said tramway or railway, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or be serviceable for the construction and maintaining of the said tramway or railway; and further to allow the horses, mules, or cattle required for the purpose of working the said tramway or railway to graze upon any Crown land adjoining the same; and also to obtain water from any part of such land where it can be found by digging, well-sinking, constructing dams or tanks, and conveying such water therefrom by pipes or conduits to any part of the said tramway or railway, free of any charge or interference: Provided that nothing in this Act contained shall establish any servitude in favour of the said company for such privilege, or for procuring materials for the said tramway or railway, upon any land which may at any time hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Line to be completed within five years.

4. The said company shall be bound to complete the said tramway or railway within five years from the taking effect of this Act, failing which the powers and authorities hereby conferred shall cease and determine.

Right of Government to purchase line.

5. At any time after the expiration of seven years from the date of opening for traffic of the said tramway or railway from Kookfontein to O'okiep, the Colonial Government shall have the right, if so disposed, to purchase from the said company, and the said company shall, if required thereto, be bound to sell to the Colonial Government, the said tramway or railway, together with all fixed property of the said company lying within the limits of deviation aforesaid, at the cost price of the construction and equipment of the said tramway or railway, and of the purchase and erection of land and buildings, or at any less sum that may be agreed upon between the said company and the Colonial Government.

Failing to sell, company may remove plant, &c.

6. If at any time after the said right of pre-emption in the last section contained shall have accrued to the Government, the Government shall have waived or declined to exercise the same, or if at the expiration of the further period of twelve months thereafter the said company and the Government shall have been unable to agree upon the terms of sale and purchase as aforesaid, then and thereafter it shall be lawful for the said company to remove and carry away all plant and material from the said tramway or railway.

Company may dispose of its rights with sanction of Governor

7. It shall be lawful for the said company, with the previous sanction of the Governor, at any time to sell, dispose of, and transfer all their right, title, and interest in and to the said

tramway or railway, and other property acquired or erected for the purposes of the said tramway or railway under the provisions of this Act, to any other company or companies or private individuals desirous of purchasing the same; subject, nevertheless, to the provisions, terms, and conditions of this Act, as if the purchaser or purchasers thereof had been herein expressly made liable thereto.

No. 25—1873.

No. 25—1873.]

[June 26, 1873.

ACT

To Amend the Act No. 14 of 1868, for Constituting the Town of Port Elizabeth a Municipality. ⁽¹⁾

WHEREAS by the sixty-third section of the Act No. 14 of 1868, for "Constituting the Town of Port Elizabeth a Municipality," the council therein constituted is empowered to make and levy in manner therein provided a rate or assessment upon all immovable property within the limits of the municipality for certain purposes therein mentioned, and *inter alia* for making watercourses, reservoirs, aqueducts, and other waterworks: And whereas the rate or assessment thereby authorised to be made has been found insufficient for the purposes aforesaid, and it is expedient to empower the said council to make and levy a further rate or assessment not exceeding the sum of one penny in the pound in any one year on the value of the immovable property within the said municipality, such rate or assessment to be applied solely for the purposes of providing a water supply for the municipality, by contracting with a company or companies, or with any corporate body, individual or individuals, for the same, and the taking over and purchase of such works, with the rights and privileges appertaining thereto, at a price to be named in such contract or contracts: Be it therefore enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding any clause, matter, or thing in the said Act No. 14 of 1868 contained, it shall be lawful for the council of the said municipality to make and levy in each and every year a further and separate rate or assessment for the purpose of a water supply for the town of Port Elizabeth not exceeding one penny in the pound sterling, on the value of the immovable property within the said municipality, and the modes of assessing, collecting, and recovering the same shall be such and the like as are provided for the levying, collecting, and recovering the landlords' rate in the said Act, so far as the same are applicable.

Council authorised to levy water rate.

2. It shall be lawful for the council to make and conclude any contract or contracts with any joint-stock company or co-partner-

Council may make contracts for supplying town with water.

¹ See also Acts 8, 1881, and 25, 1895.

No. 25—1873.

ship, or with any corporate body, or any individual or individuals, for supplying the town of Port Elizabeth with water: Provided that the council shall be at liberty from time to time, after twelve months' notice, to purchase and take over the works executed by and under such contract or contracts on the terms and at a price or prices to be therein named.

Council may borrow on security of said rate.

3. It shall be lawful for the council and it is hereby authorised and empowered to borrow and take up at interest on the security of the rate herein provided to be levied, such sum or sums of money as may from time to time be required for the purposes of this Act.

Interpretation of terms.

4. The word "municipality" used in this Act shall mean the municipality of Port Elizabeth, and the word "council," the municipal council of Port Elizabeth.

Short title.

5. This Act may be cited for all purposes as "The Port Elizabeth Municipality Amendment Act."

No. 26—1873.]

[June 26, 1873.]

ACT

To Amend the Law of Inheritance in this Colony, and repeal the "Lex Hac Edictali."⁽¹⁾

Preamble.

WHEREAS it is expedient to amend in manner hereinafter set forth the law as to the inheritance of the estates of deceased persons in this Colony, and to repeal the "Lex Hac Edictali": Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Heir not entitled to deduct any portion under Falcidian and Trebellianic laws.

1. In no case shall any heir of any one dying after the taking effect of this Act be entitled to deduct out of the estate of the person so dying any portion under or by virtue of the laws known respectively as the Falcidian and the Trebellianic Laws, which, but for such laws respectively, such heir would not be entitled to claim or deduct.

Lex Hac Edictali repealed.

2. From and after the taking effect of this Act the sixth law of the ninth title of the fifth book of the Codes of Justinian, commencing with the words "Hac Edictali," and commonly called or known as the Law or Lex Hac Edictali, shall be and the same is hereby repealed.

Short title.

3. This Act may be cited for all purposes as "The Law of Inheritance Amendment Act, 1873."

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories. See also Act 23, 1874.

No. 1—1874.]

[June 23, 1874.

ACT

To Regulate the Investment of the Guardians' Fund,
and the rate of Interest payable in respect thereof.

WHEREAS it is expedient to increase the powers at present possessed by the Master of the Supreme Court as to the investment of money in his hands as Administrator of the Guardians' Fund; and whereas the Act No. 15 of 1873, intituled "An Act to amend in certain respects Ordinance No. 105 of 1833, and to repeal Ordinance No. 3 of 1837, to endure for one year from the taking effect thereof," was by the third section thereof only to continue in operation for the period of one year from the 30th day of June, 1873, and it is expedient that the provisions thereof should be continued: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Ordinance No. 3 of 1837, intituled "Ordinance for altering the Ordinance No. 105, intituled 'Ordinance of His Excellency the Governor in Council for providing for the due administration and management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper care of the persons of Minors and Lunatics,'" and so much of the Ordinance No. 105 of 1833, intituled as aforesaid, as may be repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Ordinance No. 3 of 1837, and repugnant portions of Ordinance No. 105 of 1833, repealed.

2. It shall be lawful for the Governor to dispose of to the Master of the Supreme Court in his capacity of Administrator of the Guardians' Fund, and the said Master is hereby authorised to invest any unemployed moneys belonging to such Fund in so much of any stock and so many of any debentures which now have been or may hereafter be authorised to be raised or taken up by the Governor, as he may apply for on such terms as may be mutually agreed upon, provided that every such investment shall be made with the same advice or upon the same authority as if such investment were a loan upon mortgage.

Master may invest moneys of Guardians' Fund in Government stock or debentures.

3. In lieu and instead of the rate of interest provided for by the twenty-eighth and twenty-ninth sections of the Ordinance No. 105 of 1833, the interest payable by the said Master as Administrator of the Guardians' Fund, upon money which shall belong to any estate or to any person being or having a legal representative within this Colony, and which shall have been duly paid over to the said Master under the provisions of the twenty-fifth and twenty-sixth sections of the Ordinance No. 105, may be at the rate of four per cent. per annum.

Interest paid by Master to be four per cent. in certain cases.

4. This Act shall commence and take effect from and after the expiration of the said Act No. 15 of 1873, and no sooner.

Commencement of Act.

1310 ANNEXATION OF ICHABOE AND PENGUIN ISLANDS.

No. 1—1874.
Short title.

5. This Act may for all purposes be cited as the “Guardians’ Fund Act, 1874.”

No. 2—1874.] [July 6, 1874.
An Act to Secure by law a certain Allowance or Annual Pension to Sir Christoffel Joseph Brand, Knight, lately Speaker of the House of Assembly of the Cape of Good Hope.
[Lapsed.]

No. 3—1874.] [July 6, 1874.
An Act to Provide for the Imprisonment in the Colony of certain Criminals sentenced in the Colony of Natal.
[Repealed by Act 1, 1875]

No. 4—1874.] [July 6, 1874.

ACT

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

Preamble.

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

ANNEXATION OF ICHABOE AND PENGUIN ISLANDS. 1311

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

No. 4—1874.

1. The "Annexation of Ichaboe and Penguin Islands Act, 1873," is hereby repealed. Act No. 1 of 1873 repealed.

2. ⁽¹⁾ Upon the transfer and annexation of the said Island of Ichaboe and the said Penguin Islands to this Colony, all laws which may then be in force in this Colony shall immediately upon such annexation take effect and be in force in and upon the said islands so annexed. As soon as Islands are annexed Colonial laws to be in force therein.

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

No. 5—1874.]

[July 6, 1874.]

Act to exempt for the present the Island of Ichaboe and Penguin Islands from the operation of the Customs Laws of this Colony.

[Repealed by Act 1, 1895.]

No. 6—1874.]

[July 29, 1874.]

An Act to Provide for taking a Census of the population of the Colony of the Cape of Good Hope.

[Spent.]

¹ Annexed by Proc. in Gazette 10th July, 1874.

No. 7—1874.]

[July 29, 1874.]

ACT

To Amend the "Border Protection Act, 1868." (1)

Preamble.

WHEREAS it is expedient that the officer appointed to exercise jurisdiction under the "Border Protection Act, 1868," should, in addition to the jurisdiction given to him by the said Act, exercise within the limits of the district assigned to him under the said Act, certain powers possessed by a Resident Magistrate under the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative rights and duties of Masters, Servants, and Apprentices," and other laws: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Officer appointed under Border Protection Act, 1868, to have jurisdiction under Act No. 15 of 1856.

1. It shall be lawful for the officer appointed to exercise jurisdiction under the said Border Protection Act, 1868, in addition to the jurisdiction thereby given to him, to exercise within the limits of the district from time to time defined by virtue of the first section of the said Act, the same jurisdiction as if such district were a district of a Resident Magistrate under the Act No. 20 of 1856, intituled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," and as if he were the Resident Magistrate of such district: Provided that nothing herein contained shall authorise the exercise by the said officer of any jurisdiction in civil cases, and provided that in the exercise of the jurisdiction hereby given the said officer shall conform as nearly as may be to the rules and laws in force as to Courts of Resident Magistrates.

Short title.

2. This Act may be cited for all purposes as "The Border Protection Amendment Act, 1874."

No. 8—1874.]

[July 29, 1874.]

ACT

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

Preamble.

WHEREAS, under and by virtue of the Sinking Fund Act, 1864, and of the second section of the Act No. 5 of 1870, intituled "An Act to amend in certain respects the Act No. 19 of 1864," intituled "An Act to provide for the Leasing of Crown Lands, and other purposes," large sums of money have been paid to the "Commissioners for administering the Sinking Fund of the Cape of Good Hope," a great portion of which they are unable to invest

¹ Act No. 27, 1868.

as by law contemplated, and the same remain idle and uninvested in their hands; and whereas "The Public Debt Consolidation Act, 1870," provides for a Sinking Fund for, and the extinction of, all the Public Debts of this Colony up to the time of the passing of the said Act, and all Acts passed since that time, authorising the borrowing of money, have in like manner provided for the extinction of such debts, and it has therefore become unnecessary that the provisions of the said first mentioned Acts should continue, and it is advisable that the uninvested moneys and assets of the said Commissioners, and the moneys which would otherwise be payable to them, under and by virtue of the said second section of the said Act No. 5 of 1870, should be paid to the Treasurer-General, to be available for the purpose of carrying on such public works as are already or may be authorised to be carried on, and that the moneys to arise from existing investments made by the said Commissioners should be dealt with in like manner: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 8—1874.

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

Repugnant Acts repealed.

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

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

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

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

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

Short title.

No. 11—1878.

No. 9—1874.]

[July 29, 1874.

An Act to Amend the Law relating to the Post Office and Postage.

[Repealed by Act 4, 1882.]

No. 10—1874.]

[July 29, 1874.

An Act to Repeal the Act No. 24 of 1869, intituled "An Act to provide for the expenses of the Survey of Crown Lands for Lease, and for other purposes."

No. 11—1874.]

[July 29, 1874.

ACT

For Exempting from Wharfage Dues, Bullion and Coin landed at East London and Port Alfred.

Preamble.

WHEREAS by the Act No. 26 of 1864 bullion and coin landed in Algoa Bay, Mossel Bay, and Port Alfred, were exempted from the payment of wharfage dues: And whereas there may be reason to doubt, whether, in consequence of the passing of the Act No. 10 of 1866-1867, the said exemption as to Port Alfred still exists, and it is desirable to remove such doubts: And whereas it is expedient that bullion and coin imported into the port of East London should be exempted from the payment of wharfage dues: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Bullion and coin exempted from wharfage dues at East London and Kowie.

1. From and after the taking effect of this Act, all bullion and coin landed at or in the harbours of East London and the Kowie, respectively, shall be exempt from the payment of wharfage dues.

No. 12—1874.]

[July 29, 1874.

ACT

To Amend the Law relating to the Superannuation Allowance to Police Officers. (¹)

Preamble.

WHEREAS by the Ordinance No. 1 of 1844, intituled "Ordinance for creating a Police Superannuation Fund," a Police Superannuation Fund was created for the police force of Cape Town, and whereas, by the Ordinance No. 25 of 1847, intituled "Ordinance for improving the Police of the Colony," a Police Superannuation Fund was created for the police force of the several country districts of this Colony, and whereas it is expedient that

¹ See Act 32, 1895, § 50. Extended by Proclamation No. 342 of 1891 to all the Native Territories.

the Police Superannuation Funds created under and by virtue of the said Ordinances should be abolished, and that the superannuation allowance for which the said funds were intended to provide should be paid from and out of the public revenue of the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 12—1874.

1. The Ordinance No. 1 of 1844, and several sections of the said Ordinance No. 25 of 1847, numbered twenty-seven to thirty-six, both inclusive, are hereby repealed.

Repugnant laws repealed.

2. All moneys, securities, and assets of every kind, constituting or belonging to any police superannuation fund, created under and by virtue of any of the provisions of the said Ordinances which are by the last preceding section repealed, shall, by the respective trustees in whom the same are vested, be paid, transferred, and made over to the Treasurer-General of this Colony, as part and on account of the public revenue of the Colony, and the Treasurer-General for the time being shall, if necessary, sue for and recover any moneys due to and to become due to any such trustees as aforesaid.

All Police Superannuation Funds to be handed over to, and become part of public revenue.

3. It shall be lawful for the Governor to order that any police officer shall be superannuated and thereupon to pay, or cause to be paid, from out of the general revenue of this Colony, to the person so superannuated, such pension or yearly allowance as the said Governor shall approve of and prescribe, but subject, however, to the following limitations and conditions, that is to say, that when and as often as the person superannuated shall have served with diligence and fidelity for any term not less than fifteen, and not more than twenty years, his yearly allowance may be made equal to, but shall not exceed one-half of his yearly pay while in active service, which yearly pay shall be taken to be the average of his yearly pay for the three years next pending his superannuation, and that when and as often as the person superannuated shall have served, in manner aforesaid, for the term of twenty years or upwards, his yearly allowance may be made equal to, but shall not exceed, two-thirds of his yearly pay while in active service, which yearly pay shall be taken to be the average aforesaid: Provided always that no police officer who shall be under the age of fifty years shall be capable of receiving any such yearly allowance as aforesaid unless it shall be certified in writing by the Resident Magistrate of his district that, from infirmity of mind or body, he is incapable of discharging the duties of his situation.

Governor may superannuate police officers and pay pensions out of public revenue.

4. It shall be lawful for the Governor, in case any police officer shall be disabled for the performance of his duty by reason of any wound or injury received by him in the actual execution of his duty, to pay or cause to be paid from and out of the general revenue of this Colony, to the person so disabled, whatever his age or time of service may be, such pension or yearly allowance not

Governor may pension disabled police officers.

No. 12—1874.

exceeding the average of his yearly pay for the three years next preceding the time of his receiving the said wound or injury, should he have served so long; and if not, such yearly allowance not exceeding the average of his yearly pay during his time of service, as the said Governor shall approve of and prescribe.

Governor may reward police officers for extraordinary services out of public revenue.

5. It shall be lawful for the Governor to pay, or cause to be paid from and out of the public revenue of this Colony such sums of money by way of reward to such police officers as shall by extraordinary services have merited the same: Provided that whenever such rewards shall have been paid by the Governor, a return showing the amounts and particulars of such payments shall be laid on the table of both Houses at the next ensuing Session of Parliament.

Superannuation allowance cannot be claimed as a matter of right.

6. Nothing in this Act shall be construed so as to entitle any police officer to claim as a matter of right any superannuation allowance or to prevent any such person from being unconditionally dismissed.

All moneys formerly paid to the Superannuation Fund, except deductions from pay, to be paid in future to general revenue.

7. All sums of money which, by the Ordinances in the first section hereof mentioned, are directed to be paid and handed over to trustees for the purpose of giving and being applied to the superannuation fund therein mentioned, except the deduction from the pay of police officers, not exceeding two and a half per centum, shall hereafter be paid into and form part of the general revenue of this Colony.

Interpretation clause.

8. The term "police officer," in this Act shall be taken to include Inspector of Police, Sub-Inspector of Police, Chief Constable, Sergeant of Police, Police Constable, and men of the Water Police for the port of Cape Town; but nothing in this Act contained shall apply to any officer or man of the Frontier Armed and Mounted Police Force of this Colony, or to any officer or man of the Northern Border Police established under the Act No. 29 of 1868.

Short title.

9. This Act may for all purposes be cited as the "Police Superannuation Act, 1874."

No. 13—1874.]

[July 29, 1874.]

ACT

To Amend the Law relating to Merchant Shipping. (1)

Preamble.

WHEREAS in an Act of the Imperial Parliament, to wit, the Merchant Shipping Act, 1873, certain provisions are contained respecting unseaworthy ships, and it is desirable to apply and adapt the said provisions to certain ships in this Colony, and to amend in certain respects the Local Merchant Seaman's Acts 1855

¹ See Acts 13, 1855, and 3, 1863.

and 1863, and the Act 16 of 1857, intituled "An Act to consolidate the Laws relating to Quarantine and Port Regulations": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 13—1874.

1. The powers and authorities vested in the Board of Trade by the twelfth and thirteenth sections of the said Merchant Shipping Act, 1873, may, as to all British ships registered at or being within the limits of this Colony, be exercised by the Governor of this Colony; and the said sections shall, as to all such ships, be read and understood as if the Governor was referred to and mentioned instead of the Board of Trade.

Governor may exercise powers vested in Board of Trade by twelfth and thirteenth sections of Imperial Merchant Shipping Act, as to certain ships.

2. If the owner of any ship surveyed under the last preceding section is dissatisfied with any order made upon such survey, he may apply to the Supreme Court; or, in case the ship is in any port within the jurisdiction of the Eastern Districts Court, to that Court. The Court may, upon such application, if they think fit, appoint one or more competent persons to survey the ship anew, and any surveyor so appointed shall have all the powers of the person by whom the original survey was made. Such survey anew shall, if so required by the Governor or the shipowner, be made in the presence of any person or persons appointed by them respectively to attend at the survey. The Court to which such application is made may make such order as to the detention or release of the ship, as to the payment of any costs and damages which may have been occasioned by her detention, as to the payment of the expenses of the original survey, and of the survey anew, and otherwise as to the payment of any costs of and incident to the application as to the Court may seem just.

Owner of any ship surveyed under previous section may, if dissatisfied, apply to Supreme or Eastern Districts Court.

Powers of Court so applied to.

3. Any agreement made in this Colony with a seaman may, instead of stating the nature and direction of the intended voyage or engagement as by the one hundred and forty-ninth section of the Imperial Merchant Shipping Act, 1854, required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

Agreement with seamen in this Colony may be for a certain period, instead of for voyage.

4. The Court or Tribunal in this Colony by law vested with the power of cancelling or suspending the certificate of a master or mate is also hereby vested with the like power of cancelling or suspending the certificates of engineers of steamships in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout after "master" or "masters" in the two hundred and forty-second section of the Imperial "Merchant Shipping Act, 1854," and in the "Local Merchant Seaman's Amendment Act, 1853."

Powers of suspending certificates of masters or mates extended to engineers.

5. The second section of the "Local Merchant Seaman's Amendment Act, 1863," shall be read and construed as if the words "with respect to cancelling or suspending certificates" in the commencement thereof were omitted.

Second section of Merchant Seamen's Amendment Act, 1863, amended.

No. 13—1874.

Twenty-first section of Act No. 16 of 1857 repealed, and other provision made instead.

Vessels arriving at certain ports to be boarded, and have berths assigned to them.

Penalty on vessels changing berths.

First section of this Act not to apply to coasting vessels under Act No. 26 of 1872.

Short title.

6. The twenty-first section of the said Act No. 16 of 1857 is hereby repealed, and the following shall be read and substituted in its place, that is to say:—The respective Port Captains of the ports of Cape Town, Port Elizabeth, Simon's Town, Port Alfred, East London, and such other ports in this Colony as may from time to time be appointed for that purpose by Proclamation of His Excellency the Governor, to be published in the *Government Gazette*, shall, upon the arrival of any vessel in the said ports between sunrise and sunset, board her immediately, and, if practicable, previous to her coming to anchor, in order that he may point out to the master of the vessel a proper berth; and in case he should be prevented from so boarding, in consequence of the quarantine regulations, he shall point out a berth for such vessel arriving under such circumstances, and after having pointed out any such berth as aforesaid it shall be lawful for the Port Captain, if it shall appear to him necessary so to do, to order any vessel to shift or change her berth to any other berth to be pointed out, and any master of a vessel disobeying any order of a Port Captain, under this section shall be liable to a penalty not exceeding £50.

7. The first section of this Act shall not apply to ships engaged exclusively in the coasting trade of this Colony, as such coasting trade is defined by the second section of the Act No. 26 of 1872 intituled "An Act for Regulating the Coasting Trade of the Colony of the Cape of Good Hope."

8. This Act may for all purposes be cited as the "Local Merchant Shipping Act, 1874."

No. 14—1874.]

[July 29, 1874.]

ACT

To Amend the law relative to the Registration and Qualification of Voters, and to the Election of Members of Parliament, and for the more effectual prevention of the Personation of Voters, and for other purposes connected with Elections. (1)

Preamble.

WHEREAS it is expedient to amend in certain respects the law relative to the registration of voters and the election of members of Parliament, and to provide for the more effectual prevention of the personation of voters, and for other purposes connected with elections: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Twenty-second to thirty-first sections of Constitution Ordinance, and twenty-

1. The several sections of the Ordinance for constituting a Parliament in this Colony, commonly called the Constitution Ordinance, from the 22nd to the 31st (both inclusive), and the

¹ See Act 9, 1892.

27th section of the Act No. 16, 1856, intituled "An Act for amending the Law relative to the Registration of Voters, and to the taking of Polls," are hereby repealed in so far as they relate to the Electoral Division of Cape Town.

2. The list of voters for the Electoral Division of Cape Town, shall, upon the occasion of each biennial registration of voters, as by law required, be made out by some fit and proper person, to be nominated for that purpose by the Governor of the Colony, by Government notice in the *Government Gazette*, which person shall be called the registering officer for the Electoral Division of Cape Town.

And whereas the Town Council of the Municipality of Cape Town is, by law ⁽¹⁾ required to frame annually a list of the resident householders of the said municipality: Be it enacted as follows:

3. The Town Council of the municipality of Cape Town, when framing the list of resident householders of the said municipality for the year one thousand eight hundred and seventy-five, ⁽²⁾ shall employ a sufficient number of persons to collect, from house to house, in the several districts into which the said Municipality shall, for the time being, be divided, the names of the resident householders of the said districts, respectively, and such persons shall be supplied by the said Town Council with a sufficient number of printed papers, which shall, in substance, be in the form in the schedule to this Act set forth. The contents of every such paper shall be printed on one side in the English language, and on the other side in the Dutch language.

4. Every person employed as aforesaid to collect the names of voters, being supplied with such printed papers as aforesaid, shall, upon such day or days as the Town Council shall in that behalf appoint, leave at every house, warehouse, or other building, in each district in which any person shall be found to receive the same, one of the said printed papers, to the end that the blanks in the said paper may be filled up in manner and form as in the said paper directed: Provided that as often as any warehouse or shop shall be a part of, or shall communicate with any house or building, and shall be occupied by the same person who occupies such house or building, it shall be sufficient to leave the said paper either at such house or building, or at such warehouse or shop.

5. On such day or days as the Town Council shall in that behalf direct, not being less than two clear days from the day on which such printed papers as aforesaid shall have been left as aforesaid in any district, the person who left the same or some other of the persons employed as aforesaid shall call for the said papers at the places where the same were left, and, having obtained the said papers, shall deliver them to the registering officer: Provided

¹ See Act 26 of 1893, § 18.

² And every second year thereafter. See § 30.

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Form may be filled up at once instead of being left.

If person calling for paper, finds it not filled up or informally filled, he shall get it properly filled.

that it shall be lawful for any person so employed as aforesaid, instead of leaving the papers aforesaid to be afterwards filled up, to allow the same to be filled up at once, should the person or persons by whom the same should have been filled up, had they been left, so desire; anything in either of the two last preceding sections to the contrary notwithstanding.

6. If the person who shall have called for and obtained any such paper as aforesaid shall find that the same has not been filled up, or has been filled up informally, he shall, if practicable, get the same paper or another paper filled up properly, so that the same shall show legibly—

1stly. The christian name and the surname of the claimant, and if he have more christian names than one, then all his christian names, written at full length. If the claimant be known by more christian names or more surnames than one, then the paper shall show all the names by which he is known.

2ndly. The street and the number of the street in which the claimant resides.

3rdly. The trade, profession, or other occupation of the claimant, and

4thly. The nature of the qualification from or out of which the claimant claims a right to be registered as a voter.

Should the house, warehouse, or shop, or building at which any such paper as aforesaid shall have been left, not be situated in any street or not in any street or place having a name, then the part of the paper left blank for the insertion of the street and number need not be filled up, or may be filled up in such a way as to designate, as well as may be, the situation of such house, warehouse, shop or building. By the term "residence" in this and in the tenth section is meant the house, warehouse, shop, or other building at which the printed paper shall have been left, whether the occupier lives there or not; and by the term "christian name" is meant in this Act any name prefixed to the surname, whether received at christian baptism or not.

Meaning of term "residence."

Meaning of term "christian name."

Penalty for inserting wrong name, &c.

7. If any person shall, in any such printed paper as aforesaid, insert or shall move, incite, aid, or abet any other person to insert any name not being the name, and not being intended to be the name, of some person residing at or in occupation of the house or premises at which such printed paper was left to be filled up, and shall do so with intent that such name, so inserted, whether that of some non-existent person or not, shall appear upon the said paper as the name of a person claiming to be registered as a voter, such person so offending shall upon conviction be liable to a fine not exceeding five pounds, or to imprisonment with or without hard labour for any period not exceeding three months.

8. (1) The signature or mark of every person who shall sign any such printed paper as aforesaid as a claimant for registration shall be witnessed by at least one witness.

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Signature or mark of any claimant to be witnessed.

9. All such papers as aforesaid, collected in the several districts of the municipality of Cape Town, being received by the Town Council in order that the list of resident householders of the said municipality may be framed therefrom, shall be safely kept by the said Council until the then next nomination, in manner and form as in the second section of this Act mentioned of a registering officer for the Electoral Division, whereupon the said registering officer shall apply to the said Council for the said papers, and the said Council shall deliver the same to him.

Papers to be kept by Town Council until applied for by Registering Officer.

10. As soon as the registering officer shall be in possession of the printed papers aforesaid, he shall frame from such papers a temporary or provisional list of the claimants in each district, beginning with district No. 1; and in framing such list he shall, in regard to each district, pursue an alphabetical order, and shall set forth the christian name or names and the surname of each claimant at full length and not otherwise, and shall state opposite to each name the residence of the claimant, his trade or other description, and the nature of his qualification, as such particulars appear upon or from the printed papers in the registering officer's possession. And should such officer find that any of the said papers does not contain all such particulars as aforesaid, he shall take no notice of such paper in framing the said list.

Registering Officer to frame temporary list of claimants in each district.

11. Should the registering officer have reason to believe or suspect that the same person appears by the printed papers in the possession of such officer to be a claimant for registration in more districts than one, or more than once in the same district whether by reason of the occupation by such person or premises in more than one district or in more than one place in the same district, then such officer shall cause to be delivered at every house, warehouse, shop, or other building, at or from which any printed paper containing the name of such person was obtained, a notice which shall be in substance as follows:

If same person appears to claim for more districts than one, or to claim more than once in same district, notice to be given to him.

NOTICE.

Inasmuch as there is reason to believe that the name _____ (here state the claimant's name at length), which name is found as that of a claimant for registration as a voter in more districts than one, (or "more than once in district No. —"), refers to one and the same person, namely, _____, who resides in district No. —, (or "in _____ street, in district No. —"), notice is hereby given that unless cause to the contrary be shown to me at _____ at — o'clock in the forenoon on the — instant, the name of the said _____ will be placed on the list of claimants in

Form of notice.

¹ But see § 29, Act 9, 1892.

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district No. —, and not on the list of claimants in any other district, (or “ will be placed only once on the list of claimants in district No. —”).

Cape Town, this — day of —, 18 —.

A. B., Registering Officer.

And should no cause to the contrary be shown at the appointed time and place, then the name of the person in question shall be placed upon the lists of claimants, in conformity with the terms of the said notice. In case any such claimant as is in this section referred to be a person who, being qualified to be registered in more districts than one, shall not reside within the Electoral Division of Cape Town, then he shall be registered in whichever of such districts he shall himself select, and failing such selection, then in whatever district the registering officer shall determine.

Registering Officer
to appoint a time and
place to receive
claims not regis-
tered.

12. As soon as may be after the registering officer aforesaid shall be in possession of the printed lists obtained from the several districts which shall for the time being constitute, together with the municipality of Green Point, the Electoral Division of Cape Town, (¹) he shall publish in the *Government Gazette*, and by printed placards posted in such places as he shall deem necessary, a notice, stating that he will attend at a certain time and place, to be specified in such notice, for the purpose of receiving and taking down the names of all persons claiming to be registered as voters in any of the districts aforesaid who have not signed and delivered over as aforesaid printed lists containing their claims to be so registered, and also of all persons claiming to be registered as voters in the municipality of Green Point, which notice shall be in substance as follows :

REGISTRATION OF VOTERS.

The undersigned will attend on — (name the day or days of the week, and state the day or days of the month, and the year), at — (state the place), from nine o'clock a.m. till four o'clock p.m. for the purpose of taking down the names of all such persons as claim to be registered as voters in the Electoral Division of Cape Town, and who have not already signed and delivered over, in reference to the present registration, printed papers making their claims. All persons claiming before me must claim in person, or by an agent authorised by some writing, signed by the claimant, and witnessed by at least one witness, which agent must be able to state in full the claimant's christian name or names, his surname, his residence, his trade, profession, or other description, and the nature of his qualification to be registered.

Dated at Cape Town, this — day of —, 18—.

(Signed) A. B., Registering Officer.

¹ See § 30, Act 9, 1892.

13. It shall be lawful for the registering officer aforesaid, instead of fixing the same time and place for taking down the names of such claimants as aforesaid for the whole of the districts into which the municipality of Cape Town ⁽¹⁾ shall be divided, to fix a different time and place for each district of such municipality, or for so many districts of such municipality as he shall deem expedient to group together; and as often as different times and places shall be fixed in reference to all or any of the districts aforesaid, the notice aforesaid shall be altered accordingly. And the registering officer shall attend at some place within the municipality of Green Point for not less than six hours on some day to be fixed by him, for the purpose of taking down the names of claimants for registration; of the place, day, and hours of which attendance notice shall be given in the manner hereinbefore provided.

14. The registering officer, attending in conformity with the notice given by him as aforesaid, shall take down at full length the christian name or names and the surname of each claimant, the street and the number of the street in which such claimant resides, the trade, profession, or other description of such claimant, and the nature of the qualification in respect of which such claimant claims a right to be registered as a voter. In case the residence of such claimant shall be elsewhere than within the Electoral Division of Cape Town, ⁽¹⁾ then, instead of his place of residence, there shall be taken down the street and number of the street in which is situate the house, warehouse, shop, or other building, from or out of which such claimant claims a right to be registered as a voter.

15. It shall be lawful for the registering officer to explain to any person claiming before him as aforesaid the nature of the qualifications in the eighth section of the Constitution Ordinance specified as entitling persons to be registered as voters, and to interrogate such person so far as may be reasonably necessary, to ascertain that such person comprehends the nature of such qualifications, and distinctly avers that he possesses the particular qualifications by him alleged. Any person who shall falsely, knowingly, and wilfully, aver to such registering officer, whether in answering questions put to him or otherwise, that such person possesses a certain qualification to be registered which he does not in fact possess, shall, upon conviction, be liable ⁽¹⁾ to a fine not exceeding ten pounds, and, in default of payment, to imprisonment with or without hard labour for any period not exceeding two months. If any claimant shall refuse or decline to answer any proper and reasonable question put to him by the registering officer for the purpose of ascertaining the existence of the qualification which such person shall allege that he possesses, then the name of such claimant shall not be taken down, or, if taken down, shall be expunged. Nothing,

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Registering Officer may fix different time and place for each district, or may group districts together.

To attend at Green Point for six hours at least on some day to be appointed.

Registering Officer to take down names, &c., of claimants.

Registering Officer may question claimant as to his qualification.

Penalty for false answers.

Name of claimant refusing to answer to be expunged.

¹ See § 30 Act 9, 1892.

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however, in this section or in the next succeeding section contained shall prevent any person whose name shall not have been taken down, or, having been taken down, shall have been expunged, from afterwards making his claim to be registered in manner and form as hereinafter in the nineteenth and twentieth sections of this Act provided.

Registering Officer not to receive name of any person entered on temporary lists, but if any doubt or question should arise, may inquire into it.

16. The name of no claimant whose name appears upon the temporary or provisional list of claimants which is in the tenth section of this Act mentioned shall be taken down by the registering officer, and if any doubt or question shall arise whether any person appearing in person or by agent before the registering officer, and desiring to have his name taken down, is a person whose name appears upon the said temporary or provisional list, then the registering officer shall summarily inquire into the matter, and his decision shall, for the purpose of the list of claimants to be posted as hereinafter in the next succeeding section of this Act directed, be final and conclusive. Should the registering officer have reason to believe or suspect that the same person appears as a claimant for registration in the municipality of Green Point, and also in one or more of the districts into which the municipality of Cape Town is divided, then the provisions of the eleventh section of this Act shall, in substance, apply to such case, and the form of notice in the said section set forth shall be altered accordingly; and such claimant, if entitled to be registered in the municipality aforesaid, and also in one or more of the districts aforesaid, may elect whether he will be registered in the said municipality, or in some of the said districts to be named by him for the purpose. Failing such election, he shall be registered either in the said municipality or otherwise in one of the said districts, as the registering officer shall determine.

Should same person claim in Cape Town and Green Point, notice in eleventh section of this Act to be served.

Names of claimants to be added to temporary list, and complete list posted.

17. As soon as may be after the registering officer shall, in manner aforesaid, have taken down the names of all such claimants as are in the twelfth section of this Act described, he shall add their names in their respective districts and in alphabetical order, to the temporary or provisional list in the tenth section of this Act mentioned, and shall cause a copy of such list as then completed, legibly written, to be posted upon or affixed to some public place in Cape Town, there to remain for not less than seven days. And in such list the names of the claimants for registration in or belonging to the municipality of Green Point shall be separately set forth, precisely as if such municipality had been a district.

Names of claimants in each district to be posted there also.

18. Besides posting or affixing, as in the last preceding section mentioned, the list of claimants in or belonging to the whole of the districts into which the municipality of Cape Town for the time being be divided, and also in or belonging to the municipality of Green Point, the registering officer shall cause to be posted upon or affixed to some public place in each district, there to remain for not less than seven days, a copy of so much of the said list as

contains the names of the claimants in or belonging to the said district. And the registering officer shall cause so much of the said list as relates to the municipality of Green Point to be posted within the said municipality in like manner as if such municipality had been a district.

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19. (1) Subjoined to each of the lists in the two last preceding sections mentioned shall be a notice written in both the English and Dutch languages, and signed by the registering officer, which notice shall be in substance as follows :

Notice to be attached to lists in two previous sections.

NOTICE.

Notice is hereby given that if any person whose name is not inserted in the above list shall claim to have his name inserted therein, or if any person whose name is inserted therein or who claims to have his name inserted therein, shall object to the right of any other person whose name is inserted therein to be registered as a voter, such person may lodge with the undersigned at ——— on or before the — day of ———, 18— (here insert some day not sooner than ten nor later than twenty-one days next after the day of the posting of the list to which such notices relates), his claim or objection (as the case may be), in order that such claim or objection may be recorded and dealt with as the law directs.

Form of notice.

Dated at Cape Town, this — day of ———, 18—.

(Signed) A. B., Registering Officer.

20. (1) Every claim to be made in pursuance of such notice as aforesaid shall be marked on the outside, "Claim to be registered as a Voter," and shall be in substance as follows :

Form of claim in pursuance of above notice.

This is to give notice that I hereby claim to have my name inserted in the list of voters in District No. — (or in the municipality of Green Point as the case may be), and that my qualification arises from the occupation of (here state "house," "warehouse," "shop," or other building, and the street and number of the street in which it is situated ; or, should it not be in a street having a name and numbered houses, describe it otherwise as well as may be).

Dated this — day of ———, 18—.

(Signed) E. F., Carpenter.

In case the qualification of the claimant shall be "salary" or "wages," then the above form of claim shall be altered accordingly.

21. Every objection to be made in pursuance of such notice as aforesaid shall be marked on the outside "Objection to the Registration of a Voter," and shall be in substance as follows :

Form of objection.

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This is to give notice that I hereby object to the name of _____ being retained on the list of voters for District No. — (or “the municipality of Green Point,” as the case may be), and the ground of my objection is (here state the ground of objection).

Dated this _____ day of _____, 18—.

(Signed) G. H.

Claims and objections to give full particulars as to name, &c.

22. Every person claiming as in the twentieth section of this Act mentioned shall sign his christian name or names and his surname at full length, and shall also state what is his trade, profession, or other description, and every person objecting as in the twenty-first section of this Act mentioned shall, together with his name (which it shall not be imperative to write at full length), state his residence. No claim or objection which shall omit any of the particulars by this section required shall be attended to.

Court to be held to revise and amend voters' list.

23. As soon as may be after the list in the seventeenth and eighteenth sections of this Act mentioned shall have been posted or affixed, the Resident Magistrate of Cape Town shall, by notice in the *Government Gazette*, inform all whom it may concern that the said Magistrate will attend at his Court-room on some day and at some hour to be specified in such notice, for the purpose of revising and amending the voters' list for the Electoral Division of Cape Town. Such notice shall specify for the holding of such court a day later by not less than seven days than the day named in the notice in the nineteenth section of this Act, as the latest day for lodging claims and objections.

Original posted list and separate lists of claims, and objections to be delivered to Magistrate by Registering Officer.

24. As soon as may be after the expiration of the latest day for lodging claims and objections, and not later than forty-eight hours before the hour announced for the sitting of the Resident Magistrate for the purpose of revising and amending the voters' list as aforesaid, the registering officer shall deliver to such Resident Magistrate a correct copy of the list in the seventeenth section of this Act mentioned, in the plight and condition in which it was posted as in the said section enjoined, together with another list, containing the names of all persons not inserted in the said list, who shall, in terms of the notice in the nineteenth section of this Act mentioned, have claimed to be inserted therein, and also a third list containing the names of all persons inserted in the list aforesaid as posted and affixed, whose right to be so inserted shall have been objected to; and the registering officer shall, when delivering the said lists to the Resident Magistrate, deliver to him also the original writings containing all claims and objections. The registering officer shall, moreover, not less than forty-eight hours before the hour appointed for the sitting of the Resident Magistrate to revise and amend the list aforesaid, cause notice in writing to be given to every person inserted in the said list as posted, whose right to be so inserted shall have been objected to, that the hearing of such objection will come on before the

Resident Magistrate at the sitting appointed to be held by him for the purpose aforesaid. No. 14—1874.

25. The Resident Magistrate of Cape Town shall on the day and at the hour by him announced as aforesaid attend in his Court-room; and it shall be lawful for any person not inserted in the voters' list as posted, who shall have claimed in writing to be inserted therein, and for any person who shall in writing have objected to the right of any person inserted in the said list to be so inserted, and for any person who shall have been so objected to, to come before such Magistrate, and such Magistrate shall hear all such parties, and if he shall think fit, take their evidence upon oath, and may, should he think fit, summon before him and examine upon oath any person whom he shall in the course of such enquiry deem it necessary to examine, and may impose a fine not exceeding ten pounds on any person duly summoned who shall, without lawful cause, refuse or neglect to attend; and such Magistrate shall finally determine all questions brought before him, and revise and amend the voters' list as so posted as aforesaid, according as justice shall require. The Resident Magistrate may if necessary adjourn his sitting from time to time.

Manner of hearing and determining questions, and revising lists.

26. Every person who shall have claimed as aforesaid to be inserted in the list aforesaid shall be bound to prove his qualification to the satisfaction of the Resident Magistrate; and should such claimant not appear, either in person or by his general agent, or by some agent specially authorised in writing by such claimant, the claim of such person shall be dismissed.

Every claimant appear and prove his claim.

27. If the person who shall have objected to the right of any other person to be inserted in the list aforesaid shall not, either in person or by some agent specially authorised in writing by such objector, appear to make good his objection, such objection shall, without requiring any appearance or proof on the part of the person objected to be dismissed. If the objector shall appear and if the person objected to shall not appear in person, and the ground of objection shall be one peculiarly within the knowledge of the person objected to, then, in case the objector, or, should he have appeared by agent, his agent shall make oath to the belief of the deponent that such ground of objection does really exist, the Magistrate may either at once allow the objection or make some further inquiry as shall appear just.

Objectors to appear and make good their objections.

If person objected to does not appear Magistrate may in certain cases either allow objection or make further inquiry.

28. It shall be lawful for the Resident Magistrate, should it appear right and fitting so to do, to adjudge to any person objecting or objected to such reasonable costs against the adverse party as such Magistrate shall tax and allow, to be recovered in like manner as if costs between party and party in a civil action tried and determined in the Court of the said Magistrate.

Costs may be given.

29. As soon as the Resident Magistrate aforesaid shall, in manner aforesaid, have revised and amended the voters' list aforesaid, he shall cause to be made out and safely kept in his office the

Revised list to be kept in Magistrate's office.

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And completion thereof to be reported to Colonial Secretary.

Provision for a biennial registration.

At elections, polling place and officer to be appointed for each district in municipality of Cape Town.

Each voter to vote in his own district.

Every voter on the list may be taken to be qualified.

Polling place for Green Point to be appointed either there or in Cape Town.

Duration of poll

Polling Officer to be assisted by some person acquainted with the inhabitants of each district.

said list as so revised and amended, and such list shall be and remain the list of registered voters for the Electoral Division of Cape Town, until a fresh list shall have been framed in manner as hereinafter provided. And the Resident Magistrate shall upon the completion of such list report to the Colonial Secretary that it has been completed.

30. The provisions of this Act from the third section to the ninth, both inclusive, shall be acted upon and carried into effect in every second year from and after the year one thousand eight hundred and seventy-five in manner and form as hereinbefore described in regard to that year; and all the other sections of this Act from the tenth to the twenty-ninth, both inclusive, shall be acted upon and carried into effect, when and as often as a registering officer for the Electoral Division of Cape Town shall, for the purpose of any biennial registration of voters, be nominated in manner and form as in the second section of this Act mentioned.

31. As often as it shall be necessary, after the completion under this Act of a list of registered voters, for the Electoral Division of Cape Town, to take a poll in the said division for members or for a member of either House of Parliament, then one polling place shall be, by Government notice in the *Government Gazette*, appointed or established in each of the districts into which the said municipality of Cape Town shall for the time being be divided, and the polling officer appointed by Government notice in the *Government Gazette* to take the poll in each district shall be furnished with a list of voters in and for such district; and no voter shall be competent or permitted to vote except at the polling place of the district in and for which he is registered. But the fact that any voter registered in any district shall have ceased at the time of taking the poll to possess the qualification in regard to which he was registered in such district shall not deprive him of the right to vote in such district so long as his name remains inserted in the list of voters in such district. And in regard to the municipality of Green Point, it shall be lawful to appoint a polling place within the said municipality, at which alone the voters registered belonging to such municipality shall be competent to vote, and not elsewhere, or to appoint that all such voters shall vote at the polling place of such one of the districts into which the Municipality of Cape Town shall be divided as shall be deemed most convenient, and be selected.

32. As often as any such poll as is in the last preceding section mentioned shall be taken in the said Electoral Division, such poll shall remain open for one day, and no longer, and the same day shall be appointed for taking the poll in the whole of the districts constituting the said Electoral Division.

33. The polling officer appointed to take the poll in each district of the municipality of Cape Town aforesaid shall be assisted by some person acquainted as generally as possible with the inhabi-

tants of such district, which assistant shall be appointed by Government notice in the *Government Gazette* and the duty of such assistant shall be to detect and disclose all attempts which may be made to personate any of the registered voters; and such assistant to the polling officer shall, before acting as such make oath before the polling officer, who is hereby authorised to administer such oath, that he will perform his duty as such assistant without fear, favour, or prejudice. Should a polling place be appointed within the municipality of Green Point, it shall not be necessary to appoint an assistant to the polling officer at such polling place.

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Such assistant to be sworn.

34. It shall be the duty of the polling officer at each polling place in the Electoral Division aforesaid, and he is hereby authorised and required, to prevent anyone from entering and remaining in the polling place during the hours of voting, except the returning officers of the Electoral Division, the assistant aforesaid, the candidates in regard to whom the poll is taken, or, in the absence of any of the latter, a representative of each absent candidate (which representative shall be authorised by some writing under the hand of such candidate to represent him), and the voters, or persons claiming to be voters coming to give and whilst giving their votes.

Polling Officer to allow certain persons only to be present during the hours of voting.

35. No person shall be permitted to enter or remain in any polling place during the poll, whilst he shall wear, carry, or display any cockade, ribbon, or other mark distinguishing the friends or supporters of any of the candidates in regard to whom the poll is being taken.

No cockade or ribbons to be worn in polling place.

And in regard to the several Electoral Divisions of the Colony, other than the division of Cape Town: Be it enacted as follows:

36. As often as there shall be within any such Electoral Division a municipality or corporate town now forming or hereafter to be formed into a distinct Field-cornetcy, and the commissioners or council of such municipality or the town council of such corporate town shall, at any meeting thereof, resolve that it would be for the public advantage to extend to such municipality or corporate town the provisions of this Act, or such of them as may not be deemed inapplicable to such municipality, or corporate town, it shall be lawful for the Governor, with the advice of the Executive Council, upon the application of the commissioners or council of such municipality, or of the town councillors of such corporate town, to declare and provide, by proclamation in the *Government Gazette*, that the provisions of this Act in reference to the Electoral Division of Cape Town, with such exceptions, if any, and such adaptations as the Governor shall approve of and proclaim, shall be in force within the Field-cornetcy constituted by such municipality or corporate town, precisely as if the said provisions with such exceptions and adaptations had been by this Act expressly applied to such municipality or corporate town: And the Electoral Division of Graham's Town shall be capable of being brought under the provisions of this Act, in like manner as if Graham's Town

Provisions of this Act may apply to country municipalities.

As well as to Graham's Town.

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Expenses of registration to be borne by municipalities.

Forty-second and fifty-second sections of Constitution Ordinance repealed, and provisions of this Act substituted.

Polling Officers at elections may put certain questions.

Discrepancies between name given by voter and that on registered list, not to preclude him from voting, if it appears that he is really and truly the person intended to have been registered.

were a municipality or corporate town, within an Electoral Division; when and as often as the said provisions shall be extended to any municipality or corporate town, then all former Laws or Ordinances repugnant to or inconsistent with any of the said provisions shall be repealed: Provided that the expenses attendant upon the employment of the person or persons employed to collect the names of persons entitled to be registered as voters in any such municipality or corporate town, shall be borne by such municipality or corporate town, which shall also supply the person or persons so employed the necessary printed papers.

And in regard to all and singular the several Electoral Divisions of this Colony without distinction: Be it enacted as follows:

37. The forty-second and fifty-second sections of the Constitution Ordinance are hereby repealed, but where in any Act the said sections or either of them are referred to, the provisions of this Act substituted for the said sections or either of them shall be considered as mentioned instead thereof.

38. The polling officer at any polling place shall if required by or on behalf of any candidate, and may of his own motion when he shall deem it fitting, put to any person coming to vote at the time of tendering his vote, but not afterwards, the following questions:

1st. What is your name in full?

2ndly. Where do you live?

3rdly. What is your occupation?

4thly. Are you to the best of your knowledge and belief the same person whose name appears as _____ (here give the name of the registered voter as whom the person tendering his vote claims to vote) on the list of registered voters for the Electoral Division of _____?

5thly. (In case the poll is taken for a member or for members of the Legislative Council),—Have you already voted, either here or elsewhere, at this election, for any member of the Legislative Council? or (in case the poll is taken for a member or for members of the House of Assembly),—Have you voted, either here or elsewhere in this Electoral Division, at this election for any member of the House of Assembly?

39. In case the person tendering his vote shall, in answer to the first of the said questions, give the surname, as registered, of the voter as whom he claims to vote, but not the christian name as registered, or not all the christian names when more than one, and it shall appear from answers to further questions that the person tendering his vote has no names other than those first stated by him, he shall not thereby be precluded from voting, in case it shall appear from his answers to other questions, or from the testimony of the assistant to the polling officer in the thirty-third section of this Act mentioned (when there shall be such assistant present at the poll), that the christian name or names as registered are mis-

taken, and that the person tendering his vote is really and truly the person intended to have been registered.

[No. 14—1874.]

40. In case the person tendering his vote shall, in answer to the second or third of the said questions, state a residence or occupation different from the residence or occupation registered as the residence or occupation of the voter as whom the person tendering his vote claims to vote, such person shall be questioned as to his residence and occupation at the time of the framing of the list of registered voters upon which appears the name of the voter as whom such person claims to vote. Should it appear from the answers to such questions that he did not at the time of the framing of such list reside at the place registered, or did not follow the occupation registered, he shall not thereby be precluded from voting in case it shall appear from his answers to other questions, or from the testimony of the assistant aforesaid (when there shall be an assistant present at the poll), that the residence or the occupation, or residence and occupation, as registered, are mistaken, and the person tendering his vote is really and truly the person intended to have been registered.

Discrepancies between residence or occupation stated by voter, and that on registered list not to preclude him from voting in case it appears that he is really and truly the person intended to have been registered.

41. As often as the list of registered voters in the hands of the polling officer shall not set forth the residence or occupation of the voter, then it shall not be necessary to put the second or third questions aforesaid (as the case may be), anything in the thirty-eighth section of this Act notwithstanding.

If residence or occupation is not set forth in list, those questions need not be put.

42. If any person tendering his vote shall wilfully make a false answer to any question which any polling officer is, by the thirty-eighth, thirty-ninth, and fortieth sections of this Act, authorised to put, such person shall, upon conviction, be liable to be imprisoned with or without hard labour for any period not exceeding two years.

Penalty for false answers.

43. (1) Any person who, knowing that he is not the person registered by or under a certain name upon any list of registered voters, shall nevertheless wilfully assume or pretend to be the person so registered, and shall vote or attempt to vote as being the person so registered, shall, whether any such questions as aforesaid shall have been put to him or not, be liable upon conviction, to a fine not exceeding fifty pounds, and in case of non-payment to imprisonment with or without hard labour for any period not exceeding six months, unless the fine imposed be sooner paid. Nothing in this section contained shall affect the provisions of the last preceding section in regard to the punishment for any false answer made to any question put but no person prosecuted to trial either under this or the last preceding section shall be afterwards prosecuted under the other of the said sections.

Penalty for personation of voters.

44. (1) If any polling officer shall have reasonable and probable cause for believing that any person has, in the presence of such

Persons tried under either this or the preceding section, not liable to prosecution under the other.

Polling officer may, on reasonable grounds of suspicion

¹ See § 82 Act 9, 1892.

No. 14—1874.

scrutineers, be capable of being identified. In case the complaint shall be that some person not entitled to vote at such poll was admitted to vote, and did vote thereat, and the ground of such complaint shall be established to the satisfaction of the Civil Commissioner, he shall, in case the poll in question was a poll for a member or for members of the Legislative Council, certify in writing that it has been made to appear to him in a proceeding under this section of this Act that the person who voted at the poll in question by and under the name of ——— was not entitled so to vote; and shall transmit such certificate to the Colonial Secretary, who shall, in case the committee of scrutineers have not yet completed their scrutiny, transmit such certificate to such committee, who shall thereupon set aside and treat as non-existent the votes given by such person, should the printed list or polling paper signed by such person be, for any such reason as that hereinbefore specified in regard to the certain other polling paper aforesaid, capable of being identified. Should the committee of scrutineers have completed their scrutiny before any such certificate or certificates as aforesaid shall have been transmitted to them by the Colonial Secretary, then the Colonial Secretary shall require the said committee to re-assemble, and shall transmit every such certificate to such committee, who shall proceed thereupon as hereinbefore directed in order to correct the number of votes formerly certified by such committee under the forty-fourth section of the Constitution Ordinance.

If election is for Legislative Council, Civil Commissioner to inform Colonial Secretary seven days after such election, whether any such complaint is made, so that notice may be given to scrutineers.

49. Every such Civil Commissioner as is in the last preceding section described shall, at the expiration of seven days next after the last day upon which a poll was taken for a member or for members of the Legislative Council, at any polling place in the Electoral Division with which he is connected, inform the Colonial Secretary whether any and, if so, how many complaints, under the forty-seventh section of this Act, have been lodged with him, to the end that the said Colonial Secretary may not require the committee of scrutineers to re-assemble until he shall have in his hands the whole number of certificates likely to be transmitted to him: And every Civil Commissioner who shall have informed the Colonial Secretary of any complaint which such Civil Commissioner shall afterwards find to be ill-founded shall forthwith report to the Colonial Secretary that such complaint has been dismissed.

Duty of scrutineers on receipt of amended voting papers.

50. When the committee of scrutineers, so re-assembled as aforesaid, shall have received all such certificates as aforesaid which shall have been transmitted to the Colonial Secretary, and shall have revised the number of votes for the several candidates as the same shall be affected by such certificates, and shall have certified to the Colonial Secretary, *de novo*, the number of votes given for each candidate, then in case the difference between the number of votes as originally certified by the said committee and the number of votes as certified *de novo* shall not be such as to affect the seat of

any of the members already proclaimed, or to alter the ranking or position as amongst themselves of any of the members so proclaimed, the number of votes as certified *de novo* shall be published by Government notice in the *Government Gazette* for general information, but shall not be further regarded. If, however, the difference aforesaid shall be such as to prove that any candidate already proclaimed a member had fewer votes than some candidate not proclaimed a member, or that the ranking or position as amongst themselves of any of the members proclaimed requires to be altered, then the Governor shall, by a proclamation reciting the former proclamation and the grounds that have since arisen for amending the same, proclaim afresh the names of the candidates in the order, as regards numbers of votes, in which they shall be found to stand after the revision and rectification of the votes as hereinbefore provided: And as often as it shall appear by such proclamation that any person formerly proclaimed a member has received fewer votes than some other person who was not proclaimed a member, the person formerly proclaimed a member shall, upon and from the issuing of such proclamation, cease to be a member, and the other person who received a greater number of votes shall thenceforth become the member in his room and stead. In case the revision and rectification aforesaid shall have the effect of showing an equality of votes between any member who was formerly proclaimed and any candidate who was not proclaimed, the question between them shall be determined by lot, to be drawn in manner and form as in the forty-fourth section of the Constitution Ordinance provided: And should the effect of such revision and rectification be to show an equality of votes between any two or more members who, when formerly proclaimed, appeared to have had a majority one above another, then the order in which the names of the said members shall stand in the amended proclamation shall be determined by lot, to be drawn in the same manner. But the day of the publication of the first proclamation, and not the day of the publication of the amended proclamation, shall for the purpose of computing the time for which members shall hold their seats, be deemed to be the date of the election of the members proclaimed as such by such amended proclamation.

51. In case the poll in regard to which any complaint as is in the forty-seventh section of this Act mentioned shall be lodged shall have been a poll taken for a member or for members of the House of Assembly, and if such complaint shall not have been inquired into and disposed of before the declaration or proclamation of the member or members, as in the fifty-fifth section of the Constitution Ordinance directed, the Civil Commissioner, in case he shall adjudge such complaint to be well founded, shall certify to the Colonial Secretary, in case of a vote or votes rejected at the poll, the name or names of the candidate or candidates for whom the complainant now votes, and in the case of a vote or votes

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Members to be proclaimed afresh, if difference in the number of votes alters their position.

If election is for House of Assembly, Civil Commissioner to certify number of votes admitted and number of votes rejected for each candidate, &c.

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admitted at the poll, from what candidate the vote or votes in question are to be deducted. Should the proclamation in the fifty-sixth section of the Constitution Ordinance specified not have been published when any such certificate shall have been received by the Colonial Secretary, then, if the effect of any such certificate shall be to show that any candidate formerly returned as a member has fewer votes than some other candidate not so returned, the former return shall be amended by the Colonial Secretary in conformity with the certificate by him received from the Civil Commissioner, and the proclamation to be issued under the fifty-sixth section of the Constitution Ordinance, shall publish the name of the member or the names of the members according to such amended return. A Government notice shall be prefixed or appended to such proclamation showing the number of votes received by the respective candidates as originally transmitted by the returning officer, and the change in such numbers consequent upon the certificate or certificates aforesaid. Should the proclamation in the fifty-sixth section of the Constitution Ordinance mentioned have been published before the receipt by the Colonial Secretary of any such certificate or certificates as aforesaid, then all and singular the provisions of the fiftieth section of this Act, in reference to the Legislative Council, shall, *mutatis mutandis*, be applied so far as applicable to the House of Assembly, precisely as if the number of votes as ascertained by the amended return aforesaid were the number of votes certified *de novo* by the committee of scrutineers, and the number of votes originally transmitted by the returning officer in regard to the House of Assembly were the number of votes originally certified by the said committee in regard to the Legislative Council.

Mode of procedure
in investigating complaints.

52. Every person complaining as in the forty-seventh section of this Act mentioned, and every person complained against, shall be entitled to be assisted by an agent, and the Civil Commissioner may, should the circumstances of the case require it, take evidence on oath, and may summon witnesses to appear before him to give evidence; and the form of summoning witnesses and the consequences of attendance or non-attendance shall *mutatis mutandis* be in substance the same as are set forth in the sixteenth, seventeenth, and eighteenth sections of the rules, orders, and regulations of the Courts of Resident Magistrates, contained in the schedule marked B to the Act No. 20 of 1856; and the Civil Commissioner may, if he shall think fit, award his reasonable costs to any person concerned in such investigation, to be paid by any other person concerned therein, and shall tax and ascertain such costs, and shall certify in writing to the clerk to the Court of the Resident Magistrate of the district in which the person liable to pay such costs shall reside the amount of such costs, and the process of such Court may issue for the levy of such costs precisely as if such costs had been costs recovered in a civil suit by the person to whom they shall have been awarded by the Civil Commissioner.

53. If the nature of any such complaint as aforesaid shall be such that the Civil Commissioner shall be uncertain regarding the decision proper to be given upon it, it shall be competent for him to draw up a statement of the facts, and such statement shall be signed by such Civil Commissioner in attestation of its correctness, and such Commissioner shall (except as hereinafter excepted) transmit the same to the Registrar of the Supreme Court, to be by him submitted to a Judge in chambers for his consideration and determination: Provided that every Civil Commissioner within the Eastern Districts, as the same are described in the Administration of Justice Act, 1864, shall transmit all such cases as last aforesaid to the Registrar of the Court of the Eastern Districts for the consideration and determination of a Judge of the said Court.

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Civil Commissioner may submit doubtful cases to a judge in chambers.

54. The Judge before whom any such statement as aforesaid shall be laid may, should the same appear to him defective, call for further information from the Civil Commissioner who transmitted it, and shall give such a decision as shall appear to him right and proper, and such decision shall, for the purpose of the poll to which it relates be final and conclusive.

Judge may call for further evidence, &c..

55. All and singular the several sections of this Act, from the forty-seventh to the fifty-fourth, both inclusive, shall apply to the Electoral Divisions of Cape Town and Graham's Town, in like manner as to all the other Electoral Divisions of the Colony, except that all complaints under section forty-seven shall, if they relate to the Electoral Division of Cape Town, be lodged with and be inquired into by the Resident Magistrate of Cape Town; and if they relate to the Electoral Division of Graham's Town, shall be lodged with and inquired into by the Resident Magistrate of Albany.

Forty-seventh to fifty-fourth sections of this Act to apply to Cape Town and Graham's Town, &c.

56. If, upon ascertaining the number of votes which have been given for the several candidates for election as members of the House of Assembly for any Electoral Division, it shall be found that any two or more of such candidates have received an equal number of votes, the like proceedings shall be had in order to determine who shall be proclaimed the members for such Electoral Divisions as are prescribed in the forty-fourth section of the said Constitution Ordinance as to an equality of votes between candidates for election as members of the Legislative Council.

In case of equality of votes between candidates for House of Assembly, &c., forty-fourth section of Constitution Ordinance to apply.

57. This Act may be cited for all purposes as "The Election Law Amendment Act, 1874."

Short title.

SCHEDULE.

[Repealed by § 28 Act 9, 1892, and Schedule E of that Act to be read as substituted for it.]

No. 15—1874.] [July 29, 1874.]

An Act to Provide for the Terminus of the Submarine Telegraph from this Colony being in India or Ceylon instead of at Aden.

[Lapsed. See Act 19, 1878.]

No. 16—1874.] [July 30, 1874.]

An Act to Amend the Law relating to Attesting Witnesses.

[Repealed by Act 22, 1876.]

No. 17—1874.] [July 30, 1874.]

ACT

To Amend the Criminal Law. (1)

Preamble.

WHEREAS it is desirable that certain amendments, as hereafter mentioned, should be made in the Criminal Law: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. [Repealed by Act 35, 1893.]

Persons tried for robbery may be convicted of assault or theft.

2. If upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit the crime of assault, or the crime of theft, forming part of the crime of robbery charged in the said indictment, the defendant shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of the said crime of assault or of the said crime of theft, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such assault or theft; and no person so tried shall be liable to be afterwards prosecuted for the assault or theft, forming part of the said crime of robbery, charged in the said indictment.

Trial may be postponed after arraignment.

3. Notwithstanding that any defendant may have been arraigned upon any charge, it shall be competent for the Court before which he has been arraigned to postpone the trial of the said charge until such time and place, and upon such terms as to such Court may seem proper: Provided, however, that no such postponement shall be allowed after the jury shall have been duly sworn and charged with the prisoner in the manner provided for that purpose: Provided, further, that nothing in this section contained shall be held or construed to repeal or in any way to affect the validity of the

But not after jury is sworn.

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories. See Ord. 40, 1828 and notes.

provisions of the 58th and 59th sections of Ordinance No. 40 of 1828.

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4. The statement of an accused person purporting to be duly made and subscribed according to the 34th section of the Ordinance No. 40, intituled "An Ordinance for Regulating the manner of proceeding in Criminal Cases in this Colony," shall be received in evidence before any court or tribunal upon its mere production without further proof thereof, unless it shall be proved that such statement was not in fact duly made, or that the signatures or marks thereto are not, in fact, the signatures or marks of the persons whose signatures or marks they purport to be.

Prisoners' declarations at preparatory examinations to be received in evidence on mere production.

Exceptions.

5. In addition to the cases mentioned in the 41st section of the Ordinance No. 72, intituled "Ordinance for Altering, Amending, and declaring in certain respects the Law of Evidence within this Colony" where a deposition of an absent witness is admissible in evidence, such deposition shall also be admissible in evidence as in the said section mentioned, if it shall be proved on oath to the satisfaction of the Court, that the deposing witness is too ill to be able to travel: Provided that in every case mentioned in the forty-first section of the Ordinance No. 72, aforesaid, and in this section of this Act, it shall appear upon the record or be proved to the satisfaction of the Court that the person accused, by himself, his counsel, attorney, or agent, had a full opportunity of cross-examining the witness.

Admissibility of deposition at preparatory examination of witness unable to travel.

6. The punishment of whipping shall in no case be inflicted under any sentence of any Court of Resident Magistrate until the proceedings in the case have been returned to the Magistrate with a Judge's certificate, as directed by the 47th section of the Act No. 20, of 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrate." (1)

Lashes not to be inflicted under any sentence of Resident Magistrate's Court until Judge's certificate is received.

7. The 51st section of the said Ordinance No. 40 shall be read and construed as if the words "where innocence may be fairly presumed, and in every case where the charge is not alleged with sufficient certainty" were omitted therefrom.

Section 51 of Ordinance No. 40 amended.

8. Every instrument liable to Stamp Duty shall be admitted in evidence in any criminal proceeding, although it may not be stamped as required by law.

Unstamped instruments admissible in criminal cases.

[9 and 10 have reference to proceedings before the Grand Jury which has been abolished by Act 17, 1885.]

11. Every person who, after the taking effect of this Act shall be held to bail, or committed to prison for any crime or offence, shall be entitled to require and have within a reasonable time in that behalf from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same a copy of the examinations of the witnesses, respectively, upon whose depositions he has been so held to bail or committed to prison, and of his

Persons bailed or committed to prison entitled to receive copy of examinations of witnesses against them.

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On payment of
three pence a folio.

own statement, on payment of a reasonable sum not exceeding three-pence for each folio of one hundred words: Provided, that if such demand shall not be made before the day appointed for the commencement of the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any such copy as aforesaid, unless the judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to the trial; but it shall, nevertheless, be competent for such judge, or other person presiding at such trial, if he shall think fit, to postpone such trial on account of such copy not having been previously had by the party charged.

Persons under trial
may inspect depositions
without charge
at trial.

12. Every person under trial shall be entitled at the time of the trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against, and the statement taken at the preliminary examination of, such person.

Section 39 of Ordinance No. 40 repealed.

13. The thirty-ninth section of the said Ordinance No. 40 is hereby repealed.

Short title.

14. This Act may be cited for all purposes as the "Criminal Law Amendment Act, 1874."

No. 18—1874.]

[July 31, 1874.

ACT

To Amend the Constitution Ordinance and Act No. 3 of 1865, and to repeal Act No. 6 of 1859. ⁽¹⁾

Preamble.

WHEREAS it is expedient, in order to secure to the electors a more equal exercise of the franchise, to divide the Colony of the Cape of Good Hope into seven Electoral Provinces, for the purpose of electing the members of the Legislative Council, and to alter, in other respects, the constitution of the said Council: And whereas it is necessary, for the purposes aforesaid, to amend the Constitution Ordinance and Act No. 3 of 1865, and to repeal Act No. 6 of 1859: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Sections 4 and 5
of Constitution Ordinance, Act No. 6 of 1859, and section 31 of Act No. 3 of 1865, repealed.

Present Council to be deemed to have been elected for five years.

And vacancies in the meantime, or before dissolution to be

1. The fourth and fifth sections of the Constitution Ordinance, the Act No. 6 of 1859, and the 31st section of the Act No. 3 of 1865, are hereby repealed: Provided that all the members of the Legislative Council in existence at the time of the taking effect of this Act, shall be deemed to have been elected for the term of five years from the date of their election and no longer: Provided further, that any vacancy or vacancies which shall happen in the present Council before the dissolution thereof, or before the

¹ See Acts 30, 1887, and 14, 1893, § 8.

expiration of the said five years, whichever shall first happen, shall be filled up in the same manner as if this Act had not been passed, but the member or members elected to fill such vacancy or vacancies shall hold his or their seat or seats until the expiration of the five years aforesaid or such dissolution as aforesaid and no longer.

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filled up as if this Act had not been passed.

2. For the purpose of electing hereafter the twenty-one ⁽¹⁾ elective members of the said Council, as provided for by the twenty-first section of Act No. 3 of 1865, the Colony of the Cape of Good Hope shall be divided into seven Electoral Provinces, and such provinces shall respectively consist of the Electoral Divisions following, that is to say :

Division of Colony into seven electoral provinces.

1. The Western Electoral Province shall consist of the Electoral Divisions of Cape Town, Cape Division, Stellenbosch, and Paarl.
2. The North-western Electoral Province shall consist of the Electoral Divisions of Worcester, Malmesbury, Piquetberg, Namaqualand, and Clanwilliam.
3. The South-western Electoral Province shall consist of the Electoral Divisions of Swellendam, Caledon, Riversdale, Oudtshoorn, and George.
4. The Midland Electoral Province shall consist of the Electoral Divisions of Graaff-Reinet, Richmond, Beaufort West, and Victoria West.
5. The South-eastern Electoral Province shall consist of the Electoral Divisions of Port Elizabeth, Uitenhage, Graham's Town, Albany, and Victoria East.
6. The North-eastern Electoral Province shall consist of the Electoral Divisions of Somerset East, Fort Beaufort, Cradock, Colesberg, and Albert.
7. The Eastern Electoral Province shall consist of the Electoral Divisions of King William's Town, East London, Queen's Town, Aliwal North, and Wodehouse. ⁽²⁾

3. The voters in and for each of the said Electoral Provinces shall be entitled to elect three qualified men, and no more, to be members of the said Legislative Council, and such members shall vacate their seats at the expiration of seven ⁽³⁾ years from the date of their election: Provided that every member vacating his seat under the provisions of this section shall be eligible to be re-elected.

Each province to elect three members, who shall vacate their seats every seven years.

4. All and singular the provisions of the Constitution Ordinance, from the thirty-fourth to the forty-fourth sections thereof, both inclusive, and of the seventy-third and seventy-fifth sections of the said Ordinance, regarding the mode of signing and accepting

Mode of election.

¹ 22 now. See Act 39 of 1877.

² and 8 The Province of Griqualand West, Act 39 of 1877, § 3. The Transkeian Territories included in Eastern Electoral Province by § 2 Act 30, 1887.

³ As to dissolution of Parliament. See § 7 of this Act, and § 74 of Constitution Ordinance.

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requisitions, and electing and proclaiming any member or members of the Legislative Council for the Western and Eastern Districts respectively, shall apply *mutatis mutandis*, to the election of any member or members of the said Council for the said Electoral Provinces respectively, precisely as if the said Ordinance had directed the election of members of the said Council to take place for the said Electoral Provinces respectively, instead of for the Western and Eastern Districts respectively: Provided, however, that as often as there shall be an election of any member or members of the said Council, then, in case the candidate or candidates to fill the vacant seat or seats who shall have duly accepted and transmitted a requisition or requisitions, as in the said thirty-fourth section of the said Ordinance is mentioned, shall in number not exceed the seat or seats to be filled, then and in every such case there shall be no poll held; but such candidate or candidates, if otherwise duly qualified, shall, after the expiration of the time limited by the proclamation for transmitting requisitions and acceptances thereof, be declared and proclaimed in the *Government Gazette*, as being duly elected a member or members of the said Legislative Council.

Section 33 of Constitution Ordinance amended.

5. The thirty-third section of the said Constitution Ordinance shall be, and the same is hereby, amended, by reading the same as if the words following, that is to say, "Western or Eastern, as the case may be, for which he shall be elected," had not been inserted therein, but had been entirely omitted therefrom.

Province to be selected by person elected for more than one.

6. If in any case the same person shall have been elected as member of the said Council for more than one Electoral Province, such person shall be bound, upon being thereto required by the Governor, if not before, to elect the Electoral Province for or in respect of which he will become a member of the said Council; and upon such election being declared, a fresh election shall take place to supply the resulting vacancy or vacancies.

Council may be dissolved as provided in section 74 of Constitution Ordinance.

7. Nothing in this Act contained shall prevent the Governor from, at any time, dissolving the present or any future Legislative Council as in the seventy-fourth section of the said Constitution Ordinance provided.

Members of Parliament accepting offices of profit under Government or becoming insolvent to vacate their seats.

8. And whereas it is provided by the 33rd and 47th sections of the said Ordinance, that no person holding any office of profit under Her Majesty the Queen within the said Colony, and no uncertificated insolvent shall be eligible to be elected a member of the said Council or of the House of Assembly, but no provision is made in and by the said Ordinance for the vacating of the seat of any person who being a member either of the said Council or of the said Assembly shall accept any office of profit under Her Majesty or shall become insolvent⁽¹⁾: Be it enacted that if any member of the Legislative Council or House of Assembly shall accept or be the holder of any

¹ See also § 71, Constitution Ordinance.

office of profit under Her Majesty the Queen, save and except the office of Colonial Secretary, Treasurer, ⁽¹⁾ Attorney-General, Commissioner of Public Works, or Secretary for Agriculture, or if the estate of any such member shall be sequestrated as insolvent, the seat of such member shall become vacant, and thereupon an election shall take place for filling the said vacancy in like manner as if the causes specified in this section for creating vacancies had been specified in the said Constitution Ordinance.

No. 18—1874.
Exceptions.

9. And whereas the 73rd section of the said Constitution Ordinance provides *inter alia* for the supplying during the recess of either House of Parliament of any vacancy which may have occurred in either of such Houses, but no provision is made in and by the said Ordinance for the supplying of any vacancy occurring in either House in the interval between any general election for members of either House and the then next meeting of Parliament: Be it enacted that the provisions of the said seventy-third section of the said Ordinance, relative to the supplying, during the recess of either House of Parliament, of any vacancy which shall have occurred in either of such Houses, shall extend and apply to the supplying of vacancies occurring in either House in the interval between any general election for members of either House and the then next meeting of Parliament, precisely as if such interval were a recess created by prorogation or adjournment of the House in which any such vacancy shall have occurred; and it shall be lawful for any member of the House of Assembly desiring to resign his seat during such interval, to do so by writing ⁽²⁾ under his hand, addressed to the Colonial Secretary, anything in the seventieth section of the Constitution Ordinance to the contrary notwithstanding: Provided, further, that it shall be lawful for any member of the House of Assembly to resign his seat in the said Assembly, by writing under his hand, addressed to the Colonial Secretary, instead of the Speaker of the said Assembly, if such office shall be vacant in consequence of the death or resignation of such Speaker, or if such Speaker should be absent from the Colony.

Further provision
for filling vacancies.

Vacancies during
recess.

Members may re-
sign during recess by
writing to Speaker
or Colonial Secretary

10. This Act may be cited for all purposes as the "Constitution Ordinance Amendment Act, 1874."

Short title.

¹ Printed as amended by Act 14, 1893.

² Or by Telegraphic Message, § 3, Act 41 of 1882.

No. 19—1874.]

[July 31, 1874.]

ACT

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

Preamble.

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

1. From East London, *via* Blaney, to King William's Town, and from Blaney to Queen's Town ;
2. From Worcester, *via* Hex River and De Staat, to Beaufort West ;
3. From the Bushman's River to Cradock ;
4. From Bushman's River to Graham's Town. ⁽¹⁾
5. From Belleville on the Cape Town and Wellington Railway, *via* Kraaifontein, to Malmesbury, and from Kraaifontein to Muller's Vley ;
6. From the Zwartkop's River, *via* Uitenhage, to Graaff-Reinet ; and
7. In Cape Town, from the Castle to the Docks ;

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

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

1. The Governor shall, as soon as conveniently may be after the passing of this Act, cause to be constructed and equipped, either under contract for each separate line of railway or otherwise, the several railways in the preamble of this Act mentioned, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers, and do and perform all such acts, matters, and things as he may deem necessary or expedient for the said purposes: Provided, however, that instead of constructing and equipping so much of the said railway sixthly above mentioned as lies between the Zwartkops River and Uitenhage, it shall be competent for the Governor to exercise the power of purchase contained in the "Port Elizabeth and Uitenhage Railway Company (Limited) Act, 1871." ⁽²⁾

Lands may be entered, &c.

2. Any person being duly authorized by the Governor so to do may enter upon any land for the purpose of surveying the same, and of probing or boring in order to ascertain the nature of the

¹ Printed as amended by Act 5, 1876.

² Act 8, 1871, lapsed.

soil, or of setting out the said several lines of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

No. 19—1874.

3. All and singular the powers and authorities which are by the Act No. 9 of 1858, ⁽¹⁾ intituled "An Act to provide for the Management of the Public Roads of the Colony," bestowed upon the Commissioners of Roads in regard to taking or acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act mentioned, or of any works in connection therewith, are hereby bestowed upon the Governor, or any person charged by him with the making or maintaining of the railways aforesaid, precisely as if the said powers and authorities were, *mutatis mutandis*, herein again set forth, and as if the said railways were public roads: Provided however, that if any land or materials belonging to any person who shall be absent from the Colony, or whose place of residence shall be unknown to the Governor, shall be required for the making or maintaining of the railways aforesaid, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9 of 1858 upon such proprietor, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be a sufficient notice to such proprietor: Provided, also, that it shall not be necessary before the exercise of any such powers or authorities as aforesaid, that any proceeding shall be taken to settle the amount of compensation or recompense to be paid for or in respect of such land or materials, but it shall be lawful for the Governor, or any person charged by him with the making or maintaining of the railways aforesaid, to enter upon, take possession of, and use any land or materials which may be required for the purposes of any of the said railways whenever he may think fit, leaving all questions as to the recompense or compensation to be paid for or in respect of such land or materials to be settled afterwards in manner provided by the 12th and 13th sections of the said Act No. 9 of 1858.

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

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

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

5. The several provisions of Act No. 19 of 1861, intituled "An Act for the Regulation of Railways in this Colony," save and except the twenty-ninth and thirtieth sections thereof, shall, *mutatis mutandis*, apply to the railways to be constructed under

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

¹ Repealed by Act 40, 1889.

No. 19—1874.

this Act, precisely as if the said railway belonged to a company, and there were a board of directors, the functions of the said board being performed by the Governor with the advice of the Executive Council.

Sums to be expended.

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

1. For the purpose of constructing and equipping the said railway from East London to King William's Town, and from Blaney to Queen's Town, the sum of one million and sixty-nine thousand pounds sterling, which said sum includes a sum of twenty-five thousand pounds already authorised by resolution of both Houses of Parliament to be expended upon the construction of the first section of the said line of railway from East London.
2. For the purpose of constructing and equipping the said railway from Worcester to Beaufort West, a sum not exceeding one million three hundred and ninety thousand pounds sterling.
3. For the purpose of constructing and equipping the said railway from the Bushman's River to Cradock, a sum not exceeding eight hundred and forty-two thousand pounds sterling.
4. ⁽¹⁾ For the purpose of constructing and equipping the said railway from Bushman's River to Graham's Town, a sum not exceeding two hundred and fifty-five thousand two hundred pounds sterling.
5. For the purpose of constructing and equipping the said railway from Belleville to Malmesbury and from Kraaifontein to Muller's Vley, a sum not exceeding two hundred and twenty-eight thousand pounds sterling.
6. For the purpose of constructing and equipping the said railway from the Zwartkop's River to Graaff-Reinet, a sum not exceeding nine hundred and forty thousand pounds sterling, which said sum includes the money required for the purchase of the said railway between Zwartkop's River and Uitenhage and the matters and things appertaining thereto; and
7. For the purpose of constructing and equipping the said railway from the Castle to the Docks, a sum not exceeding eight thousand and eighty pounds sterling.

Loan of £4,000,000 authorised.

7. And whereas it is estimated that of the said sum of four millions eight hundred and five thousand and eighty pounds sterling, a sum not exceeding four millions will be required to be raised by loan, the residue of the said sum being provided from

¹ Printed as amended by Act 5, 1876.

and out of the proceeds of the sale of crown lands, heretofore paid to the commissioners of the Sinking Funds, under the 2nd section of the Act No. 5 of 1870 for purpose now otherwise provided for, and from and out of other existing sources of revenue, it shall be lawful for the Governor to raise the said sum of four million pounds, from time to time as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock.

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

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

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

15. And whereas under and by virtue of the Acts relating to the construction of the Cape Town and Wellington Railway, to wit, the Acts No. 20 of 1857, No. 10 of 1862, and No. 15 of 1872, a certain charge in the nature of a sub-guarantee is imposed upon the immovable property of or belonging to the division of the Cape (including the municipalities of Cape Town and Green Point), and the divisions of Stellenbosch and the Paarl; and whereas the rail- ways in the preamble of this Act mentioned are to be constructed without imposing any such charge upon property of or belonging to the divisions through which the said lines of railway will pass: Be it enacted, that the said charge upon the immovable property of or belonging to the said divisions, and the liability thereof to any rate in respect of such charge, shall cease as from the 1st of January last past: Provided that nothing herein contained shall discharge or relieve any such property, or the owners or occupiers thereof or the Divisional Council of either of the said divisions,

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

Accounts to be sub- mitted annually to Parliament.

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

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No. 20—1874.

from any liability for any sum or sums of money due in respect of the said sub-guarantee for any period prior to the 1st day of January aforesaid, but such moneys shall be in the same plight and condition as if this Act had not passed.

Short title.

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

No. 20—1874.]

[July 31, 1874.

ACT

To enable the Divisional Council of Swellendam to borrow Moneys, upon the security of Road Rates and Tolls, for the payment of its Debt, and for the Improvement and Construction of certain Roads in connection with Southey's Pass.

Preamble.

WHEREAS it is expedient that the Divisional Council of Swellendam should be empowered to borrow moneys, upon the security of road rates and tolls of the said division, for the purpose of paying off the balance of the contribution due by the said Council to the general revenue on account of the expense of constructing the road over Southey's Pass, and for improving and constructing the roads by which the said Pass is approached from Heidelberg and Port Beaufort on the one side, and from the Karoo on the other, by which the inhabitants would be benefited: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Repugnant laws repealed.

1. So much of the Act No. 9 of 1858, entitled an "Act to provide for the management of the Public Roads of this Colony," No. 10 of 1864, entitled an "Act to provide for the Construction and Maintenance of the Main Roads of this Colony," and No. 22 of 1873, entitled an "Act to amend the Laws relating to the Construction and Maintenance of the Main Roads of the Colony," as is repugnant to or inconsistent with any of the provisions of this Act, shall, so far as regards the provisions of this Act, be and the same is hereby repealed.

Divisional Council may raise loan not exceeding £2,000 on credit of tolls or rates

2. It shall be lawful for the said Divisional Council to raise from time to time by way of loan, on the credit of any tolls to be levied or rates to be assessed under the Acts in the first section of this Act cited, any sum or sums that may at any time be required by the said Divisional Council for the purposes hereinbefore mentioned: Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said Council, at a meeting at which there shall be present not fewer than six elected members; provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had due notice (as required by the "Rules of

Order" of the said Divisional Council) of the intention to hold such meeting; and provided that no loan or loans or debts contracted by the said Council under this Act shall at any time exceed the sum of two thousand pounds sterling; and provided that, except as hereinafter, in section 5 is mentioned, no such loan shall be applied for the payment of any previous loan or debt that may have been raised or may be due by the said Council.

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3. The sums aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues of the said Divisional Council, and it shall be lawful for the said Divisional Council to apply to the payment of interest or principal, or interest and principal, of the moneys aforesaid, any such rates or revenues not specially appropriated or required for any other object.

Sums to be chargeable upon rates and revenues of council.

4. The said Divisional Council shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys so borrowed by said Council for the purposes aforesaid, which acknowledgment shall in substance be in the form given in the schedule to this Act, and shall be signed on behalf of the said Divisional Council by three of its elected members appointed for that purpose by a resolution of the said Council.

Acknowledgment of loan to be in form given in schedule.

5. And whereas the said Divisional Council is indebted to the general revenue of the Colony in the sum of four hundred and thirty-seven pounds and ten shillings sterling, being the balance of its contribution towards the expense of constructing the road over Southey's Pass: Be it enacted that it shall and may be lawful for the said Council to pay the aforesaid sum of four hundred and thirty-seven pounds and ten shillings sterling, out of the said sum of two thousand pounds sterling, authorised to be raised under this Act.

Balance £437 10s. 0d. due to general revenue to be paid out of money raised under this Act.

6. All debts lawfully incurred by the said Divisional Council for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Debts incurred to be subject to Act No. 11 of 1867.

7. All moneys raised as aforesaid under this Act shall on receipt thereof be deposited in a bank, to be chosen for that purpose by the said Council, to the credit of a separate account, and all sums required shall be drawn by cheques signed by the secretary to the said Divisional Council, and countersigned by such one of its elected members as shall be appointed so to do by the said Council.

Moneys raised to be deposited in bank to separate account, &c.

8. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December then next preceding, and all liabilities and assets on the same days.

Separate account to be submitted to Government half-yearly.

9. The accounts in the preceding section mentioned shall be audited and examined by the auditors, to be from time to time appointed under the provisions of "The Divisional Councils Act,

Accounts to be audited.

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1865," and the provisions of the 83rd and 85th sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loan.

Expenses of Act to be paid out of loan raised.

10. All the necessary costs, charges, and expenses attending the procuring of this Act and the carrying the provisions thereof into effect shall be paid out of the money to be received under the provisions of this Act.

11. This Act may be cited for all purposes as the " Swellendam Divisional Council Loan Act, 1874."

SCHEDULE.

We, the undersigned, members of the Divisional Council of Swellendam, duly authorised thereto by the said Council, do hereby acknowledge that the said Divisional Council of Swellendam is indebted to.....in the sum of....., for so much money borrowed by the said Council for the purposes set forth in the Swellendam Divisional Council Loan Act, 1874, and certify that the said sum is secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Swellendam this...day of.....

..... } Members of the
..... } Divisional Council
..... } of Swellendam.

Witnesses :

No. 21—1874.]

[July 31, 1874.

An Act for Applying a Sum not exceeding Eight Hundred and Forty-four Thousand Two Hundred and Thirty-two Pounds Seventeen Shillings and Sixpence Sterling for the Service of the Year 1874.

[Spent.]

No. 22—1874.]

[July 31, 1874.

An Act for Applying a Sum not exceeding Three Hundred and Eighty-six Thousand and Seventy-two Pounds Thirteen Shillings and Ninepence Sterling for the Service of the Year 1875.

[Spent.]

No. 23—1874.]

[July 31, 1874.

ACT

To Amend the Law of Inheritance of this Colony.⁽¹⁾

WHEREAS it is expedient to remove certain restrictions heretofore existing by the laws of this Colony on the freedom of the disposition of property by the last will or testament of the owner thereof: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of any Law or Ordinance heretofore existing in this Colony as shall be repugnant to, or inconsistent with, any of the provisions of this Act shall be repealed, and the same is hereby repealed accordingly.

Repugnant laws repealed.

2. No legitimate portion shall be claimable of right by any one out of the estate of any person who shall die after the taking effect of this Act.

No legitimate portion can be claimed of right.

3. Every person competent to make a will shall have full power by any will executed after the taking effect of this Act to disinherit or omit to mention any child, parent, relative, or descendant without assigning any reason for such disinheritance or omission, any law, usage, or custom now or heretofore in force in this Colony notwithstanding; and no such will as aforesaid shall be liable to be set aside as invalid, either wholly or in part, by reason of such disinheritance or omission as aforesaid.

Persons making will may disinherit any child, &c., without assigning reasons

4. Nothing in this Act contained shall affect or alter the Laws of Inheritance *ab intestato* at present in force in this Colony.

Existing Laws of Inheritance *ab intestato* to remain in force.

5. Nothing in this Act shall extend to or alter or affect the laws of this Colony regarding community of property between spouses when not excluded by antenuptial contract.

Existing laws of community of property between spouses to remain in force.

6. This Act may be cited for all purposes as "The Succession Act of 1874."

Short title.

No. 24—1874.]

[July 31, 1874.

ACT

To Regulate the appropriation of Grants from the Public Revenue in aid of Higher and Professional Education.

WHEREAS it is expedient to encourage the advancement of the youth of all classes throughout the Colony in literary and scientific studies, and to make better provision for enabling young persons to prepare themselves for the various examinations prescribed, or to be prescribed, by the University of the Cape of Good Hope:

Preamble.

¹ See Act 26, 1873. Extended by Proclamation No. 80 of 1890 to all the Native Territories.

No. 24—1874.

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

Moneys to be administered by Governor under rules and regulations framed by him and approved of by Parliament.

1. All sums of money granted by Parliament for the purposes of higher and professional education shall be administered by the Governor, in accordance with such rules and regulations touching higher and professional education as shall from time to time be approved of by the Governor, with the advice of the Executive Council, and published by proclamation in the *Government Gazette*: Provided that no such rule or regulation, nor any alteration or rescission thereof, which may from time to time become expedient shall be proclaimed by the Governor or shall take effect until such rule or regulation or the alteration or rescission thereof, as the case may be, shall have been assented to by both Houses of Parliament by resolution of each House: Provided also that the regulations contained in the schedule to this Act shall be, and are hereby declared to be, the regulations touching higher professional education for the time being, subject to alteration or rescission in the manner hereinbefore set forth; and provided, further, that an annual report of the allocation of such sums of money shall each year be laid before Parliament.

Regulations for the time being to be those in the schedule to this Act.

Annual report to be submitted to Parliament.

No grant to be made to Graaff-Reinet College unless number of professors and lecturers exceed two.

2. In consideration of the payment from the Public Treasury of the Colony of four hundred pounds per annum to the Council of the Graaff-Reinet College, under the provisions of the 28th section of Act No. 29 of 1860, intituled "An Act for establishing a College at Graaff-Reinet," no grant under this Act shall be made in aid of the salary of a professor or lecturer of the said college, unless and until the number of such professors or lecturers shall exceed two, and then only in respect of the number of such professors or lecturers in excess of two.

Class 1, Order A, in schedule to Act No. 13 of 1865, amended.

3. The first condition, Class 1, Order A, in the schedule to the Education Act, 1865⁽¹⁾, shall be read as if the words "where no other provision has been made from the public funds for higher education" in the commencement thereof was omitted therefrom.

Short title.

4. This Act may for all purposes be cited as "The Higher Education Act, 1874."

SCHEDULE.

[See note to Schedule to Act 13 of 1865.]

No. 25—1874.]

[July 31, 1874.]

An Act to Provide for the payment of Pensions to Widows of Officers on the Fixed Establishment of the Public Service of this Colony.

[Repealed by Act 22, 1879.]

¹ Act 13, 1865.

No. 26—1874.]

[July 31, 1874.

AN ACT

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

WHEREAS by the Acts No. 15 of 1871 and No. 12 of 1872, certain provisions were made for promoting the construction of a bridge or bridges over the Orange River: And whereas there is reason to believe that a convention will shortly be entered into between the Government of this Colony and the Government of the Orange Free State, under which, besides the provisions mentioned in the said first mentioned Act, the Government of this Colony will be enabled to construct the said three first mentioned bridges, with power, however, to the Government of the Orange Free State or any company formed therein to construct any one or more of the said bridges on the same terms as the Government of this Colony or any company formed therein may be authorised to construct the same, and with a further provision that the Government of the said Orange Free State shall be at liberty to receive one-half of the revenue to be derived from any bridge or bridges to be constructed by the Government of this Colony, upon payment to the said Government of one-half of the money expended in and about constructing such bridge or bridges, and upon such other terms as may be deemed fair and reasonable: And whereas it is proposed that four bridges shall be constructed over the said river, that is to say, at some convenient site in the vicinity of Aliwal North, Bethulie, Colesberg, and Hope Town respectively: And whereas the last of the said proposed bridges would abut upon the Province of Griqualand West, and it is expedient therefore that power should be given to the Governor to enter into a convention with the Government of the said Province similar to that proposed to be entered into with the said Government of the Orange Free State: And whereas in case of the construction of the said bridges, or any of them, by or on behalf of the Government of this Colony, it will be necessary to provide for raising money for such construction, not exceeding three hundred thousand pounds sterling: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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

Repugnant laws repealed.

2. It shall be lawful for the Governor to enter into a convention as aforesaid with the Government of the Orange Free State, which shall be binding on this Colony, and upon such convention being

Convention may be entered into with Free State.

No. 26—1874.

entered into and published by proclamation in the *Government Gazette* the same shall be of the same force and shall have the same effect as if it had been introduced in so many enacting clauses in this Act.

Loan for construction of bridges authorised.

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

Loan to be raised by debentures.

4. The said sum of three hundred thousand pounds sterling may be raised from time to time, as it may be deemed expedient by the Governor, by debentures, to be issued in this Colony or in England or partly in this Colony and partly in England, for sums not exceeding five hundred pounds, nor less than one hundred pounds each upon the best and most favourable terms that can be obtained and the interest to accrue due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Extinction of debt provided for.

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

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

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

Redeemed debentures to be cancelled by Treasurer.

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

Guardians' Fund may be invested in debentures.

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

advice, or upon the same authority, as if such investment were a loan upon mortgage.

No. 27—1874.

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

Annual accounts to be laid before Parliament.

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

Convention may be entered into with Griqualand West.

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

Bridges may be built by contract.

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

Short title.

No. 27—1874.]

[July 31, 1874.

ACT

To Authorise and Empower the Municipality of Uitenhage to borrow a further Sum under Act No. 3 of 1867.

WHEREAS by the Uitenhage Water Act, No. 3 of 1867, the Commissioners of the Municipality of Uitenhage are empowered, subject to the several conditions and provisions in the said Act contained, to borrow and take up at interest any sum or sums of money not exceeding in the aggregate the principal sum of Two Thousand Five Hundred Pounds sterling, for the purpose of enabling the said commissioners to construct and provide one or more reservoirs, and to convey water from the Uitenhagespring or springs near Sandfontein to the Town of Uitenhage in an improved manner, upon the security of a special rate or rates, not to exceed in any one calendar year the amount of one penny in the pound sterling

Preamble.

No. 27—1874.

on the value of all the immovable property situate within the said municipality liable to assessment, and to mortgage the said rate, for securing the repayment of such moneys :

And whereas the said sum of Two Thousand and Five Hundred Pounds sterling will be sufficient only for storing and filtering the water in reservoirs close to the town, and for leading the same through the streets (for household purposes), but insufficient to provide for certain necessary works to be constructed between the said Uitenhage spring or springs and the town of Uitenhage, and for husbanding the water for irrigation purposes, in accordance with the said Uitenhage Water Act, No. 3 of 1876 :

And whereas such works as were authorised by the said Act No. 3 of 1867, both for irrigation and household purposes, can be no longer delayed, in consequence of the increased and increasing requirements of the said municipality, the storing and husbanding of the said water having become a necessity :

And whereas such necessary works between the said Uitenhage spring or springs and the town of Uitenhage (to be constructed wholly within the boundary of the said municipality and in and over the town lands of the same) cannot be undertaken without further borrowing powers on the security of such intended special water rate or rates as aforesaid, and such further borrowing powers cannot be obtained without the aid and authority of Parliament: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. A further sum or sums than is already authorised by the Uitenhage Water Act No. 3 of 1867, that is to say, a further principal sum of ten thousand pounds sterling is hereby authorised to be raised, in like manner as the sum of two thousand five hundred pounds is authorised to be raised by the said Act, and such further principal sum of ten thousand pounds sterling, or any part thereof, shall be used and expended in the manner and for the purposes set forth in the said Uitenhage Water Act, or some or any of them.

2. All and several the provisions of the said Act No. 3 of 1867, empowering the said commissioners to borrow and take up at interest the amount authorised by that Act, shall apply *mutatis mutandis* to the provisions of this Act, and to the increased loan thereby authorised.

3. This Act may be cited as the “Uitenhage Water Service Increased Loan Act, 1874,” and shall take effect from and after the promulgation thereof.

Further loan authorised under Act No. 3 of 1867.

Act No. of 1867 to apply.

Short title.

No. 28—1874.]

[July 31, 1874.

ACT

To Amalgamate the Laws relating to Masters, Servants,
and Apprentices.

WHEREAS in several parts of the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices," reference is made to other parts of the said Act, and whereas many of these references have become inapplicable by reason of the repeal of the said Act by the Masters and Servants Law Amendment Act, (¹) 1873," and it is desirable that the said two Acts should be read together: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The said "Masters and Servants Law Amendment Act, 1873," shall be construed with and as part of the said Act No. 15 of 1856.

Act No. 18 of 1873 to be construed with Act No. 15 of 1856.

2. This Act may be cited for all purposes as the "Masters and Servants Law Amalgamation Act, 1874," and the said Act No. 15 of 1856 may for all purposes be cited as the "Masters and Servants Law Act, 1856."

Short title.

No. 29—1874.]

[July 31, 1874.

An Act to further Facilitate the apprehension in this Colony of certain persons who have committed crimes in the Colony of Natal, in the Province of Griqualand West, in the Orange Free State, or in the South African Republic.

[Repealed by Act 18, 1877.]

No. 30—1874.]

[July 31, 1874.

An Act to Amend the Act No. 7 of 1854, entitled "An Act for Extending Trial by Jury to Civil Cases."

[Repealed by Act 23, 1891.]

No. 31—1874.]

[July 31, 1874

An Act to Prevent the spread of the Scab Disease in Sheep and Goats.

[Repealed by Act 28, 1886.]

¹ No. 18. See Acts 7, 1875; 35, 1886; 8, 1889; 30, 1889 and 24, 1895, § 17. Extended by Proclamation No. 206 of 1893, to all the Native Territories.

No. 5—1875.

No. 1—1875.]

[June 10, 1875.]

An Act to Repeal the Act No. 3 of 1874, and to make other provisions in lieu thereof.

[Lapsed.]

No. 2—1875.]

[June 30, 1875.]

An Act to regulate and provide for the Payment of Superannuation Allowances to Members of the Frontier Armed and Mounted Police Force.

[Repealed by Act 9, 1878.]

No. 3—1875.]

[June 30, 1875.]

An Act for the more effectual prevention of Cruelty to Animals.

[Repealed by Act 18, 1888.]

No. 4—1875.]

[June 30, 1875.]

An Act to enable Persons to deposit small Savings at Interest, with the security of the Government for due repayment thereof.

[Repealed by Act 4, 1886.]

No. 5—1875.]

[June 30, 1875.]

ACT

To Amend Ordinance No. 3, 1852, "For Regulating in certain respects the Appropriation of the Revenue of the Colony of the Cape of Good Hope by the Parliament thereof."

Preamble.

WHEREAS by Ordinance No. 3, 1852, forming the schedule to the Order in Council passed at the Court of Buckingham Palace on the eleventh of March, 1853, it is enacted that, until Parliament shall otherwise direct, there shall be payable every year to Her Majesty, her heirs and successors, out of the revenue of the Colony, certain sums of money for defraying the expenses of the several services and purposes in the schedule to the said Ordinance annexed set forth: And whereas amongst the said services it is provided, under schedule C, annexed to the said Ordinance, that there shall be payable as aforesaid, for public worship, the sum of £16,060: And whereas it is desirable that the different religious communities of the Colony should be left to their own efforts and resources for securing the means of religious worship and instruction, and that the interests of existing incumbents being duly protected, the support now given to Christian ministers from the public revenue should be withdrawn: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent

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

No. 5—1875.

1. Schedule C of the said Ordinance No. 3, 1852, shall be and is hereby repealed.

Schedule C of Ordinance 3 of 1852, repealed.

2. Notwithstanding the repeal of the schedule C aforesaid, there shall continue to be paid from and out of the public revenue, to every minister of religion who shall, at the time of the taking effect of this Act, be in the receipt of any salary or payment, under or by virtue of the said schedule, from or out of such public revenue, the same salary or payment of which he shall be so in receipt, until he shall die, or shall cease to hold the office, or place, or situation held by him at the time of the taking effect of this Act: Provided that if any such minister as aforesaid shall die or shall cease to hold such office, place, or situation as aforesaid at any time within five years next after the taking effect of this Act, then the successor of such minister in such office, or place, or situation shall be entitled to receive, till the expiration of such five years, but no longer, the same salary or payment which such minister was in receipt of when he died or otherwise vacated the said office, place, or situation: And provided that as often as any minister who shall at the time of the taking effect of this Act be in receipt of any salary or payment from or out of the public revenue shall vacate the office, place, or situation then held by him, for the purpose of accepting some other office, place, or situation become vacant, of which the minister was, when by death or otherwise he caused such vacancy, in the receipt from the public revenue of any salary or payments, then such minister supplying such vacancy shall be entitled to receive until he shall die or shall cease to hold the said office, place or situation, the same salary or payment of which his immediate predecessor was in receipt when such vacancy occurred.

Present incumbent to continue to receive salary until he dies or ceases to hold office.

But if he dies or ceases to hold office within five years, his successor to receive salary till the expiration of that period.

And if he vacates office to take another office to which a salary is attached, he may draw such salary until he dies or ceases to hold office.

No. 6—1875.]

[June 30, 1875.

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

[Repealed by Act 6, 1891.]

No. 7—1875.]

[June 30, 1875.

ACT

To Amend the Law relating to Masters, Servants, and Apprentices. (¹)

Preamble.

WHEREAS it is expedient to amend the law relating to Masters, Servants, and Apprentices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Servant or apprentice may be apprehended summarily on deposition of master.

1. If the master of any servant or apprentice alleging matter of complaint against such servant or apprentice for any offence punishable under the "Masters and Servants Law Act, (²) 1856," or the "Masters and Servants Law Amendment Act, (³) 1873," shall make deposition on oath before a Resident Magistrate, or Justice of the Peace, that he believes (stating the grounds of his belief) that in order to secure the appearance of such servant or apprentice before the Resident Magistrate having jurisdiction to try the case, that the apprehension of such servant or apprentice is necessary, it shall be lawful for such Resident Magistrate or Justice of the Peace to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons: Provided, however, that if the master of any servant or apprentice shall make such deposition maliciously and without reasonable and probable ground for believing the same to be true, such master shall be liable to be fined any sum not exceeding five pounds, and in default of payment thereof to be imprisoned for any period not exceeding one month.

Penalty for malicious depositions.

May be apprehended summarily for desertion.

2. If any servant or apprentice is charged under either of the aforesaid Acts with having, without lawful cause, departed from his master's service with intent not to return thereto, it shall be lawful for any Resident Magistrate or Justice of the Peace to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons.

Punishment for abusive language.

3. (⁴) There shall be considered as inserted in the seventh section of the said "Masters and Servants Law Amendment Act, 1873," after the paragraph of the said section numbered eight, the following as a ninth paragraph:

9. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by

¹ See Acts 28, 1874; 35, 1886; 8, 1889; 30, 1889; and 24, 1895, § 17. Extended by proclamation No. 206 of 1893 to all the Native Territories.

² No. 15.

³ No. 18.

⁴ See Act 30, 1889.

his master in authority over him, calculated to provoke a breach of the peace.

No. 7—1875.

4. The paragraph numbered five of the fourth section of the said last mentioned Act is hereby repealed.

Paragraph 5, section 4, Act 18, 1873, repealed.

5. On the trial of any case in any Court of Resident Magistrate wherein any master, servant, or apprentice is charged with having contravened any of the provisions of the said Masters and Servants Acts, such master, servant, or apprentice, as the case may be, and his or her wife or husband, shall be competent, but not compellable, to give evidence on his or her own behalf, or on the behalf of the complainant in the said case.

Accused competent to give evidence.

6. No master, servant, or apprentice charged with having contravened any of the provisions of the said Masters and Servants Acts, and who is not immediately before the hearing of such charge in actual custody, shall be compelled to enter the dock or place usually assigned for prisoners under trial in the Court, or shall be otherwise treated as under arrest, during the hearing of such charge: Provided that if, in the opinion of the Magistrate before whom the charge is heard it shall be necessary, in order to secure the attendance of such master, servant, or apprentice, that he should be placed in custody, it shall be lawful for such Magistrate to cause such person to be arrested and detained in custody.

Accused not compellable to enter the dock, but may be detained in custody.

7. In case it may be necessary to prosecute or proceed against any person employed on any of the public works of this Colony for contravening any of the provisions of the said Masters and Servants Act, such prosecution or proceeding may be carried on by and in the name of any of the officers in charge of the work upon which such servant is employed at the time of such contravention.

Officer in charge of any public work may prosecute.

8. This Act may be cited for all purposes as the "Masters and Servants Act, 1875," and shall be construed as one with the Masters and Servants Act, 1856, and the Act of 1873, amending the same; and the said Acts, the Master and Servants Law Amalgamation Act, 1874, and this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1875."

Short title.

No. 8—1875.]

[June 30, 1875.]

Act to Amend the Law relating to the Sale of Wines and Spirituous and Fermented Liquors.

[Repealed by Act 28, 1883.]

No 9—1875.]

[June 30, 1875.

ACT

To Enable persons residing beyond the limits of this Colony to participate in certain of the benefits enjoyed by Her Majesty's subjects within this Colony under the University Incorporation Act, (1) 1873.

Preamble.

WHEREAS it is expedient that persons residing beyond the limits of this Colony should be enabled to participate in some of the benefits enjoyed under the University Incorporation Act, 1873, by persons who reside within the Colony, and it is doubtful how far, as the law stands, they can do so: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Repugnant laws repealed.

1. So much of the University Incorporation Act, 1873, as is repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Examinations may be held beyond this Colony,

2. It shall be lawful for the council of the University of the Cape of Good Hope to make provision for the examination as in the said Act mentioned, beyond this Colony, of persons desiring to matriculate in, or to obtain any degree, certificate, or distinction from the said university, whether such persons reside within the said Colony or not.

Degrees may be conferred on persons duly examined, whether resident in this colony or not.

3. It shall be lawful for the said council to confer, after examination, and according to the bye-laws and regulations of the said university, degrees and certificates, as in the said Act mentioned, upon duly qualified persons, whether such persons reside within this Colony or not.

Bye-laws may be framed as to competition of non-residents for fellowships, &c.

4. It shall be lawful for the said council, from time to time, to frame bye-laws and regulations under which persons not resident in this Colony may compete for and hold any fellowship, studentship, scholarship, exhibition, bursary, or other prize, which is or may be hereafter at the disposal of the council: Provided, that no such bye-laws or regulations shall be of any force or effect until they shall have been approved of by the Governor and laid upon the table of both Houses of Parliament at any time during the first session which shall be held after the framing of the said bye-laws and regulations, and shall have been before the said Houses for a period of not less than fifteen days.

To be first approved of by the Governor and laid before Parliament for fifteen days.

Short title.

5. This Act may be cited for all purposes as the "University Extension Act, 1875."

¹ Act 16, 1873.

No. 10—1875.]

[June 30, 1875.]

ACT

To Amend in certain respects Act No. 7 of 1856. ⁽¹⁾

WHEREAS it is expedient that provision should be made by law for apportioning the quitrent payable by or out of fixed property which may become or have become subdivided amongst several owners in cases where the seller and purchaser or the owners shall be unable or unwilling to come to any such agreement as is in the Act No. 7 of 1856 mentioned: Be it enacted by the Governor of the Cape of Good Hope, by and with the consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. In every case where the seller and purchaser or the owners of land subject to the payment of quitrent to Her Majesty the Queen shall be unable or unwilling to come to any agreement to fix and determine the shares or proportions of the said quitrent which should for the future be payable by such purchaser and seller respectively, or by such part owners respectively from or out of their respective shares or portions of such land in terms of the provisions of Act No. 7 of 1856, then it shall be lawful for such seller or purchaser, or for any part-owner, as the case may be, to request the Civil Commissioner of the division in which such land shall be situated to fix and appoint a day for the apportionment of such quitrent, and thereupon such Civil Commissioner shall fix and appoint a day for hearing the parties and apportioning the said quitrent, and upon the day so appointed the Civil Commissioner shall apportion the quitrent to be thereafter paid by the purchaser and seller respectively, or by the part-owners respectively, as to such Civil Commissioner shall seem just and equitable: Provided however that no such apportionment shall be made unless the party who shall have requested the Civil Commissioner to fix and appoint such day as aforesaid shall have served a notice in writing of such hearing upon the purchaser or seller, as the case may be, or upon the remaining part-owners, not less than fourteen days previous to the day fixed for hearing: Provided further that it shall be competent for any party interested who shall have appeared before such Civil Commissioner to bring the decision of such Civil Commissioner under the review of the Supreme Court within three months after the date of such decision: Provided further that on no division shall less than five shillings quitrent be payable.

Proceedings to be taken when joint owners cannot agree on the apportionment of quitrent under Act 7 of 1856.

2. The Civil Commissioner shall cause every such apportionment of quitrent as aforesaid to be recorded in a book, to be kept by him for that purpose, and shall endorse such shares and portions of quitrent upon the title deed or transfer deed or deeds

Civil Commissioner to keep record book of such apportionment.

¹ See Act 40, 1895.

No. 11—1875.

under or by virtue of which the several shares or portions of such property shall be enjoyed by such purchaser or seller or part-owners respectively, and shall state and embody such shares and proportions of quitrent in any transfer deed by which such share or portion may be afterwards transferred.

Short title.

3. This Act may be cited for all purposes as the "Apportionment of Quitrent Amendment Act, 1875."

No. 11—1875.]

[June 30, 1875.]

ACT

To Amend in certain respects the Law regulating the dealing in Gunpowder, Firearms, and Lead.

Preamble.

WHEREAS it is expedient to vest in the Judges of the Supreme Court discretionary powers in the infliction of penalties for any contravention of the provisions of the Ordinance No. 2 of 1853: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly, as follows:—

Repugnant law repealed.

1. So much of Ordinance No. 2 of 1853, and of any subsequent Act as shall be repugnant to or inconsistent with this Act, shall be and the same is hereby repealed.

Penalties under Ordinance 2 of 1853 to be construed as if words "not exceeding" were inserted before the amounts.

2. Where any fine or other penalty is provided by the said Ordinance for the infringement of any of the provisions thereof, the said Ordinance shall as to every sum payable by way of fine and every term of imprisonment be construed as if the words "not exceeding" were inserted before every such amount of fine and every such term of imprisonment.

Short title.

3. This Act may be cited for all purposes as the "Gunpowder and Firearms Amendment Act, 1875."

No. 12—1875.]

[June 30, 1875.]

ACT

To Authorise the Divisional Council of Cradock to borrow Moneys, upon the security of Road Rates and Tolls, for Public Works.

Preamble.

WHEREAS the Divisional Council of Cradock is desirous of improving the means of communication in the said division by the construction of substantial roads and the erection of bridges: And whereas, from the nature of the country and the extent of work to be done, such works to be properly carried out will involve a larger outlay of money than could be met by immediate taxation under the powers by law vested in the said Council:

And whereas it is expedient that the said Council should be authorised to borrow moneys upon the security of road rates and tolls of the said division for the improvement and construction of the roads therein, and that provision should be made for the gradual extinction of the debt incurred for the cost of such works: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

No. 12—1875.

1. So much of the Act No. 9 of 1858, ⁽¹⁾ intituled “An Act to provide for the Management of the Public Roads of the Colony,” so much of “The Road Act (No. 10), 1864,” and so much of “The Road Act (No. 22), 1873,” ⁽¹⁾ as is repugnant to or inconsistent with the provisions of this Act, shall in so far as relates to this Act, but not otherwise, be and the same is hereby repealed.

Repugnant laws repealed.

2. It shall be lawful for the said Council from time to time to borrow and to take up at interest such sum or sums of money, not exceeding ten thousand pounds sterling in the whole, as may be required for the purposes of this Act.

Loan of £10,000 authorised.

3. No loan under this Act shall be capable of being raised except in pursuance of a resolution passed at an ordinary meeting of the said Council, of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be capable of being raised in any year in which the rates assessed by the said Council shall be less than one penny in the pound sterling upon the value of the property liable to be rated in the said division.

Conditions precedent to raising any part of loan.

4. For the due payment of the moneys to be raised as aforesaid, and the interest thereof, the rates, tolls, and other revenues of the said Council are hereby charged and hypothecated: Provided, however, that the moneys raised under the provisions of the Act No. 6, 1867, and the interest payable thereupon, shall be a first preferent charge upon all and singular the revenues which are by the said Act made liable to the payment thereof, and the moneys to be borrowed under this Act, and the interest thereof, shall be a second preferent charge upon the said revenues.

Security for repayment of loan and interest.

5. The said Council shall grant written acknowledgments of, or for, such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in the form annexed to this Act, and shall be signed on behalf of the said Council by three of its elected members thereto duly authorised by resolution of the said Council.

Acknowledgment for loans to be given in form provided in schedule.

6. As a fund for the payment of the interest upon and the gradual extinction of the loans to be raised under the authority of this Act, there shall be charged and chargeable upon, and set apart out of, the annual revenues of the said Council as aforesaid an annual sum equal to the interest on the whole amount of such

Fund for payment of interest and extinction of loans created.

¹ Repealed by Act 40, 1889.

No. 12—1875.

loans, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sum shall be annually charged upon and payable out of the revenues of the said Council so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Fund to be applied to no other purpose and to be kept separate.

7. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section as shall not be required for the payment of the interest for the time being due upon the loans raised under the authority of this Act shall be paid to a separate account to be kept in a bank to be chosen for that purpose by the Council, and shall be applied in redeeming and cancelling the obligations or acknowledgments of the said Council for moneys raised under the authority of this Act in such manner and form as shall be provided by the terms and conditions whereon such obligations or acknowledgments shall respectively have been granted; and all moneys so paid into a bank for the purpose aforesaid shall be drawn out by cheques to be signed by some member or members thereto specially authorised by resolution of the said Council.

Separate account to be kept and abstract rendered half-yearly to Colonial Secretary.

8. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December preceding.

Accounts to be audited.

9. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of "The Divisional Councils Act, 1865,"⁽¹⁾ and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loan.

Public Bodies' Debts Act, 1867, to apply.

10. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the "Public Bodies' Debts Act, 1867."⁽²⁾

Provision of payment of cost of Act.

11. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act, and carrying the provisions thereof into effect, out of the moneys to be raised under the provisions hereof.

And whereas the bridge erected by the said Council across the Fish River at Cradock, under the provisions of the Act No. 6, 1867, was partially destroyed by flood in the month of December, one thousand eight hundred and seventy-four: And whereas it is expedient that the said Council should be empowered and enabled to cause the same to be reconstructed and restored: Be it enacted as follows:

Repugnant parts of Act 6, 1867, repealed.

12. So much of the Act aforesaid, No. 6, 1867, as is repugnant to or inconsistent with the provisions of this Act, shall be and the same is hereby repealed.

¹ Act 4, 1865, repealed by Act 40, 1889.

² Act 11, 1867.

13. It shall be lawful for the said Council from and out of the moneys to be raised under the authority of this Act to advance and pay such sums as may be necessary for the reconstruction and restoration of the said bridge.

No. 12—1875.

Fish River Bridge may be reconstructed out of moneys raised under this Act.

14. The interest upon the moneys paid and advanced under the last preceding section shall be payable out of the surplus, if any, of the tolls levied and raised at the said bridge under the provisions of the Act aforesaid, after payment of the interest accruing upon the existing debt contracted for the erection thereof, and any deficiency of such interest and the capital sum shall be refunded and repaid to the General Loan Account for the purposes in the preamble to this Act first abovementioned out of the fund to be provided under section thirteen of the Act aforesaid, No. 6, 1867.

Provision for payment of interest on money advanced for Fish River Bridge.

15. This Act may be cited for all purposes as the "Cradock Divisional Council Loan Act, 1875."

Short title.

SCHEDULE, CRADOCK DIVISIONAL COUNCIL LOAN ACT, 1875.

Acknowledgment for Loan of £

We, the undersigned, members of the Divisional Council of Cradock, duly authorised thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Cradock is indebted to _____ in the sum of _____

for so much money borrowed for the purposes mentioned in the "Cradock Divisional Council Loan Act, 1875," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Cradock, this _____ day of _____ 187

} Members of the
Divisional Council of
Cradock.

Entered _____

Secretary.

1368 VICTORIA EAST DIVISIONAL COUNCIL LOAN.

No. 13—1875.]

[June 30, 1875.

ACT

To enable the Divisional Council of Victoria East to borrow Moneys for the purpose of Constructing a Road over the Hogsback, Division of Victoria East, upon the security of Road Rates and Tolls.

Preamble.

WHEREAS it is expedient that the Divisional Council of Victoria East, should be empowered to borrow moneys, upon the security of road rates and tolls of the said division, for the purpose of constructing a road over the Hogsback, in the divisions of Victoria East and King William's Town, by which the inhabitants would be benefited: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of the Act No. 9 of 1858, (1) entitled an "Act to provide for the Management of the Public Roads of this Colony," of the Act No. 10 of 1864, entitled an "Act to provide for the Construction and Maintenance of the Main Roads of this Colony," and of the Act No. 22 of 1873, (1) entitled an "Act to amend the Laws relating to the Construction and Maintenance of the Main Roads of the Colony," as is repugnant to or inconsistent with any of the provisions of this Act, shall be and the same is hereby repealed.

Loan of not exceeding £2,000 authorised.

2. It shall be lawful for the Divisional Council of Victoria East to raise from time to time by way of loan, on the credit of any tolls to be levied, or rates to be assessed under the Acts in the first section of this Act cited, any sum or sums that may at any time be required by the said Divisional Council for the purposes hereinbefore mentioned: Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said Council, at a meeting at which there shall be present not fewer than six elected members: Provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had due notice (as required by the "Rules of Order" of the said Divisional Council) of the intention to hold such meeting, and of the purpose for which the same is called, and provided that no loan or loans or debts contracted by the said Council under this Act shall at any time exceed the sum of two thousands pounds sterling.

Security for repayment of loan and interest

3. The sums aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues of the said Divisional Council, and it shall be lawful for the said Divisional Council to apply to the payment of interest or principal, or interest and principal of the moneys aforesaid, any such rates or revenues.

¹ Repealed by Act 40, 1889.

VICTORIA EAST DIVISIONAL COUNCIL LOAN. 1369

4. The said Divisional Council shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys so borrowed by such Council for the purposes aforesaid, which acknowledgment shall in substance be in the form given in the schedule to this Act, and shall be signed on behalf of the said Divisional Council by three of its elected members appointed for that purpose by a resolution of the said Council.

No. 13 1875.

Acknowledgment for moneys borrowed to be given in form provided in schedule.

5. All debts lawfully incurred by the said Divisional Council for the purposes of this Act shall be subject to the provisions of the "Public Bodies' Debts Act, 1867." ⁽¹⁾

Public Bodies' Debts Act, 1867, to apply.

6. All moneys raised as aforesaid under this Act shall, on receipt thereof, be deposited in a bank, to be chosen for that purpose by the said Council, to the credit of a separate account; and all sums required shall be drawn by cheques signed by the secretary to the said Divisional Council, and countersigned by such one of its elected members as shall be appointed so to do by the said Council.

Moneys borrowed under this Act to be kept separate.

7. The said Council shall keep a separate and distinct account of all moneys received and expended as aforesaid by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half yearly, showing all moneys received and expended up to the 30th June and 31st December then next preceding, and all liabilities and assets on the same days.

Separate account to be kept and abstract rendered half-yearly to Colonial Secretary.

8. The accounts in the preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of "The Divisional Council Act, 1865," ⁽²⁾ and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loan.

Accounts to be audited.

9. It shall be lawful for the said Council to erect and establish a toll upon the said road subject to and in accordance with the provisions of the twenty-second, twenty-third and twenty-fourth sections of the Act No. 9 of 1858 ⁽³⁾ in that behalf, and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the said Act shall extend and apply to the toll-bar and toll on the said road.

Toll may be erected on road constructed under this Act.

10. All the necessary costs, charges, and expenses attending the procuring of this Act and the carrying the provisions thereof into effect shall be paid out of the money to be received under the provisions of this Act.

Provision for payment of cost of this Act.

11. This Act may be cited for all purposes as the "Victoria East Divisional Council Loan Act, 1875."

Short title.

¹ Act 11, 1867.² Act 4, 1865, repealed by Act 40, 1889.³ Repealed by Act 40, 1889.

1370

GRAAFF-REINET MUNICIPAL LOAN.

No. 16—1875.

SCHEDULE.

We, the undersigned, members of the Divisional Council of Victoria East, duly authorised thereto by the said Council, do hereby acknowledge that the said Divisional Council of Victoria East is indebted to _____, in the sum of _____, for so much money borrowed by the said Council for the purposes set forth in the Victoria East Divisional Council Loan Act, 1875, and certify that the said sum is secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Alice, this _____ day of _____.

_____ } Members of the Divisional Council of Victoria East.
 _____ }
 _____ }

Witnesses :

No. 14—1875.] [June 30, 1875.]

An Act to Amend the Law relating to the Frontier Armed and Mounted Police Force, and to provide for the greater efficiency of the said Force.

[Repealed by Act 9, 1878.]

No. 15—1875.] [June 30, 1875.]

An Act to Amend in certain respect the Act No. 12, 1870, intituled "An Act for the Better Preservation of Wild Ostriches."

[Repealed by Act 33, 1889.]

No. 16—1875.] [June 30, 1875.]

ACT

To enable the Commissioners of the Municipality of Graaff-Reinet to Borrow a Sum of Money not exceeding Twelve Thousand Pounds Sterling, for the purpose of providing the inhabitants of the Town of Graaff-Reinet with a better and purer supply of Drink Water, and also of extending and improving the Waterworks within the Municipality. (1)

Preamble.

WHEREAS the inhabitants of the municipality of Graaff-Reinet have been for a number of years and are still suffering great inconvenience and loss in consequence of the periodical flooding of Sunday's River, from which the town is supplied; and whereas it is expedient that the commissioners of said municipality should be empowered to borrow a sum of money, not exceeding twelve

¹ See § 33 Act 10, 1880, and also Act 34, 1886.

thousand pounds sterling, for the purpose of increasing and improving the supply of water, making reservoirs, and laying pipes from the main watercourses to the different parts of the town of Graaff-Reinet: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

No. 16—1875.

1. It shall be lawful for the commissioners of the municipality of Graaff-Reinet to borrow and take up such sum or sums of money, not exceeding in the whole the sum of twelve thousand pounds sterling, for the aforesaid purpose, and any amounts borrowed as aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues of the said municipality, and shall be a first and preferent charge upon the same.

Commissioners authorised to borrow £12,000 on security of rates and revenues of municipality.

2. It shall be lawful for the commissioners of said municipality, whenever the general revenue is insufficient, to impose, for the purpose of providing for the payment of the principal or interest or principal and interest of such loan, a certain annual rate or tax upon the value of the immovable property of the inhabitants, not exceeding one penny in the pound, and every rate so imposed shall be levied in the same manner as if it had been imposed under the provisions of Ordinance No. 9, 1836.

Whenever revenue is insufficient to pay principal or interest, or both, annual rate may be imposed on immovable property.

3. Every ratepayer shall be entitled at his own expense to have a private pipe laid from the main or branch pipe to his residence on payment in advance of such rate, and upon such regulations and stipulations as commissioners may decide.

Ratepayers entitled to have private pipes.

4. The commissioners aforesaid shall grant to the party or parties or company or society from whom they shall borrow such money, a written acknowledgment of or for the money so borrowed, not exceeding in the whole the above mentioned sum of twelve thousand pounds sterling, such acknowledgment to be in substance in the form annexed to this Act, and to be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Acknowledgment for money borrowed under this Act to be given in form in schedule.

5. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the Public Bodies Debts Act, 1867. (1)

Public Bodies' Debts Act, 1867, to apply.

6. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act, and shall, as long as any part of any debt contracted by virtue of this Act shall be in existence, make an annual statement thereof up to 31st December, which statement shall be deposited in the Town Office for the information and inspection of resident householders.

Separate account to be kept of moneys borrowed under this Act.

7. The commissioners shall not be allowed to make any use of the borrowing powers under this Act before having first submitted

Money borrowed under this Act not to be expended without.

¹ Act 11, 1867.

1372

TULBAGH DIVISIONAL COUNCIL LOAN.

- No. 16—1875. a feasible plan, with estimate of the works contemplated in this
 approval of rate-Act, and approved of by the ratepayers of aforesaid municipality
 payers. at a meeting called specially for that purpose by public notice of
 at least fourteen days.
- How cost of this Act to be paid. 8. The necessary costs, charges, and expenses for obtaining this
 Act and carrying the provisions thereof into effect, shall be paid
 by the commissioners out of the general revenue of aforesaid
 municipality.
- Short title. 9. This Act may be cited as the "Graaff-Reinet Municipal
 Water Act, 1875."

SCHEDULE.

We, the undersigned, Commissioners of the Municipality of Graaff-Reinet, do hereby acknowledge that the said Commissioners, in their said capacity, are indebted to _____ in the sum of £_____, for so much money borrowed by the said Commissioners for the purposes set forth in the Graaff-Reinet Municipal Water Act, 1875; and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided; and we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Graaff-Reinet this _____ day of _____ 18—.

Witnesses :	A. A., Chairman.	
D. D.	B. B.	} Commissioners.
E. E.	C. C.	

No. 17—1875.] [June 30, 1875.
 An Act to continue Act No. 9, 1855, intituled "An Act for
 Incorporating the South African Association."
 [Repealed by Act 27, 1888.]

No. 18—1875.] [June 30, 1875.

ACT

For enabling the Divisional Council of Tulbagh to borrow
 Moneys, upon the security of Road Rates and Tolls,
 for the Construction of a Road through the Karroo in
 the direction of Fraserburg. ⁽¹⁾

Preamble.

WHEREAS it is expedient that the Divisional Council of Tulbagh should be empowered to borrow moneys, upon the security of the road rates and tolls of the said division, for the purpose of constructing a public road through the Tulbagh Karroo to the boundary of the said division, and in connection with a new line

¹ Amended by Act 37, 1877.

of road in course of construction by the Divisional Council of Fraserburg through the Verlaten Kloof, by which the inhabitants would be benefited: And whereas the annual amount of road rates to be levied under Act No. 9, 1858, is not sufficient to meet the first outlay of this work: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 18—1875.

1. So much of Act No. 9, 1858, ⁽¹⁾ intituled “An Act to provide for the Management of the Public Roads of this Colony,” as is repugnant to or inconsistent with any of the provisions of this Act shall, so far as regards the provisions of this Act, be, and the same is hereby repealed.

Repugnant laws repealed.

2. It shall be lawful for the said Divisional Council from time to time, to raise by way of loan, on the credit of any tolls to be levied or rates to be assessed under the Act No. 9 of 1858 aforesaid, or under the Act No. 10 of 1864, intituled “An Act to provide for the Construction and Maintenance of the Main Roads of the Colony,” any sum or sums of money that may at any time be required by the said Divisional Council for the purpose of carrying into effect the object and purpose hereinbefore mentioned: Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said Divisional Council, at a meeting at which there shall be present not fewer than five members, inclusive of the chairman; and provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had, for at least fourteen days next before the day appointed for such meeting, a notice, signed by the secretary to such Council, stating that the question of such loan will come under consideration of such meeting, which notice the said secretary shall issue at the instance of the chairman of the said Council; and provided that no loan or loans or debts contracted by said Council under this Act shall at any time exceed the sum of one thousand pounds sterling: and provided that no such loan as aforesaid shall be capable of being effected in any year in which the road rates levied and collected under the said Act No. 9, 1858, shall be less than one penny in the pound on the value of the property liable to be rated in the said division of Tulbagh; and provided that, except as is hereinafter mentioned, no such loan shall be applied for the payment of any previous loan that may have been raised by the said Council.

Conditions under which loan may be raised.

3. In every case in which it shall be resolved by said Council to raise any such loans as aforesaid, the said Council shall, by a notice in the *Government Gazette*, call for tenders for the sum or sums required, and in case it shall accept any of the tenders sent in, shall accept that which specifies the lowest rate of interest, and the bond, declaration, or obligation pledging the tolls or rates agreed upon to be pledged for ensuring the repayment of the sum

Tenders to be invited in *Government Gazette* for sums required.

¹ Repealed by Act 40, 1889.

- No. 18—1875. or sums borrowed by said Council, and the interest thereon, shall be signed by three members on behalf of such Council, of whom the Civil Commissioner of the division shall not be one.
- Moneys raised to be kept separate. 4. All moneys raised as aforesaid under this Act shall on receipt thereof be deposited in a bank, to be chosen by the said Council, to the credit of a separate account, and all sums required shall be drawn by cheques, signed by the secretary and countersigned by the chairman.
- Separate account to be kept and abstract rendered half-yearly to Colonial Secretary. 5. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December then preceding, and all liabilities and assets on the same days.
- Accounts to be audited. 6. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of the "Divisional Councils Act, 1865,"⁽¹⁾ and the provisions of the eighty-third and eighty-fifth sections of the said Act shall apply to all accounts, books, and papers connected with the same road.
- Fund to be provided for repayment of loans. 7. It shall be incumbent on the said Council, and they are hereby required, after the payment of the interest on any loan or loans as aforesaid, and providing for the necessary repairs of the said road, to set apart the remainder, if any, of the tolls levied on the same road, and the further sum of one hundred pounds sterling annually from their general revenue, in order to provide a fund for the repayment of the capital sums of money raised as aforesaid, until the same are wholly paid off and discharged.
- Provisions for payment of cost of Act. 8. All the necessary costs and expenses attending the procuring of this Act, and carrying the provisions thereof into effect, shall be paid out of the money to be received under the provisions of this Act.
- Short title. 9. This Act may be cited for all purposes as the "Tulbagh Divisional Council Loan Act, 1875."

No. 19—1875.]

[June 30, 1875.

ACT

To Legalise the Loan of £1,000 borrowed by the Divisional Council of Worcester, expended in the Construction of the Road through the Hex River, and to amend Act No. 31, 1868.

Preamble.

WHEREAS by Act No. 31 of 1868, intituled "An Act for enabling the Divisional Council of the Division of Worcester to borrow Moneys upon the security of Road Rates and Tolls, for the Improvement and Construction of the Road through Hex River Kloof," the Divisional Council of Worcester was empowered to

¹ Act 4, 1865, repealed by Act 40, 1889.

borrow moneys upon the security of the road rates and tolls of the division of Worcester for the purpose of improving the public road passing through Hex River Kloof, commencing at Hex River Bridge and ending at a certain distance on the Karroo side of the Hex River Mountain, by which the inhabitants would be benefited: And whereas the said Divisional Council was in and by said Act authorised and empowered to raise by way of loan on the credit of any tolls to be levied or rates to be assessed, under so much as was not thereby repealed of the Act No. 9 of 1858, entitled "An Act to provide for the Management of the Public Roads of the Colony," or under the Act No. 10 of 1864, entitled "An Act to provide for the Construction and Maintenance of the Main Roads of the Colony," any sum or sums of money that might at any time be required by the said Divisional Council for the purpose of carrying into effect the object and purpose of the said Act, provided (amongst other things not necessary to be re-stated) that the amount of such loan, or any debt contracted by the said Council under the said Act, should not exceed the sum of £5,000 sterling: And whereas the cost of making and completing the said road having proved to be far greater than the said sum of £5,000, the said Divisional Council borrowed on credit the further sum of £1,000, necessary to complete the said road, and expended the same in so completing it: And whereas it is just and right that this sum of £1,000 so borrowed and expended on the said road in excess of the sum of £5,000 mentioned in said Act No. 31 of 1868 should be repaid by the said district of Worcester, by means of a further rate to be levied in terms of the said section of said Act, for a further sum of £1,000 in addition to the sum of £5,000 in said section mentioned:

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

The said Act No. 31 of 1868 shall be and hereby is amended, by substituting in the second and fourth sections thereof the sum of £6,000 in lieu and stead of the sum of £5,000 in said sections mentioned, to be raised under said Act; provided always that any loan contracted under the terms and provisions of the said section of said Act No. 31 of 1868 and under this present Act shall not at any time exceed the said sum of £6,000, inclusive of any loan already contracted under said Act.

Act 31 of 1868
amended by substituting £6,000 for £5,000.

No. 20—1875.]

[July 30, 1875.

ACT

For enabling the Commissioners of the Municipality of Beaufort West to borrow a further Sum of Money for the purpose of re-constructing and otherwise improving the Beaufort Reservoir, and for the payment of the Moneys already raised for the construction thereof.

Preamble.

-WHEREAS by the Act No. 4 of 1866-'67 ⁽¹⁾ intituled "An Act for enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the inhabitants of such Municipality," provision was made for enabling the said commissioners to secure to the Cape of Good Hope Savings Bank Society certain moneys lent and to be lent by the said Savings Bank Society to the said commissioners, not exceeding in the whole the sum of £2,000 sterling, for the purpose of constructing a reservoir capable of storing such supply of water: And whereas by Act No. 5 of 1869, intituled "The Town of Beaufort Water Loan Act of 1869," provision was further made for enabling the said commissioners of the municipality of Beaufort to borrow a further sum of money, not exceeding in the whole the sum of £2,000 sterling, for the purpose of strengthening and otherwise improving the Beaufort Reservoir, and for securing to the lender thereof the said further sum of £2,000 to be borrowed by the said commissioners under the said last-mentioned Act, and for rendering the said sum of £2,000 sterling secured by the aforesaid Act No. 4 of 1866-'67, and the interest payable thereon, a first and preferent charge upon all and singular the revenues of every description which are by the said last-mentioned Act made liable to the payment thereof, and for rendering the said moneys borrowed under the said Act No. 5 of 1869, and the interest payable thereon, a second preferent charge upon the said revenue: and whereas it is expedient to empower the said commissioners to borrow and take up such moneys as may be required for re-constructing, strengthening, and improving the said reservoir, and for paying off the moneys already raised under the said Acts, but not exceeding in the whole the sum of £6,000 sterling:

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

1. It shall be lawful for the commissioners of the municipality of Beaufort to borrow and take up such sum or sums of money, not exceeding in the whole the sum of £6,000 sterling, as shall be required for re-constructing, strengthening, and improving the reservoir aforesaid, and for paying off the moneys already raised under the Acts No. 4 of 1866-'67 and No. 5 of 1869.

Commissioners may borrow £6,000 for reservoir.

¹ See also Act 15, 1881.

2. The first ten sections of the Act aforesaid, No. 4 of 1866-'67, shall apply to the money to be borrowed under this Act, by whomsoever the same shall be lent, whether by the said Savings Bank Society or by some other society, or by some company or co-partnership, or individual, precisely as if the said sections were, *mutatis mutandis*, herein again set forth and word for word repeated.

No. 20—1875.

First ten sections of Act 4 of 1866-'67 to apply to such loan.

3. That the sum of £2,000 secured by the Act aforesaid, No. 4 of 1866-'67, and the interest payable thereupon shall be a first and preferent charge upon all and singular the revenues of every description which are by the said Act made liable to the payment thereof; and the moneys borrowed and secured under the said Act No. 5 of 1869, and the interest payable thereon, shall form a second preferent charge upon the said revenue; and the moneys to be borrowed under this Act and the interest thereof shall form a third preferent charge upon the said revenues until such time as the moneys secured and borrowed by the Acts aforesaid, No. 4 of 1866-'67, and No. 5 of 1869, shall have been repaid and satisfied, when the moneys to be borrowed under this Act shall be a first and preferent charge upon the said revenue.

Order of preference of Act 4 of 1866-'67, Act 5 of 1869, and this Act, on revenues liable for the payment of the moneys borrowed thereunder.

4. Nothing in the "Public Bodies' Debt Act of 1867" (1) shall interfere with the preference over the revenue to arise from the said reservoir given by this and the said Acts No. 4 of 1866-'67, and No. 5 of 1869, nor with the powers given by the 4th to the 8th clause inclusive of the said Act 4 of 1866-'67, to assess a rate for payment of the money borrowed under the said Acts in case the revenue from the said reservoir shall be unequal to the repayment thereof; but, on the contrary, the provisions of the said sections shall be applicable to the money to be borrowed under this Act: Provided that if in the course of any proceedings under the "Public Bodies' Debts Act, 1867," at the instance of any creditor of the municipality of Beaufort, the Supreme Court shall make an order under the 4th section of the said Act No. 4 of 1866-'67, directing the Master of the said Court to enquire whether any, and if so, what debts other than the debt then in question are due by the said municipality, then and in that case the creditors under the said Acts No. 4 of 1866-'67, and 5 of 1869, and under this Act may appear and prove their debts respectively.

Public Bodies' Debts Act, 1867, not to interfere with such preference.

5. This Act may be cited for all purposes as the "Town of Beaufort Water Loan Act of 1875."

Short title.

¹ Act 11, 1867.

No. 21—1875.]

[June 30, 1875.

ACT

To Amend the Law relating to Antenuptial Contracts. ⁽¹⁾

Preamble.

WHEREAS it is expedient that the sixth section of the Placaat of the Emperor Charles V., bearing date the fourth day of October, 1540, should be repealed, and that other provisions should be made relating to antenuptial contracts: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Sixth section of Placaat of Charles V., 4th October, 1540, repealed.

1. The sixth section of the Placaat aforesaid is hereby repealed, as also so much of any other law or usage as is repugnant to or inconsistent with any of the provisions of this Act.

No antenuptial contract valid unless registered, and a copy filed in Deeds Registry.

2. No antenuptial contract executed after the taking effect of this Act shall be valid or effectual as against any creditor or creditors of either of the spouses unless the same shall be registered in the Deeds Registry Office of this Colony, in conformity with established law and custom, and unless a duplicate original or notarial copy of such contract shall, at the time of the registration of the original, be deposited in the Deeds Registry aforesaid, there to remain for general information, and such duplicate or copy may be inspected by any person who shall, by payment of the fee for the time being payable for a search in the Debt Registry, be entitled to inspect the register of antenuptial contracts, and no separate or further fee shall be demandable, and no such antenuptial contract as aforesaid shall be registered until such duplicate or notarial copy as aforesaid shall have been deposited.

When settlement of property under antenuptial contract may be impeached by creditors.

3. No antenuptial contract executed after the taking effect of this Act, whereby one of the intended spouses shall settle upon or for the benefit of the other intended spouse, or the children of their marriage, or of the descendants of any such children, or upon or for the benefit of such other spouse and of such children and descendants, any property, movable or immovable, shall, in case of the sequestration of the estate of the spouse who settled any such property, within two years from the time of the execution of such contract, be of any force or effect against or in competition with any creditor or creditors upon the insolvent estate of such spouse, whose debts or demands existed at the date of the registration of such contract, if it shall be proved that the same was made by the insolvent with intent to defraud or delay his creditors in obtaining payment of their debts.

When covenant of antenuptial contract to pay sum of money or annuity to other spouse at death, or any other time may be impeached by creditors.

4. When by the terms of any antenuptial contract executed after the taking effect of this Act, one of the intended spouses shall covenant or agree for the payment out of his or her estate, at his or her death, or at any other time, of any sum of money or annuity, or for the making of any other provision for the benefit

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

of the other spouse, or for any of the purposes in the third section of this Act specified, no payment, transfer, alienation, cession, delivery, mortgage, pledge, or other act, in order to carry out such covenant or agreement, shall, in case of the subsequent sequestration of the estate of such covenanting or agreeing spouse, be of any force or effect against or in competition with any creditor or creditors upon the insolvent estate of such spouse, whose debts or demands existed at the date of such payment, transfer, alienation, cession, delivery, mortgage, pledge, or act, if it be proved that such payment, transfer, alienation, cession, delivery, mortgage, pledge, or act, was made with intent to defeat or delay any creditor or creditors of such spouse in obtaining payment of his or her or their debts, and at a time when his liabilities, fairly calculated, exceeded his assets fairly valued: Provided, however, that no such payment, transfer, alienation, cession, delivery, mortgage, pledge, or act, shall be liable to be impeached or invalidated after five years from the making thereof: Provided, further, that nothing in this section contained shall extend to, impair, or affect the force or operation of any special conventional hypothecation granted by any spouse at the time of entering into such convention or agreement for securing the performance of the same.

5. Every antenuptial contract *bonâ fide* executed and duly registered before the taking effect of this Act, whereby any property shall have been settled for all or any of the purposes in that behalf in the third section of this Act specified, shall be valid and effectual according to its legal order of ranking against or in competition with all creditors upon the insolvent estate of the spouse who made such settlement save and except creditors whose debts or demands shall be in existence at the time of the taking effect of this Act, all which last mentioned debts and demands must be satisfied in full before any claims upon or by virtue of such contract shall be capable of being set up.

6. As often as by any antenuptial contract which, if executed before the taking effect of this Act, shall have been registered in conformity with established law and custom, and which, if executed after the taking effect of this Act, shall have been so registered, and shall also have had a duplicate or notarial copy thereof deposited as aforesaid, one of the intended spouses shall have covenanted and agreed for the benefit of the other spouse or for any other of the purposes in the third section of this Act specified, to effect a policy of assurance upon the life of either of the intended spouses, or to cede and assign over some such policy theretofore effected, and in either case to pay the annual premiums to become due upon such policy, then in case the estate of the spouse who so covenanted and agreed shall become sequestered as insolvent, no payments of such premiums made by such spouse shall be deemed or taken to fall under or come within the eighty-third or eighty-fourth sections of the Ordinance No. 6 of 1843, commonly called the "Insolvent Ordinance."

No. 21—1875.

Position of contracts executed before passing of this Act.

Premiums on life policy of insolvent settled under antenuptial contract on spouse not to fall under 83rd or 84th section of Insolvent Ordinance.

No. 21—1875.

Registration of antenuptial contracts to fall under provisions of Ordinance 27 of 1846.

7. Every antenuptial contract as hereinbefore mentioned which shall be hereafter executed in this Colony shall, as regards the period after the execution thereof within which the same must be tendered for registration, be deemed and taken to fall under or come within the provisions of the Ordinance No. 27 of 1846, intituled "Ordinance for Amending the Law relative to Conventional Hypothecations."

Residents in British Kaffraria to register contracts under this Act there also.

8. Besides the registration required by this Act in the Deeds Registry of this Colony of antenuptial contracts executed after the passing of this Act, if either of the spouses shall at the time of the execution of any such contract be resident in that part of this Colony to which the Deeds Registry of British Kaffraria applies, such contract shall also be registered, and a duplicate or copy thereof deposited, as in the second section of this Act mentioned, in the Deeds Registry of British Kaffraria.

No contract except notarial contracts to be registered unless executed beyond the Colony.

9. No antenuptial contract executed in this Colony shall be capable of being registered in the Deeds Registry Office unless the same shall have been executed before a notary public, but any such contract if executed elsewhere than within this Colony shall, whether notarial or not, be capable of being so registered, and shall, if registered, and if a duplicate original, or a copy thereof, attested by a notary public entitled to practise as such in this Colony, be deposited as aforesaid, have in this Colony the same force and effect in regard to creditors in insolvency as if it had been executed before a notary public in this Colony.

Act not to affect position of women married in partial community.

10. Nothing in this Act contained shall be construed so as to relieve any woman married under an antenuptial contract, not wholly excluding community of property and community of profit and loss, from liability to any creditor to whom she and her property, and the provision made for her benefit by such contract, would have been liable, by reason of the partial community subsisting between her and her husband in case this Act had not been passed; nor shall anything in this Act contained be construed so as to deprive any woman of any right of tacit hypothec or other privilege which she would otherwise by law possess upon her husband's estate in security for her property, owned by her before and at the time of her marriage, and kept by her out of community, which right shall be judged of as if this Act had not been passed.

Not to affect contracts fraudulently made.

11. Nothing in this Act contained shall extend to protect or make effectual any antenuptial contract or any provision in any antenuptial contract which would, by reason of some fraud thereby perpetrated or attempted, have been void or voidable by law in case this Act had not been passed.

Interpretation of terms.

12. The term "creditors" shall in the construction of this Act include and embrace persons to whom any insolvent spouse shall, together with any co-partner or other person, be jointly indebted, as well as persons to whom such spouse shall singly and alone be indebted; provided, however, that nothing herein contained

shall extend to alter or affect the ranking as between themselves of the creditors upon joint estates and separate estates as the same is provided for in the 34th and 36th sections of the said "Insolvent Ordinance"; provided, also, that as often as the separate estate of any such spouse as aforesaid, and the estate of any company or co-partnership of which such spouse is a partner, shall be concurrently under administration as insolvent, and the trustee of the separate estate and the trustee of the joint estate shall not agree between themselves as to which of them shall institute such legal proceedings as may have become necessary in reference to any such antenuptial contract as aforesaid, it shall be lawful for the Supreme Court, and (in regard to any such estates situate within the districts over which the Court of the Eastern Districts has jurisdiction) for the Court of the Eastern Districts, to decide upon motion which of the two trustees shall institute such proceedings.

No. 22—1875.

13. This Act may be cited for all purposes as "The Antenuptial Contracts Law Amendment Act, 1875."

Short title.

No. 22—1875.] (1)

[June 30, 1875.

ACT

To provide for the Holding of Inquests in certain Cases of Death.

WHEREAS no adequate provision exists in the law of this Colony for the holding of inquests in cases where persons die suddenly or are found dead, or are supposed or suspected to have come by their death by violence, or otherwise than in a natural way: And whereas it is expedient that such provision should be made: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. In all cases in which it shall come to the knowledge of any Resident Magistrate that there is at or within the distance of six miles from the seat of his magistracy the dead body of any person who died suddenly or was found dead, or is supposed or suspected to have come by his death by violence, or otherwise than in a natural way, such Magistrate shall as soon as possible, proceed in person to the spot where the dead body is, and shall inspect the same and hold an inquest thereon, and, if necessary, shall cause the same, if interred, to be disinterred, for the purpose of such inspection and inquest, and shall by the examination of witnesses, necessary, ascertain the cause of death.

Inquests within six miles of seat of magistracy to be held by magistrate.

2. In viewing the dead body, the Resident Magistrate shall take careful note of all appearances, marks, and traces presented by it

Magistrate to inspect body and note appearances.

¹ See Act No. 7, 1894, §§ 16, 26, 27. Extended by Proclamation No. 80 of 1890 to all the Native Territories and by Proclamation No. 340 of 1894 to East and West Pondoland.

No. 22—1875.

and about it which shall tend to show whether the deceased did or did not come by his death from violence, and if from violence, whether the same was used by himself or by some other, and, if by some other, who such other was, or how he may be discovered.

To have body examined by a medical man.

3. The Resident Magistrate shall also cause the dead body to be examined as soon as possible by a regularly admitted medical man, if such can be procured, and, if not, then by the best qualified person or persons that can be obtained.

Process of summoning witnesses.

4. The process for summoning witnesses to attend before any inquests shall be in substance as follows :

Inquest for the district of _____

To _____, Chief Constable.

You are hereby required, in Her Majesty's name, to summon A. B., of (describe him particularly), that he appear before me on this the _____ day of _____, 18—, in the forenoon (or afternoon, as the case may be, stating the day and hour according to the fact), then and there to be examined at an inquest touching the death of C.D. (or "of a certain deceased person whose name is unknown"). Herein fail not at your peril.

Dated at _____ this _____ day of _____, 18—, Resident Magistrate.

Penalty for non-attendance of witness.

5. If any person summoned as a witness shall not attend pursuant to such summons, then such person so making default shall, unless some reasonable excuse be proved by oath or affidavit, be liable to be fined by such Magistrate such sum, not exceeding £20, as such Magistrate shall think fit; and such Magistrate may, moreover, issue his warrant for the apprehension of the person so making default, which warrant shall be in substance as follows :

To _____, Chief Constable, and other constables and officers of the law, proper to the execution of criminal warrants.

Whereas A. B., of (describe him particularly as in the summons), who was duly summoned to appear before me at (name the place as in the summons), at (state the time as in the summons), then and there to be examined at an inquest touching the death of C. D., or of a certain deceased person whose name is unknown, and hath refused and neglected so to do, to the great delay and hindrance of justice : These are therefore, in Her Majesty's name, to command you, or some of you, to apprehend and bring before me the body of the said A. B., that he shall be dealt with according to law; and for so doing this shall be your warrant.

Dated at _____, this _____ day of _____, 18—. _____, Resident Magistrate.

6. The oath to be taken by witnesses appearing before the inquest shall be administered by the Magistrate, and shall be as follows: "The evidence which you shall give to this inquest touching the death of C.D. (or "of the deceased person, name unknown, regarding whom this inquest is held"), shall be the truth, the whole truth, and nothing but the truth; so help me God."
7. All contempts committed by witnesses or others before or in regard of any inquest shall be visited in like manner, *mutatis mutandis*, as contempts committed by witnesses and others before any Court of Resident Magistrate.
8. The evidence of each witness shall be taken down in writing by the Magistrate or by the Magistrate's clerk, according as the Magistrate shall think proper and direct.
9. Nothing in this Act contained shall prevent any person authorised by law to issue warrants of apprehension, or authorised to apprehend offenders or supposed offenders in that warrant, from acting in all respects as regards such warrants or such offenders, and whether an inquest shall or shall not have been commenced, precisely as if this Act had not been passed.
10. All witnesses, medical or otherwise, summoned or attending to give evidence before any inquest shall be entitled to receive their expenses precisely as if witnesses summoned to give evidence at a criminal trial or preparatory examination.
11. If the Resident Magistrate, upon such inquest, shall see reason to believe that the deceased person came by his death in any way which involved or amounted to some crime or offence upon the part of any person who can be made amenable to justice, the Resident Magistrate shall cause such person to be apprehended, in order that a preparatory examination may be instituted against him. In all other cases the Resident Magistrate shall report to the Attorney-General or Solicitor-General, as the case may be, the particulars of the case, and the conclusion in regard to it at which the Resident Magistrate shall have arrived.
12. The provisions of the sub-sections marked b and c of the second section of Ordinance No. 9 of 1848, intituled an "Ordinance for regulating the duties and remuneration of Field-cornets," are hereby repealed.
13. As often as it shall come to the knowledge of any Field-cornet that there is at any spot within his ward the dead body of any person who died suddenly, or was found dead, or is supposed or suspected to have come by his death by violence or otherwise than in a natural way, such field-cornet shall forthwith, if such spot be at a distance of six miles or less from the seat of any Magistrate, report the fact to the Resident Magistrate of the district, but if such spot shall be more than six miles distant from the seat of any Magistrate, such field-cornet shall himself, with all convenient speed, proceed to the spot where the dead body is, and shall inspect the same, and if necessary shall cause the same, if interred, to be

No. 22—1875.

Oaths of witnesses.

Contempts at inquests.

Evidence to be taken down in writing.

Inquest not to prevent issue of warrant and arrest of offenders.

Witnesses entitled to expenses.

Duty of magistrate.

Sub-sections b and c of section 2 of Ordinance 9 of 1848, repealed.

Field-cornet to report deaths within six miles of magistracy, and to hold inquest himself in those beyond.

No. 22—1875.

disinterred, for the purpose of such inspection, and shall obtain all such information as shall be procurable for the purpose of ascertaining the cause of death.

Field-cornet to inspect body and note appearances.

14. In viewing the dead body the Field-cornet shall take careful note of all appearances, marks, and traces presented by it, and about it, which shall tend to show whether the deceased did or did not come by his death from violence, and if from violence, whether the same was used by himself or some other, and if by some other, who such other was, or how he may be discovered.

To have body examined.

15. It shall be the duty of the field-cornet, where practicable, to cause the dead body to be examined as soon as possible by a regularly admitted medical man, if such can be procured, and if not, then by the best qualified person or persons that can be obtained, and such medical man or other qualified person shall be entitled to receive from the Civil Commissioner of the division his expenses, precisely as if he had been summoned to give evidence at a criminal trial held at a place where he made such examination as aforesaid.

To report case to magistrate without delay.

16. The field cornet shall, without delay, report to the Resident Magistrate, in detail, the circumstances of the case, in order that such Magistrate, or the Clerk of the Peace (should there be such an officer), may take such further steps, if any, as may be needful, either to ascertain the cause of death, or to bring to justice such person or persons as shall appear to have unlawfully caused such death.

On receiving report magistrate may hold inquest.

17. Upon receiving such report as is in the last preceding section mentioned, it shall be lawful for the Resident Magistrate, if in his opinion the circumstances of the case require it, to hold an inquest for the purpose of ascertaining the cause of death, and thereupon it shall be competent for the said Magistrate to exercise all such power and functions, and to perform all such duties in regard to the summoning and examination of witnesses and the inspection of the dead body, as are hereinbefore provided in regard to cases occurring at or within a distance of six miles from the seat of his Magistracy.

Duty of magistrate when no inquest is held or other proceedings taken.

18. As often as any case investigated by any Field-cornet shall be reported by him to any Resident Magistrate, and no inquest shall be held by such Magistrate, and no preparatory examination shall be instituted against any person upon any charge arising from or connected with the death of the deceased person, the Resident Magistrate shall transmit to the Attorney-General, or (as to cases within any of the districts in or over which the Court of the Eastern Districts has jurisdiction) to the Solicitor-General, the report of the Field-cornet, or a copy of it, together with such remarks upon the case, if any, as the Resident Magistrate shall think fit.

Sub-section c of section 3 of Ordinance 9 of 1848 to

19. The provisions of the sub-section marked c of the third section of the aforesaid Ordinance No. 9 of 1848, in regard to the

payment of Field-cornets for any inquest, shall apply *mutatis mutandis* to any inspection made by any Field-cornet under the provisions of this Act. No. 23—1875. apply to inspectors under this Act.

20. This Act may be cited for all purposes as “The Inquests Act, 1875.” Short title

No. 23—1875.]

[June 30, 1875.]

ACT

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

WHEREAS by the thirty-third section of the Royal Letters Patent, commonly called the Charter of Justice, it is provided that for the conduct and decision of all civil suits, actions, and causes depending before the Supreme Court of this Colony, and of all questions, matters, and things arising in the course of any such civil suits, actions, or causes, any two of the Judges of the said Court shall form a quorum, and shall be competent to execute all and every the powers, jurisdiction, and authorities thereby granted to and vested in the said Court, and whereas it is expedient that during the vacations hereinafter specified one Judge of the said Court should be competent to execute the said powers, jurisdictions, and authorities: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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

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

¹ Act 21, 1864.

No. 24—1875.]

[June 30, 1875.]

ACT

To Repeal Act No. 10, 1871, intituled "Act for the Protection of Private Property in Domesticated Ostriches," and to make other provisions in lieu thereof. ⁽¹⁾

Preamble.

WHEREAS it is expedient to repeal the Act No. 10 of 1871, intituled "Act for the Protection of Private Property in Domesticated Ostriches," and to substitute other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act 10 of 1871 repealed.

1. The Act No. 10, 1871, shall be, and the same is hereby, repealed.

Rights of owners of escaped domesticated ostriches defined.

2. Whenever any ostrich which shall have been domesticated, and shall have been, as such, the lawful property of any person, while in his custody, or possession, or guardianship, either by himself or his servants or within the bounds of any enclosure, within which it shall have been placed by such person, or by his orders, or with his consent, express or implied, shall have strayed or escaped from such custody, possession, guardianship, or enclosure, the property in such ostrich of the person who was the lawful owner or custodian thereof, respectively, and of every other person who had at the time of such escape or straying any property therein, —all of which persons shall, for the purposes of this Act, be designated by the term "owner of such ostrich," shall be deemed to continue therein unimpaired and unaffected by reason of such escape or straying as aforesaid, and any person who shall, without reasonable and justifiable cause, kill, injure, or convert to his own use any such ostrich, shall be liable to account in damages to the owner of such ostrich in respect to any damage done to such owner's property therein, or to restore such ostrich, or both to restore such ostrich and to account in damages, as the case may be, in like manner, as if such ostrich were an ox or other domestic animal: Provided that nothing herein contained shall be held to prevent any person from being prosecuted for any criminal offence for which he may have become liable by reason of such killing, injury, or conversion.

Destruction of dogs found within inclosures for ostriches.

3. The owners or occupiers of land or inclosures where domesticated ostriches are kept, may destroy, or cause to be destroyed, all dogs found at large in such inclosure or on such land: Provided, that if any owner or occupier, under colour of this Act, shall maliciously and without cause destroy any dog, he shall be liable

¹ Extended by Section 178 of the Native Territories Penal Code (Act 24, 1886) to all the Native Territories. See also Acts 32, 1883; 24, 1884; 12, 1885; 13, 1886. §§ 4, 5; 33, 1889; 30, 1890; 35, 1893.

to account for and pay such damages for the same as may be awarded in any Court of Resident Magistrate.

No. 25—1875.

4. Nothing in this Act contained shall be held to take away, limit, or curtail any right or property which but for this Act would have existed, or be held to belong to any person in any domesticated ostrich in respect of its being domesticated, or in the eggs of any domesticated ostrich, nor to take away any remedy, by way of action for trespass ⁽¹⁾ or otherwise, which any person on whose property any domesticated ostrich shall have trespassed, or whose property such ostrich shall have in any way injuriously affected, may have, or might but for this Act have had, against the owner of such ostrich in respect of damage done by such ostrich while remaining the property of such owner, nor to prevent any person from being prosecuted for any offence which he may have committed.

Certain existing rights not affected by this Act.

5. This Act may be cited for all purposes as the "Domesticated Ostriches Act, 1875."

Short title.

No. 25—1875.]

[June 30, 1875.]

ACT

To enable the Harbour Board of Port Elizabeth to raise a further Loan of £100,000, and to provide for the payment of Interest thereof.

WHEREAS it is desirable that certain works, as recommended by Sir John Coode, for improving the harbour of Port Elizabeth, namely, the construction of the outer jetty, and the retaining bank in connection therewith on the south side of the breakwater should be proceeded with, and to that end that the Board of Commissioners for the time being for the said Harbour should be empowered to raise on loan such further sums of money as may from time to time be necessary for prosecuting the said works to completion, not exceeding in the whole the sum of one hundred thousand pounds sterling, under the guarantee of the general revenue of this Colony; and whereas it is expedient that provision should be made for raising by means of increased wharfage dues as hereinafter mentioned sums sufficient annually to keep down the interest on all sums of money for the time being due and owing by the said commissioners, as well as for the payment of the costs of managing and keeping in repair the said works and for completing the works now in progress; and whereas the Act No. 14 of 1867, intituled "Act to enable the Harbour Board of Port Elizabeth to raise a further Loan of Forty Thousand Pounds, and to provide for keeping down the Interest thereof," has not been acted upon, and it is advisable to repeal the said Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent

Preamble.

¹ See Act 15, 1892.

No. 25—1875.

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

Further borrowing powers.

1. The said Act No. 14 of 1867 is hereby repealed.

2. It shall be lawful for the said board to borrow and take up from time to time upon interest, with the sanction of the Governor, and under the guarantee of the general revenue of this Colony, such sum or sums of money, not exceeding in the whole, in addition to the sums already borrowed by the said board under the authority of Parliament and still due, the sum of one hundred thousand pounds sterling, to be applied for the purpose of proceeding with and prosecuting to completion the said works so recommended as aforesaid; and, save and except as is hereinafter excepted, all the provisions of the Act No. 10 of 1858, ⁽¹⁾ intituled “An Act for enabling the Harbour Board of Port Elizabeth to levy certain Wharfage Dues,” so far as the same relate to the money thereby authorised to be borrowed, shall apply to the said sums hereby authorised to be borrowed as if the same were borrowed under the authority of the said Act.

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

Dues which may be levied.

3. ⁽²⁾ From and after the borrowing of the money, or any portion thereof, hereby authorised to be borrowed, it shall be lawful for the said board, and they are hereby required, to levy or cause to be levied upon all goods, articles, matters, and things, landed or shipped in Algoa Bay, and not by the schedule to this Act exempted from the payment of wharfage dues, the several dues or rates set forth in the tariff contained in the schedule to this Act annexed, instead of the dues or rates set forth in the tariff contained in schedule No. 1 of the aforesaid Act No. 10 of 1858, and all the provisions of the said Act No. 10 of 1858, shall apply and extend to the dues and rates set forth in the schedule hereunto annexed, precisely as if the said dues or rates had been inserted in the aforesaid schedule No. 1 to the said Act No. 10 of 1858, annexed.

SCHEDULE.

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

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

EXEMPTIONS.

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

2. Ships' stores outwards.

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

4. All goods shipped to or landed from any place within the Colony.

5. Bullion and coin.

¹ See Act 24, 1889.

² See also Act 23, 1883.

No. 26—1875.]

[June 30, 1875.

ACT

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

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

Preamble.

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

Act No. 7 of 871 amended.

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

Governor may raise £100,000.

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

Provisions to be observed, if borrowed on debentures.

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

Rate of interest.

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

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

¹ See Acts 12, 1876; 22, 1878; 3, 1881; 18, 1881; 18, 1893, § 25.

1390 CLANWILLIAM DIVISIONAL COUNCIL LOAN.

No. 27—1875.

How value of goods, &c., to be ascertained.

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

Punishment for false declaration.

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

No. 27—1875.]

[June 30, 1875.]

ACT

For enabling the Divisional Council of Clanwilliam to borrow Moneys, upon the security of Road Rates and Tolls, for the Construction of a Road over the Pakhuis Mountain.

Preamble.

WHEREAS it is expedient that the Divisional Council of Clanwilliam should be empowered to borrow moneys, upon the security of the road rates and tolls of the said division, for the purpose of constructing a public road over the Pakhuis Mountain by which the inhabitants would be benefited: And whereas the annual amount of road rates to be levied under Act No. 2, 1858, is not sufficient to meet the first outlay of this work: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

CLANWILLIAM DIVISIONAL COUNCIL LOAN. 1391

1. So much of Act No. 9, 1858 ⁽¹⁾ intituled "An Act to provide for the Management of the Public Roads of this Colony," as is repugnant to or inconsistent with any of the provisions of this Act shall, so far as regards the provisions of this Act, be, and the same is hereby repealed. No. 27—1875.
Inconsistent portion of Act 9, 1858, repealed.

2. It shall be lawful for the said Divisional Council from time to time by way of loan, on the credit of any tolls to be levied or rates to be assessed under the Act No. 9 of 1858 aforesaid, or under the Act No. 10 of 1864, intituled "An Act to provide for the Construction and Maintenance of the Main Roads of the Colony," any sum or sums of money that may at any time be required by the said Divisional Council for the purpose of carrying into effect the object and purpose hereinbefore mentioned: Provided that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the said Divisional Council, at a meeting at which there shall be present not fewer than five members, exclusive of the chairman; and provided that no meeting shall be competent to pass any such resolution unless each of the members shall have had, for at least fourteen days next before the day appointed for such meeting, a notice signed by the secretary to such council, stating that the question of such loan will come under consideration of such meeting, which notice the said secretary shall issue at the instance of the chairman of the said council; and provided that no loan or loans or debts contracted by said council under this Act shall at any time exceed the sum of three thousand pounds sterling; and provided that no such loan as aforesaid shall be capable of being effected in any year in which the road rates levied and collected under the said Act No. 9, 1858, shall be less than one penny in the pound on the value of the property liable to be rated in the said division of Clanwilliam; and provided that, except as is hereinafter mentioned, no such loan shall be applied for the payment of any previous loan that may have been raised by the said council. Conditions under which Council may borrow sum or sums not exceeding £2,000.

3. In every case in which it shall be resolved by said council to raise any such loans as aforesaid, the said council shall, by a notice in the *Government Gazette*, call for tenders for the sum or sums required, and in case it shall accept any of the tenders sent in, shall accept that which specifies the lowest rate of interest, and the bond, declaration, or obligation pledging the tolls or rates agreed upon to be pledged for ensuring the repayment of the sum or sums borrowed by said council, and the interest thereon, shall be signed by three members on behalf of such council, of whom the Civil Commissioner of the division shall not be one. Tenders to be invited for sum or sums required.

4. All moneys raised as aforesaid under this Act shall on receipt thereof be deposited in a bank, to be chosen by the said council, to the credit of a separate account, and all sums required shall be drawn by cheques, signed by the secretary and countersigned by the chairman. Moneys borrowed to be kept separate.

¹ Repealed by Act 40, 1889.

1392 CLANWILLIAM DIVISIONAL COUNCIL LOAN.

- No. 27—1875. 5. The said council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December then preceding, and all liabilities and assets on the same days.
- Separate accounts to be kept and abstract submitted half yearly to Colonial Secretary.
- Accounts to be audited. 6. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of the "Divisional Councils Act, 1865,"⁽¹⁾ and the provisions of the eighty-third and eighty-fifth sections of the said Act shall apply to all accounts, books, and papers connected with the same road.
- Fund for repayment of loan. 7. It shall be incumbent on the said council, and they are hereby required, after the payment of the interest on any loan or loans as aforesaid, and providing for the necessary repairs of the said road, to set apart the remainder, if any, of the tolls levied on the same road, and the further sum of one hundred pounds sterling annually from their general revenue, in order to provide a fund for the repayment of the capital sums of money raised as aforesaid, until the same are wholly paid off and discharged.
- Provision for payment of cost of Act. 8. All the necessary costs and expenses attending the procuring of this Act, and carrying the provisions thereof into effect, shall be paid out of the money to be received under the provisions of this Act.
- Short title. 9. This Act may be cited for all purposes as the "Clanwilliam Divisional Council Loan Act, 1875."

No. 28—1875.] [June 30, 1875.
 An Act for applying a sum not exceeding one million and twenty-two thousand four hundred and seventy pounds sixteen shillings and three pence sterling for the service of the year 1875.
 [Spent.]

No. 29—1875.] [June 30, 1875.
 An Act for applying a sum not exceeding four hundred and forty-eight thousand nine hundred and ninety-nine pounds thirteen shillings and one penny sterling for the service of the year 1876.
 [Spent.]

¹ Act 4, 1865, repealed by Act 40, 1889.

No. 30—1875.]

[June 30, 1875.

ACT

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

WHEREAS the present system of auditing the public accounts of this Colony does not afford a sufficient guarantee for the proper expenditure of public money, and is inadequate as a check upon the illegal application of the public revenue, and it is desirable that the Auditor-General should be placed more immediately in communication with the Parliament, and should be independent of the Executive Government: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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

Governor may appoint Controller and Auditor-General and Assistant.

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

Their salaries.

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

Tenure of office.

4. On any vacancy occurring in the office of Controller and Auditor-General, or Assistant Controller and Auditor, from death,

Appointment of successors.

¹ As to audit of Expenditure of House of Assembly, see §§ 16-18, Act 13, 1883: see also Act 32, 1888.

- No. 30—1875. resignation, or other cause, the Governor with the advice of the Executive Council, may nominate and appoint a successor, who shall have the same powers, authorities, and duties, and who shall be paid the like salary as his predecessor.
- Authority of Assistant Auditor. 5. Anything which under the authority of this Act is directed to be done by the Controller and Auditor-General may in his absence be done by the Assistant Controller and Auditor, except the certifying and reporting upon accounts for the House of Assembly.
- Regulations may be made subject to approval. 6. (1) The Controller and Auditor-General is hereby authorised to make from time to time such regulations, not inconsistent with the provisions of this Act, as may appear to be necessary and expedient for the purposes of this Act, and to enable him to exercise and perform the powers, authorities, and duties hereby imposed upon him, provided that all such regulations shall be approved by the Governor with the advice of the Executive Council previously to the issue thereof, and the same shall be laid upon the table of both Houses of Parliament within seven days after the beginning of the Session of Parliament next ensuing.
- Proceedings of Auditor on receipt of estimates. 7. After the passing of the Annual Appropriation Act, a copy of the said Act, together with a copy of the Estimates to which the said Act refers, shall be forwarded by the Colonial Secretary to the Controller and Auditor-General, who shall thereupon notify to the Treasurer of the Colony, and to the several Ministers respectively, the sums authorised by Parliament for expenditure by the several departments under each Minister. And such sums shall be issued by the Treasurer or by such persons as the Treasurer shall direct from time to time, on the requisition of the Minister charged with such expenditure, such requisition to be authorised and approved by the Controller and Auditor-General. (2)
- Duty of Treasurer thereafter. 8. The Controller and Auditor-General shall examine, inquire into, and audit the accounts of all persons entrusted with the collection, custody, receipt, payment, or issue of moneys belonging to the public revenue of this Colony, and all accounts of a public nature which he may be directed by the Government or required by Act of Parliament to examine, inquire into, and audit; and he is hereby empowered to call upon all persons in the service of the Government who may be in charge of public moneys, or of any public body whose accounts he may be directed or required to examine, enquire into, and audit, for all necessary or proper explanations respecting their receipts and expenditure, and respecting all matters necessary to enable him to discharge his duties under this Act; and he shall see that all payments are supported by proper vouchers or proof of payment and are properly authorised.
- Duties of Auditor. 8. The Controller and Auditor-General shall examine, inquire into, and audit the accounts of all persons entrusted with the collection, custody, receipt, payment, or issue of moneys belonging to the public revenue of this Colony, and all accounts of a public nature which he may be directed by the Government or required by Act of Parliament to examine, inquire into, and audit; and he is hereby empowered to call upon all persons in the service of the Government who may be in charge of public moneys, or of any public body whose accounts he may be directed or required to examine, enquire into, and audit, for all necessary or proper explanations respecting their receipts and expenditure, and respecting all matters necessary to enable him to discharge his duties under this Act; and he shall see that all payments are supported by proper vouchers or proof of payment and are properly authorised.
- Annual accounts of Revenue and Expenditure. 9. The Controller and Auditor-General shall cause in every year an account of the revenue and expenditure of the Colony for the

¹ See § 2, Act 32, 1888, and § 7, Act 14, 1892.

² See § 12, Act 32, 1888.

financial year ended the 30th June preceding to be prepared; and the said account, together with the report of the Controller and Auditor-General thereon, shall be laid before the House of Assembly by the Government on or before the 31st of March in the following year if Parliament be then sitting, and if not sitting, then within one week after Parliament shall be next assembled.

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diture to be presented to Parliament.

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

Annual 'Appropriation Accounts' to be prepared for Parliament.

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

Description of account.

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

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

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

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

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

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

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

15. In conducting the examination of the vouchers relating to the appropriation of the grants for the several services enumerated in the schedule to this Act annexed, the Controller and Auditor-General after satisfying himself that the accounts bear evidence that the vouchers have been completely checked, examined, and certified as correct in every respect, and that they have been allowed and passed by the proper departmental officers, may admit the same as satisfactory evidence of payment in support of the charges to which they may relate: Provided always that if the Government should desire any such vouchers to be examined by the Controller and Auditor-General in greater detail, the Controller and Auditor-General shall cause such vouchers to be subjected to such a detailed examination as the Government may think fit to describe.⁽¹⁾

How other vouchers are to be examined.

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

¹ See § 11 Act 32, 1888.

General, with the consent of the Government, to dispense with a second examination of the particular items of such vouchers.

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

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

18 and 19. [Repealed by Act 32. 1888.]

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

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

21. As soon as any account shall have been signed and passed by the Controller and Auditor-General, he shall transmit to the accountant a certificate in which the total amount of the sums forming respectively the charge and discharge of such account, and the balance, if any, remaining due to or by such accountant, shall be set forth; and every such certificate shall be signed by him, and shall be valid and effectual to discharge the accountant, as the case may be, either wholly, or from so much of the amount with which he may have been chargeable as he may appear by such certificate to be discharged from: Provided always that when any account not being an account current has been signed and passed by the Controller and Auditor-General, with a balance due thereon to the Crown, he shall not make out or grant any such certificate as aforesaid until the accountant has satisfied him either that he has discharged the full amount of such balance, and any interest that may be payable thereon, or that he has been relieved from the payment thereof, or of so much thereof as has not been paid, by a warrant from the Colonial Secretary.

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

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

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

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

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

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stating the object for which such public officer is required to attend, and specifying the books, vouchers, and documents to be produced.

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

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

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

25. ⁽¹⁾ In all cases in which an accountant may be dissatisfied with any disallowance or charge in his accounts made by the Controller and Auditor-General, such accountant shall have a right of appeal to the Government, who, after such further investigation as they may consider equitable, whether by *viva voce* examination or otherwise, may make such order, directing the relief of the appellant wholly or in part from the disallowance or charge in question, as shall appear to the Government to be just and reasonable, and the Controller and Auditor-General shall govern himself accordingly.

Commencement of Act.

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

Short title.

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

SCHEDULE.

Public Works Department.

Railway Department.

And such other departments as the Government, by their minute to be laid before Parliament, may direct. ⁽²⁾

No. 31—1875.]

[June 30, 1875.]

An Act to Amend the Law relating to Pounds and Trespasses.
[Repealed by Act 15, 1892.]

No. 1—1876.]

[July 4, 1876.]

An Act for the better regulation of Convict Stations and Gaols.
[Repealed by Act 23, 1888.]

No. 2—1876.]

[July 4, 1876.]

An Act to Amend the Law relating to the making out of Lists of Jurors.

[Repealed by Act 22, 1891.]

¹ See § 5, Act 14, 1892.

² For other departments, see Government Notice No. 872, 1894, 3rd September, 1894, in *Gazette*, 4th September, 1894.

No. 3—1876.]

[July 4, 1876.

ACT

To Transfer to certain other Officers certain Duties performed by the Treasurer-General and other Officers, under the Ordinances relating to Auctioneers and Transfer Duty. (1)

WHEREAS it is expedient that the duties and functions imposed upon the Treasurer-General by the second section of the Ordinance No. 13 of 1844, intituled "Ordinance for transferring to certain other Officers the duties of the Office of Collector of Taxes," should be transferred to the Civil Commissioner of the Cape Division; that Resident Magistrates should be empowered to perform certain duties under the Ordinance No. 6 of 1844, intituled "Ordinance for regulating Sales by Auction," that the provisions of the said last-mentioned Ordinance as to the recognizance therein mentioned should be amended, and that the payment of transfer duty in the Cape Division should be placed upon the same footing as the payment thereof in other divisions: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The third and fourth sections of the said Ordinance No. 13 of 1844, the ninth section of the Ordinance No. (2) 18 of 1844, intituled "Ordinance for regulating the Payment of Transfer Duty in this Colony," and so much of any other parts of the said Ordinances and of the said Ordinance No. 6 of 1844, and of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

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

3. The Resident Magistrate of the district in which any person about to take out a licence to exercise the trade or business of an auctioneer under the said Ordinance No. 6 of 1844 resides, is hereby

¹ It shall be lawful for the Governor, by notice in the *Gazette* to direct that the duties required by this Act to be performed by the Civil Commissioner of the division or the Resident Magistrate of the district shall be performed by some other officer, see § 2 Act 37, 1895.

² Ordinance 18, 1844, is repealed by Act 5 of 1884.

No. 4—1876.

authorised and empowered to accept the security and grant the certificate in the seventh section of the said Ordinance mentioned, and such security and certificate shall be of the same force and effect as if the same had been accepted and granted respectively by the officer now by law authorised to accept and grant the same.

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

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

5. [Repealed by Act 5 of 1884.]

No. 4—1876.]

[July 4, 1876.]

ACT

To Encourage the Planting and Cultivation of Trees.⁽¹⁾

Preamble.

WHEREAS it is desirable that the planting of trees and the formation of plantations should be encouraged: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Divisional Councils may apply funds to encouragement of tree-planting.

1. Notwithstanding anything to the contrary in the forty-third section of the Act No. 9 of 1858⁽²⁾ or in other law contained, it shall be lawful for any Divisional Council or the Commissioners of any Municipality or Town Council to apply such portion of their funds as may seem to them expedient to the encouragement of tree-planting, either by formation of plantations or by offering rewards to successful cultivators of trees, or by such other means as may appear best suited for the purpose.

Separate accounts of moneys expended to be rendered on 1st January each year.

2. Every Divisional Council or the Commissioners of any Municipality or Town Council who shall expend any portion of their revenue for any of the purposes mentioned in the first section hereof shall cause a separate account of the moneys so expended

¹ See Act 26, 1889 and § 53 sub § 11 Act 25, 1894. This Act extended by Proclamation No. 355 of 1893 to all Native Territories.

² Repealed by Act 40, 1889.

to be kept, and such account shall be sent in on or before the first day of January in every year to the Commissioner of Crown Lands and Public Works, or to such other officer as the Governor may, with the advice of the Executive Council, from time to time appoint to receive the same.

No. 5—1876.

3. Upon the certificate of such officer as the Governor may from time to time appoint for that purpose, that the sums so accounted for have been duly and properly applied to the specified purpose, the Governor may, with the advice of the Executive Council, cause to be paid to such Divisional Council or the Commissioners of any Municipality or Town Council as aforesaid, from and out of the public revenue of the Colony, such sum not exceeding two hundred and fifty pounds sterling in any one year, as shall amount to one-half the sum actually expended for any such purpose by such Divisional Council or the Commissioners of any Municipality or Town Council, as mentioned in the first section hereof.

Half of expense incurred may be refunded from general revenue.

No. 5—1876.]

[July 4, 1876.

ACT

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

WHEREAS by the "Railways Act, (1) 1874," a railway is authorised to be constructed, equipped, maintained, and worked from Graham's Town to the Little Fish River (on the line to Cradock), and for the purpose of constructing and equipping the said railway, the Governor was authorised to expend a sum not exceeding £328,000 sterling: And whereas it is expedient that a railway from Bushman's River to Graham's Town should be substituted for the said first-mentioned railway: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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

Preamble of Act 19 of 1874 amended.

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

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

Section 6 of Act 19 of 1874 amended.

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

¹ No. 19.

No. 7—1876.

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

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

Short title.

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

No. 6--1876.]

[July 4, 1876.]

An Act to Provide for the Better and More Effectual Supervision and Management of Native Locations.

[Repealed by Act 37, 1884.]

No. 7—1876.]

[July 4, 1876.]

ACT

For enabling the Municipality of Aliwal (Mossel Bay) to borrow a Sum not exceeding £5,000 sterling, for the purpose of providing a supply of Pure Water for the use of the Inhabitants of the Town of Aliwal and of the Shipping frequenting the Port of Mossel Bay, and for the better Drainage of the said Town.

Preamble.

WHEREAS it is expedient to provide the inhabitants of the town of Aliwal (Mossel Bay), and the shipping frequenting the port of Mossel Bay, with a better supply of pure water than at present exists, and to provide a better system of drainage of the said town: And whereas at a public meeting of resident householders convened for the above purpose on the 22nd day of September, 1875, it was resolved by a majority of such householders then present that the commissioners of the said municipality of Aliwal (Mossel Bay) be authorised to carry out the objects before mentioned at an expense not exceeding the sum of five thousand pounds sterling: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. It shall be lawful for the commissioners of the municipality of Aliwal (Mossel Bay) to borrow, from time to time, such sum or sums of money, not to exceed in the whole the sum of five thousand pounds sterling, for the purposes aforesaid, and to impose for the purpose of providing for the payment of the interest or principal or interest and principal, of the moneys aforesaid, rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed by the provisions of Ordinance No. 9 of 1836, section 28.

Municipality may
borrow £5,000, and
impose rates for ex-
tinction of debt.

2. The aforesaid sum of five thousand pounds sterling, or such lesser sum as shall have been borrowed for the purposes aforesaid, by the said commissioners, is hereby charged upon and made payable out of the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt, any funds or moneys coming to them from any source whatever and not specially appropriated or required for any other object: Provided also, that nothing in this section contained shall be construed to impair or affect the provisions of any of the next succeeding sections of this Act.

No. 7—1876.

Money borrowed chargeable upon rates in last section authorised, or upon other available assets.

3. The commissioners aforesaid shall grant to the party or parties, or company, society or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the aforesaid sum of five thousand pounds sterling; which acknowledgment shall, in substance, be in the form annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the Board of Commissioners shall be one.

Acknowledgment for moneys borrowed to be given in form provided in schedule.

4. All moneys borrowed for the purposes of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."

"Public Bodies Debts Act, 1867," to apply.

5. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes, or private watercourses, or from supplies of water for the shipping in the port, from sums received from rates imposed under the first section of this Act upon the rateable property of the municipality; and of all moneys expended upon the construction and maintenance of the waterworks and the construction and maintenance of the drains or sewers contemplated by this Act; and the said commissioners shall yearly and every year as long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Municipality of Aliwal (Mossel Bay) for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the municipality not later than the 1st day of March in the year next succeeding.

Separate accounts of moneys borrowed under this Act to be kept and submitted yearly for inspection of householders.

6. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys to be so borrowed as aforesaid.

Provision for payment of costs of this Act.

No. 8—1876.
Short title.

7. This Act may be cited for all purposes as “The Town of Aliwal (Mossel Bay) Water and Drainage Act, 1876.”

SCHEDULE.

We, the undersigned Commissioners of the Municipality of Aliwal (Mossel Bay), do hereby acknowledge that the said Commissioners in their said capacity are indebted to _____ in the sum of £_____ for so much money borrowed by the said Commissioners for the purposes set forth in the “Town of Aliwal (Mossel Bay) Water and Drainage Act, 1876,” and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided. And we further covenant and engage for and on behalf of the said commissioners that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert, according to the agreement, the rate of interest and times of payment thereof and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands at Aliwal (Mossel Bay), this _____ day of _____ 18—.

A.B., Chairman of the Municipality.
C.D., }
E.F., } Commissioners.

Witnesses :
G. H.
I. J.

No. 8—1876.]

[July 4, 1876.

ACT

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

Preamble.

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

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

No. 8—1876.

Provisional agreement in schedule confirmed.

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

Government vested with rights, &c., of late Wynberg Railway Company.

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

Lands held by Company vested in the Government.

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

Company may be dissolved by Proclamation in Gazette.

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

Loan authorised to pay debentures in agreement.

6. ⁽¹⁾ [§§ 6-10 are identical with §§ 2-6, Act 40, 1877.]

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

Debentures to value of £51,300 to be delivered to directors of company in payment of remaining portion of purchase amount.

¹ Sub §§ 1, 4, 5, and 6 of § 7, and so much of sub § 2 of § 7 as fixes dates on which interest payable repealed by Act 17, 1888.

No 8—1876.

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

Short title.

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

SCHEDULE.

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 9—1876.

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

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

Signed in presence of
R. TRIMEN,
E. TRILL,
JOHN R. REID.

No. 9—1876.]

[July 4, 1876.]

ACT

To Regulate the Introduction into this Colony of Articles or Things which by reason of Disease or otherwise might be injurious to the Interests thereof. (1)

Preamble.

WHEREAS certain cuttings of vines were lately introduced into this Colony, from places beyond the limits of the Colony where disease seriously affecting vines existed, or was supposed to exist, and there is no law prohibiting or regulating the introduction of such things, and it is necessary that some greater power than now by law exists should be given to meet such a case, and to prevent or regulate the introduction into this Colony of articles or things which are either actually affected with or are supposed to be affected with some disease, which it would be prejudicial to this Colony to allow to be introduced, or come from places where any such disease affecting them exists or is supposed to exist: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may, by proclamation, prohibit or make regulations concerning the introduction into this Colony of articles or things affected, or supposed to be affected, with disease.

1. If at any time there shall be reason to believe that any articles or things are about or likely to be introduced into this Colony, which by reason of being affected or supposed to be affected with any disease, it would be detrimental to the interest of this Colony to be allowed to be introduced at all, or without conditions or restrictions, or if by reason of any such disease existing or supposed to exist at any place beyond the limits of this Colony, it may be thought expedient to prevent or regulate the introduction into this Colony of any articles or things from such places, it shall be lawful for the Governor, with the advice of the Executive Council by proclamation to be published in the *Government Gazette*, either to prohibit absolutely the introduction into this Colony of such articles or things, or to make such regulations concerning the introduction thereof as may be deemed expedient.

¹ See Act 27, 1880.

2. It shall be lawful for the Governor, from time to time, to revoke or alter any such proclamation, as aforesaid, and also in and by any such proclamation as aforesaid to provide that persons contravening the same or anything therein or in any schedule thereto contained, shall on conviction, forfeit any sum not exceeding five hundred pounds sterling, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any period not exceeding two years, unless the fine be sooner paid.

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Governor may alter or revoke such proclamation and provide penalty for contravening it.

3. It shall be lawful for any person duly authorised in that behalf under the hand of the principal officer of Customs at any port, or the Resident Magistrate of any district, after the publication of any such proclamation as aforesaid, to inspect any article or thing in this Colony mentioned or referred to in such proclamation, and supposed to be affected with any disease as aforesaid, for the purpose of ascertaining whether it is so affected, and any person who shall obstruct or impede any person so authorised in and about such inspection, shall, on conviction, forfeit any sum not exceeding fifty pounds, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour for any period not exceeding six months, unless the fine be sooner paid.

Prohibited articles or things may be inspected.

Penalty for obstructing or impeding such inspection.

4. Any article or thing introduced into this Colony after the publication of any such proclamation as aforesaid, and in contravention thereof, may be seized and detained, and if necessary, destroyed by any order under the hand of the principal officer of Customs at the port, or the Resident Magistrate of the district where such article or thing may be found.

Articles or things introduced into Colony in contravention of proclamation may be seized, &c.

5. If during the time any such proclamation as in the first section mentioned shall be in force, any article or thing whereof the introduction shall be so prohibited as aforesaid, or concerning the introduction of which regulations shall have been so made as aforesaid, shall arrive in this Colony, having been dispatched from any place beyond this Colony, before the publication in the Government or public *Gazette*, of such place of any such proclamation as aforesaid, it shall be lawful for the Governor to indemnify from and out of the public revenue the owner of any such article or thing by paying to him or his agent the first cost of every such article or thing, together with freight, carriage, insurance, and any other charge which shall have been reasonably and properly incurred upon or about the same, whereupon such article or thing shall become the property of Her Majesty the Queen; but it shall not be incumbent on any owner of such article or thing, not absolutely prohibited to be introduced as aforesaid, to accept such terms if he shall be willing to submit and carry out at his own expense the regulations under which by any such proclamation as aforesaid such article or thing may be introduced as aforesaid: Provided also that no compensation shall be made in respect of any such article or thing as aforesaid which shall have been dispatched from any place at any time after the publication of such proclamation as

Owners of prohibited articles or things shipped before publication of proclamation to be indemnified.

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aforesaid, in the Government or public *Gazette* there, or in respect of any such article or thing as shall be found to be actually affected with any such disease as aforesaid, at the time of the arrival thereof in the Colony.

No. 10—1876.]

[July 4, 1876.

ACT

To improve the Administration of Justice in places distant from a Seat of Magistracy. (1)

Preamble.

WHEREAS it is expedient that facilities should be given for the trial of certain offences committed at places distant from the seat of a Resident Magistrate: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Appointment of Special Justices of the Peace.

1. It shall be lawful for the Governor from time to time to appoint any person whom he may think proper to act as a Special Justice of the Peace under this Act within such local limits as may be fixed and determined by him, not being within ten miles of the office of any Resident Magistrate.

Their jurisdiction and powers.

2. Every such Special Justice of the Peace shall have and enjoy, and be at liberty to exercise, within the limits so fixed and determined as aforesaid, over and in respect of any person committing within such limits any of the offences following, that is to say:

- (A). Assault, where no dangerous wound is given and no dangerous weapon is used.
- (B). Theft of any property not being a horse, mare, gelding, colt, filly, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, or ostrich, and not exceeding in value the sum of two pounds sterling.
- (C). Attempt to commit either of the above offences, or being accessory to the commission thereof.
- (D). Receiving stolen goods (not being anything excepted in clause B, and not exceeding in value the sum of two pounds sterling), knowing them to have been stolen.
- (E). Contravention of the seventh and eighteenth (2) sections of the Ordinance No. 25 of 1847, intituled "Ordinance for improving the Police of the Colony."
- (F). Contravention of any municipal regulation.

¹ See Act 13, 1895.

² § 18, Ord. 25, 1847, repealed by Act 27, 1882.

(G). *Contravention of the 35th section of the Ordinance No. 9 of 1851, intituled " Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors," as amended by the eighth section of the Wines and Spirits Act, 1875.* ⁽¹⁾ No. 10 -1876.

(H). *Contravention of any of the provisions of the Act No. 22 of 1867, intituled " An Act to amend the law relating to the issue of Passes to, and Contracts of Service with, Natives, and to the issue of Certificates of Citizenship, and to provide for the Better Protection of Property " ;* ⁽²⁾

the same jurisdiction, power, and authority as if he were the Resident Magistrate of the district in which the offence then under investigation was committed : Provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender in any higher or more severe manner than by fine not exceeding *twenty shillings*, ⁽²⁾ or (and in default of payment of the fine) by imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding *fourteen days*. ⁽³⁾

3. ⁽⁴⁾ In any proceeding relative to the prosecution of any offence before any Special Justice of the Peace under this Act, the form of summons to be served upon the defendant to appear to answer to the charge, the form of the process to obtain, and power to compel the attendance of witnesses, the form of recording the judgment or sentence of such Justice of the Peace, and all other forms and proceedings shall, as near as may be, be those from time to time directed and provided and had in regard to criminal cases in the Courts of Resident Magistrates : Provided, that in place and stead of the messenger of the Court of Resident Magistrate there shall be inserted the name of any person whom such Justice of the Peace shall nominate and appoint (which person is hereby authorised to act in regard to any such summons or process as aforesaid, as if the same were the summons or process of a Resident Magistrate's Court of which such person was messenger) ; and provided that no heading other than the direction of the instrument to such person as aforesaid, and no signature other than that of the Special Justice of the Peace, shall be necessary : And provided that no penalty for the non-attendance of witnesses shall exceed the sum of twenty shillings, and in default of payment of the fine the term of imprisonment shall not exceed the term mentioned in the second section of this Act. Forms of summons, &c.
Penalty for non-attendance of witnesses.

4. ⁽⁴⁾ Upon the day of hearing, the Special Justice of the Peace shall inquire into the charge by hearing all such competent Procedure in cases brought for trial.

¹ Ord. 9, 1851, repealed by Act 28, 1883. Jurisdiction under latter Act given to Special J.P. by § 36.

² Jurisdiction in all cases under Masters and Servants Laws conferred by Act 30, 1889 : and in certain cases under Act 27, 1882, by § 20 of that Act, also by Act 28 of 1883.

³ Amended by Act 40 of 1882, § 23.

⁴ See Act 13, 1895.

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witnesses upon oath as may be produced in support or in disproof of the same, and shall faithfully take down the evidence and proceedings in writing, and note any objections which may be made to any evidence received, or to the rejection of any evidence refused to be admitted, and shall make or cause to be made a record in a book, to be kept for that purpose, of every such case, showing in separate columns the name of the prosecutor, the name of the person complained of, the nature of the alleged offence, the date when the complaint was made, the date when the defendant was lodged in prison, the day of hearing, the judgment given, the sentence pronounced on conviction, and any remarks which such Justice of the Peace shall deem it proper to make.

Payment of costs
in unfounded and
vexatious cases.

5. ⁽¹⁾ In all cases brought before any Special Justice of the Peace under this Act it shall be lawful for him, if he shall dismiss the charge on the ground that the same is unfounded and vexatious, to adjudge that the private prosecutor shall pay to the defendant the costs of his defence, the amount of such costs to be taxed and allowed by such Justice of the Peace, and not to exceed the costs which would have been payable were the case a civil one in a Court of Resident Magistrate, and such costs shall be recovered, in default of payment thereof, together with the costs of recovering the same, to be also fixed and allowed by such Justice of the Peace, in like manner as directed by the forty-eighth section ⁽²⁾ of the said Ordinance No. 9 of 1851, with regard to fines or penalties in that section mentioned.

When a trial should
be stopped, and pro-
ceedings sent to resi-
dent magistrate, or a
preparatory exami-
nation taken.

6. ⁽¹⁾ When, in the course of any trial before a Special Justice of the Peace under this Act, it shall appear to such Justice of the Peace that the offence is, from its nature or magnitude, only subject to the jurisdiction, or more proper for the cognizance, of the Court of Resident Magistrate of the district or other superior Court, such Justice of the Peace shall stop the trial, and either transmit the proceedings in the case, with report thereon, to the Resident Magistrate of the district, or commence anew the examination of the person accused, and the witnesses, as in a preparatory examination, and the proceedings upon and with respect and subsequent to such preparatory examination, shall be the same as those prescribed by law as to ordinary preparatory examinations.

Imprisonment of
offenders.

7. ⁽¹⁾ Any Special Justice of the Peace acting under this Act shall have full power and authority by warrant under his hand to commit any person accused of having committed any of the offences in the second section hereof mentioned, whether before or during trial, and any person who may be committed for trial after preparatory examination, as in the last preceding section mentioned, to the nearest gaol or lock-up, to be there detained until liberated in due course of law, and it shall also be lawful

¹ See Act 13, 1895.

² Printed at foot of this Act.

for such Justice of the Peace, upon the conviction of any such person as aforesaid, by and before him, by like warrant as aforesaid, to commit such convicted person to such gaol or lock-up to be there safely kept until he shall have undergone the punishment awarded, or shall be otherwise lawfully discharged: Provided, however, that no person shall be committed to any gaol or lock-up before trial as aforesaid for any of the offences mentioned in sub-sections A and F of the second section of this Act, unless such Special Justice of the Peace shall have good and reasonable grounds for believing that the offender intends to abscond for the purpose of defeating the ends of justice.

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8. (1) In case of there not being any ordinary constable or not sufficient ordinary constables available either to arrest or to convey to such gaol or lock-up any person accused, committed for trial, or convicted as aforesaid, it shall be lawful for the Justice of the Peace to appoint any proper person or persons to be a special constable or special constables for the arrest, custody, or conveyance, as the case may be, of such person to such gaol or lock-up, and every such special constable shall be paid at the same rate as if he had been appointed by a field-cornet under the Ordinance No. 9 of 1848.

Appointment of special constables.

9. (1) When and as often as any Special Justice of the Peace shall exercise summary jurisdiction under and by virtue of this Act, he shall forthwith, after having disposed of the case, forward to the Registrar of the Supreme Court, or of the Court of the Eastern Districts (according as such case shall be disposed of in the Western or Eastern Districts respectively), the record of the proceedings in the case, together with such remarks, if any, as he may desire to append, and thereupon all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856, shall, *mutatis mutandis*, and as far as the same are applicable, extend and apply to such record, the Justice of the Peace being considered as substituted in the said sections for the convicting Resident Magistrate; and all matters required to be done in the said sections by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Proceedings in cases summarily adjudicated to be forwarded to Registrar of Supreme or Eastern Districts Court, as the case may be.

10. (1) Every appointment of a Special Justice of the Peace under this Act shall be notified in the *Government Gazette*, together with the local limits within which he is to exercise jurisdiction, and shall be during pleasure; and every such Justice of the Peace, upon his appointment, shall take and subscribe the like oaths as are prescribed in and by the Ordinance No. 32 for Justices of the Peace, and shall without any further appointment be in the same position as if he had been appointed a Justice of the Peace under the said Ordinance, all the provisions of which shall apply to such Justice of the Peace.

Appointment of special justice and limits of his jurisdiction to be notified in Gazette.

Oaths to be taken.

¹ See Act 13, 1895

No 10—1876.

Definition of term
"Lock-up."

11. (1) By "lock-up" in this Act is meant any building or part of a building in which any person lawfully arrested or detained in custody under this Act is placed while in such custody, whether before conviction or committed for trial, or afterwards, and every such lock-up shall, as to such person, be deemed to be a public gaol within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the Gaols of this Colony," and the Act No. 5 of 1866-'67, intituled an "Act for the better maintenance of discipline among persons under sentence of imprisonment with hard labour"; and the Resident Magistrate of the district in which such lock-up is situate, shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such lock-up or kept to hard labour outside the precincts of such lock-up as by the said last mentioned Ordinance and Act respectively are given to the Resident Magistrate of the district as to a public gaol within his district. Provided that it shall not be lawful for any such Resident Magistrate for any offence so committed to punish the offender in any higher or more severe manner than by imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for a period not exceeding three months, or by corporal punishment not exceeding twelve lashes.

Jurisdiction of re-
sident magistrates as
to escaped prisoners,
&c.

12. [This section refers to Act 2, 1855, which is repealed, and it has no further applicability.]

Effect of this Act
on existing powers
of justices of the
peace and resident
magistrates.

13. (1) Nothing in this Act contained shall, except where expressly stated to the contrary, interfere with or affect any jurisdiction, powers, or authority already possessed by law by any Justice of the Peace, or with the jurisdiction, powers, or authority of any Court of Resident Magistrate.

Short title.

14. This Act may be cited for all purposes as "The Better Administration of Justice in Criminal Cases Act, 1876."

[Section 48 of Ordinance 9, 1851, referred to in section 5 of the foregoing Act, reads as follows:—]

Warrant for levy-
ing fine or penalty.

48. And be it enacted that when and as often as any offender shall be convicted of any offence against any of the provisions of this Ordinance it shall and may be lawful for the Magistrate or Justice of the Peace convicting such offender to issue his warrant for levying the amount of any fine or penalty imposed upon such offender by distress and sale of the goods of such offender whether such offender shall be in custody by reason of his conviction of such offence or not and for levying also the costs of such distress and sale, and every such warrant shall in substance be agreeable to the form in the schedule to this Ordinance in that behalf set forth, and the overplus if any levied under any such warrant shall

¹ See Act 13, 1895.

be rendered to the said offender; and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the Courts of Resident Magistrate for the sale of goods and chattels taken under the process of execution by such Courts: Provided, always, that as often as any such warrant shall be issued by any Justice of the Peace the person to whom such warrant shall be directed shall for the purpose of such seizure and sale be deemed to be invested with the same rights and obliged to the performance of the same duties and be remunerated at the same rate as the messenger of a Magistrate's Court would have been invested with or obliged to or remunerated at in case the warrant in question had been issued by such Court.

No. 10—1876.
Sale of goods seized.

Form of Warrant for Distress and Sale referred to in foregoing Section.

To _____, messenger of the Court of the Resident Magistrate of _____ (or in case the warrant be issued by a Justice of the Peace, "To _____," the person to whom the warrant is directed).

Whereas _____ (name of the offender), of _____, was on this day (or on the _____ day of _____ 18____) convicted before me of contravening the Ordinance No. 9, 1851, and was duly adjudged to forfeit as a penalty the sum of £ _____; this is therefore to authorise and require you that of the goods and chattels of the said _____ you cause to be levied and raised the said sum of £ _____, with the costs of such conviction, amounting to the further sum of £ _____, together with your charges about the same, and return to the Clerk of this Court (or when the warrant is issued by a Justice of the Peace say "return to me") what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at _____, this _____ day of _____, 18____.
(Signed) _____, Resident Magistrate or _____, Justice of the Peace
(as the case may be).

E. F., clerk of the Court (this is to be omitted when the warrant is issued by a Justice of the Peace).

No. 11—1876.]

[July 4, 1876.]

An Act to Amend the Law relating to the Sale of Wines and certain other Liquors by Auctioneers.

[Repealed by Act 28, 1883.]

No. 12—1876.]

[July 4, 1876.

ACT

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

Preamble.

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

Further loan of
£100,000 authorised

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

Short title.

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

¹ See Act No. 3, 1881.

No. 13—1876.]

[July 4, 1876.

ACT

To provide for the Repayment of certain Sums advanced by the Colonial Government for and in respect of the Kowie Harbour Works, and to make further provision for the purpose of Improving the said Harbour. ⁽¹⁾

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

Preamble.

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

Section 7, Act 16 of 1869, repealed.

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

Loan of £150,000 authorised.

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

Provisions if borrowing upon debentures.

¹ See Act 17, 1881.

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due thereon shall be charged upon and made payable out of the general revenue of this Colony.

Provisions if borrowing upon stock.

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

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

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

No. 13—1876.

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

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

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

Formation of fund for payment of interest and extinction of loan.

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

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

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

Redeemed debentures to be cancelled by Treasurer and advertised.

- No. 14 1876. Separate account to be kept. Moneys to be expended only for purposes mentioned in preamble. Accounts to be submitted annually to Parliament.
8. All moneys raised under authority of this Act shall be carried to a separate account, and shall be expended so far as may be necessary for the purposes in the preamble to this Act mentioned and not otherwise.
9. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended, and an account of the amount of such stock and debentures for the time being outstanding, and of all such sums thereof as shall from time to time be brought in and cancelled, if any, vouched by the Controller and Auditor-General, shall be laid before both Houses of Parliament within fourteen days after the commencement of the next session thereof, and like accounts within fourteen days after the commencement of every succeeding session thereof.
- Short title. 10. This Act may for all purposes be cited as "The Kowie Harbour Loan Act, 1876."

No. 14—1876.]

[July 4, 1876.]

ACT

For enabling the Commissioners of the Municipality of Uitenhage to appropriate and dispose of certain Lands for the purpose of raising Funds for Building a Town Hall, Library, Reading-room, Town Office, Market Office, and other necessary Buildings, for the use of the Resident Householders and Inhabitants of the said Municipality.

Preamble.

WHEREAS by a certain title deed, bearing date the first day of March, One Thousand Eight Hundred and Fifty-four, certain two pieces of land situated within the municipality of Uitenhage, measuring together three morgen, sixty-seven square roods, six square feet, and seventy-six square inches, were granted in freehold to the commissioners of the said municipality, and unto the commissioners of the said municipality for the time being, on condition that the said land should not be appropriated for any other use than for that of a market-place: And whereas it is expedient that the said condition, in the said title deed contained should, for the purposes of this Act be annulled, and that a part of the before-mentioned site for the said market place, bounded on the north-east by Caledon-street, south-west by Constitution-street, north-west by Market-street, and south-east by Chase-street, for many years planted with trees and known as the "Park," being in length four hundred and fifty-six feet and in breadth two

hundred and forty feet, and containing about one morgen and one hundred and sixty square roods should be sold (with power to the aforesaid commissioners to reserve a portion thereof at their discretion for a building site) in order to raise funds towards building in conjunction with the committee for the time being of the Public Library at Uitenhage, a town-hall, library, reading-room, town office, market-office, and other necessary buildings, on such reserved portion of the said "park" land, for the use of the resident householders and inhabitants of the said municipality, and the subscribers of the said Public Library: And whereas the said condition cannot be annulled, nor the proposed sale of the said land be effected for the purpose aforesaid, without the aid of Parliament: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The condition contained in the said title deed, with regard to the particular and exclusive use of the said land, is hereby annulled as to the said part of the said land so to be sold as aforesaid.

Conditions of title deed annulled as to portion of land to be sold.

2. It shall be lawful for the commissioners for the time being of the said municipality, to cause to be sold, by public auction, the said part of the said land beforementioned, the proceeds thereof, together with the proceeds to arise from the sale of certain land with a building thereon now vested in the committee of the said library, to be applied exclusively for the purpose of building on such reserved portion of the said land, a town-hall, library, reading-room, town-office, market office, and other necessary buildings, for the use of the resident householders and inhabitants of the said municipality for ever; and the said library committee, on behalf of the subscribers and others entitled to the use of the said library, shall have exclusive and independent control over the said library and reading-room proposed to be erected as aforesaid in conjunction with the other public buildings beforementioned, the remainder of such buildings to be under the control of the said commissioners.

Commissioners may sell land and apply proceeds to building of town-hall, &c., on reserved land.

3. The necessary repairs that may be required to be made to the buildings about to be erected, from time to time, shall be made by, and at the discretion of, the commissioners of the said municipality, and may be paid for out of the general revenue and rates of the said municipality, save and except any repairs that may be required to be made, from time to time, to the interior of the library and reading-room so to be erected as aforesaid, which repairs shall at all times be effected by the said library committee, at their own proper cost and charges.

Repairs to buildings to be erected to be paid for out of general revenue of municipality.

4. This Act may be cited as the "Uitenhage Municipal Buildings Act, 1876."

Short tit e.

No. 15—1876.]

[July 4, 1876.

ACT

To Amend the Law relating to Weights and Measures.⁽¹⁾

Preamble.

WHEREAS it is expedient that there should be uniformity in the law relating to weights and measures, and that the town assizers or other persons employed in cities, towns, and villages, should be invested with certain powers under the Act No. 11 of 1858, intituled "An Act for regulating Weights and Measures in the Colony of the Cape of Good Hope": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Sections 4 to 10 of Act 2, 1855, repealed.

1. The sections of the Act No. 2 of 1855, ⁽²⁾ intituled "An Act for Abating Public Nuisances and other Mischiefs of a Public Nature in certain Towns and Villages, not being Municipalities," and numbered four to ten inclusive, are hereby repealed as well as all municipal regulations and bye-laws relating to the assizing of weights and measures.

Sets of standard weights and measures may be supplied to municipalities.

2. It shall be lawful for the Governor, upon the application of the commissioners of any municipality, to cause one or more sets of standard weights and measures, verified as in the sixth section of the said Act No. 11 of 1858 is mentioned, to be supplied to and deposited with and preserved by the Town Clerk of the municipality or such other person or persons on behalf of the said municipality as he shall direct and appoint; and every weight and measure so provided shall, until the contrary be proved, be deemed and taken to conform to and correspond with the copy or model of the standard weight or measure of the same description or denomination, deposited in the office of the Treasurer-General or other officer as in the said last mentioned Act mentioned, and to be fit and proper for testing and ascertaining the correctness of other weights and measures (as the case may be), provided always that such standard weights and measures so to be provided as aforesaid, shall not be deemed or taken to be unfit for the purposes aforesaid, by reason that they or any of them are not made of the same material as the copies or models deposited as aforesaid in the office of the Treasurer-General or other officer as aforesaid.

Such standards need not be of the same material as original copies.

Standards to be available for inspection or comparison upon notice and payment of fee.

3. The commissioners of the municipality where copies or models aforesaid are deposited shall, upon reasonable notice, and at all reasonable times, cause such of them to be produced for inspection or for testing the correctness of any measure of weight, extension or capacity, as any person shall, in writing, request them to produce for that purpose, such person paying in respect of every such copy or model produced any sum to be fixed by the commissioners, not exceeding sixpence, which sum shall be paid to the treasury of the municipality.

¹ Extended by § 231 of Act 24 of 1886 to all Native Territories.

² Act 2, 1855, repealed by Act 27, 1882.

4. It shall be lawful for the commissioners of every municipality to appoint a town assizer or other person to assize and mark weights and measures within the limits of such municipality, and for the Resident Magistrate of the district to appoint an assizer or other person to assize and mark weights and measures within the limits of any town or village not being a municipality, the limits of such town or village being for the purposes of this Act such as shall from time to time be fixed by proclamation issued by the Governor and published in the *Government Gazette*. Provided that when limits have been or shall be fixed for any town or village under the said Act No. 2 of 1855 such limits shall, until altered as aforesaid, be the limits of such town or village for the purposes of this Act.

No. 15—1876.

Municipalities may appoint town assizers.

5. The town assizer or other person so appointed as in the last preceding section mentioned shall be considered as mentioned and included in the tenth section of the said Act No. 11 of 1858 as well as a Resident Magistrate, Justice of the Peace and chief constable.

Assizers vested with powers under section 10 of Act 11 of 1858.

6. An examination as in the said tenth section mentioned of all weights and measures shall take place at least once in every year at such time or times, and at such place or places within their respective jurisdictions as may be fixed for that purpose by the Resident Magistrate of the district, or by the commissioners of the municipality as the case may be, of which time or times and place or places, at least ten days' public notice shall be given by advertisement in some local newspaper, or, if none, by posting a notice on the court-house, market-house, or other public building or buildings; and all persons using within such district, city, town, or village, as the case may be, weights or measures for the purpose of trade or dealing, shall attend at the time and place so fixed to have their weights and measures assized, and in default of so attending shall be liable to a penalty of not exceeding five pounds sterling.

An examination of weights and measures under section 10 of Act 11 of 1858 to take place at least once a year.

7. The charge for assizing each weight or measure shall be fixed from time to time by the Resident Magistrate or commissioners of the municipality as the case may be, but shall not exceed three-pence sterling for each weight or measure, exclusive of any expense for repairing the same, and the charge for all weights and measures assized by the town assizer or other person appointed by the municipality shall be paid to the treasurer of the municipality.

Charge for assizing.

8. All penalties and proceeds of forfeitures which by the said lastmentioned Act are directed to be paid to the Colonial Treasury, shall, when the proceedings producing the same have been taken by any officer or person acting for any municipality, be paid to the treasurer of such municipality.

Application of penalties.

9. In the construction of this Act the word "municipality" shall be taken to include the municipal corporation of King William's Town, and the terms "commissioners of the municipality"

Interpretation clause.

No. 16—1876.

and "commissioners" to include Town Council, Borough Council, and council of a municipality, and the term "Town Clerk" to include secretary of a municipality.

Short title.

10. This Act may be cited for all purposes as "The Weights and Measures Act, 1876," and shall be read as one with the said Act No. 11 of 1858, which may for all purposes be cited as "The Weights and Measures Act, 1858."

No. 16—1876.]

[July 4, 1876.]

ACT

To empower Resident Magistrates and others to cancel certain Adhesive Stamps.

Preamble.

WHEREAS by the fourteenth section of "The Stamp Act, (1) 1864," the Distributor of Stamps in Cape Town, or the Civil Commissioner elsewhere, is empowered to cancel certain adhesive stamps, and it is advisable that such power should be extended as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Adhesive stamps under section 14 of Act 3, 1864, may be cancelled by resident magistrates and senior clerks to civil commissioners.

1. The power and duty of cancelling adhesive stamps by the said fourteenth section of the said Act, given to and imposed upon the Distributor of Stamps in Cape Town, and the Civil Commissioners elsewhere, is hereby extended to all Resident Magistrates and senior clerks to Civil Commissioners, upon the tender to them at their offices, within such time as in the said section mentioned, of any such instrument with an adhesive stamp affixed thereon, as in the said section also mentioned, and Resident Magistrates and such clerks as aforesaid shall be considered as referred to in the fifteenth section of the said Act, as well as the said Distributor of Stamps and Civil Commissioners.

No. 17—1876.]

[July 4, 1876.]

ACT

To Facilitate Leases of Settled Estates.

Preamble.

WHEREAS it is expedient that the Supreme Court, the Court of the Eastern Districts, and Circuit Courts respectively, should have power in certain cases to authorise leases of settled estates when such Courts respectively shall deem that such leases would be proper and consistent with a due regard for the interests of all parties entitled under the settlement: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

¹ No. 3.

1. It shall be lawful for the Supreme Court and for the Eastern Districts Court and the Circuit Courts, so far as relates to immovable property, within the jurisdiction of the Eastern Districts Court and Circuit Court respectively, if such Courts shall deem it proper and consistent with a due regard for the interest of all parties entitled under any settlement as hereinafter mentioned and described, and subject to the provisions and restrictions in this Act contained, to authorise leases of any settled estates or of any rights or privileges over or affecting any settled estates for any purposes whatsoever, provided that the following conditions be observed:

No. 17—1876.
Leases of settled estates may be authorised under certain conditions.

First,—Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term not exceeding twenty-one years; or where the Court shall be satisfied that it will be beneficial to all persons interested to grant building leases for a longer term than for such term as the Court shall direct.

Secondly,—On every such lease shall be reserved the best rent, or reservation in the nature of rent, either uniform or not, that can reasonably be obtained, to be made payable annually or oftener.

Thirdly,—Every such lease shall be in writing, and shall contain a condition for re-entry on non-payment of the rent for a period of not less than three months after it becomes due.

2. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions, and stipulations as the Court shall deem expedient with reference to the special circumstances of the case.

Court may impose any further conditions deemed expedient.

3. The power to authorise leases conferred by this Act shall extend to authorise leases either of the whole or any parts of settled estates, and may be exercised from time to time.

Leases of the whole or any part of settled estates.

4. Any leases granted under this Act may by leave of any of the aforesaid Courts be surrendered, either for the purpose of obtaining a renewal of the same or not; and the power to authorise leases conferred by this Act shall extend to authorise new leases of the whole or any part of the property comprised in any surrendered lease.

Leases may be surrendered with leave of court.

Court may authorise new leases of property surrendered.

5. The power to authorise leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing in conformity with the provisions of this Act shall be vested in trustees in manner hereinafter mentioned.

How power to authorise leases may be exercised by court.

6. When application is made to the Court, either to approve of a particular lease, or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised.

Court may require applicants to produce evidence, &c.

No. 17—1876.

Court may appoint lessors in particular cases.

7. When a particular lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor, and the lease executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement.

Court may invest trustees with general power of leasing.

8. When the Court shall deem it expedient that any general powers of leasing settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement, or in any other persons, and such powers when exercised by such trustees shall take effect in all respects as if the powers so vested in them had been originally contained in the settlement.

Notices of application to be given.

9. Notice of any application under this Act shall be served upon all persons who, in the opinion of the Court to which application is made, ought to be so served unless the Court shall think fit to dispense with notice. And such notice shall require the person served to notify within a time to be specified therein, whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application, to be dealt with by the Court; and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Supreme Court may make rules for carrying this Act into effect, &c.

10. It shall be lawful for the Judges of the Supreme Court or the major part of them from time to time, to make rules or orders for carrying the purposes of this Act into effect, and for regulating the form and mode of procedure and generally the practice of the Court in respect of the matters to which this Act relates, and such rules or orders may be rescinded or altered by the like authority. And all such rules or orders shall be subject to the provisions of the third and fourth sections of the Act No. 15 of 1867.

Interpretation clause.

11. The word "settlement," as used in this Act shall signify any deed, agreement, will, or other instrument, under or by virtue of which any immovable property or any estate, or interest, in any such immovable property stand limited to, or, in trust for any person or persons by way of succession, or for a life or lives, or for a term of years determinable with the death of any person; and the term settled estates as used in this Act shall signify all immovable property and all estates or interests in any such immovable property which are the subject of any settlement.

Short title.

12. This Act may be cited for all purposes as the "Settled Estates Leasing Act, 1876."

No. 18—1876.]

[July 4, 1876.

No. 20—1876.

An Act to repeal the Act No. 19 of 1868, entitled "An Act to amend Act No. 8 of 1855, entitled 'An Act to amend Ordinance No. 6 of 1853,' entitled 'An Ordinance for the General Management and Regulation of the Customs in the Colony of the Cape of Good Hope.'"

[Not printed.]

No. 19—1876.]

[July 4, 1876.

An Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1877.

[Spent.]

No. 20—1876.]

[July 4, 1876

ACT

To remove certain Conditions and Restrictions at present imposed upon Lands held by the Lovedale Missionary Institution.

WHEREAS certain grants of land in freehold have from time to time been made by the Government of this Colony to and in favour of the several persons therein respectively named as trustees for the time being of the Lovedale Missionary Institution and of certain schools attached thereto: And whereas certain conditions and restrictions are in such several grants imposed upon the lands thereby granted: And whereas large sums of money have been expended in the construction of buildings, which it is intended to increase, but which work the conditions and restrictions of the grant tend to check, it is therefore desirable and expedient that such conditions and restrictions shall be removed: Be it, therefore, enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much and such parts of the five several deeds of grant, mentioned and referred to in the schedule to this Act annexed, as restrict the use of the lands therein granted to the special purposes therein respectively named, shall be, and the same are hereby, cancelled and annulled.

Restriction on the use of the lands mentioned in schedule cancelled.

2. It shall and may be lawful for the trustees for the time being of the said Lovedale Missionary Institution to hold, possess, and enjoy the several lands contained in the said deeds of grant as free property, and to have the free use and occupation thereof, and to sell, alienate, or mortgage the same or any part thereof, as if the several conditions and restrictions mentioned and contained in such grants had never existed.

Lands to be enjoyed as freehold property in future.

SCHEDULE.

1. Deed of Grant in Freehold, dated 1st September, 1849, made by the Colonial Government to James Laing and James Weir, Missionaries of the Free Church of Scotland at Block Drift, and to the Missionaries for the time being of the said Free Church at that place, of a Piece of Land therein mentioned and described, and therein stated to be granted "for the purpose of being exclusively used as a Seminary and Mission of the said Free Church for religious instruction and agricultural and other useful occupation to the Aborigines, on condition that the Land thereby granted should revert to the Crown when it ceased to be used for that purpose."

2. Deed of Grant in Freehold, dated 22nd November, 1849, made by the Colonial Government to the Reverend Henry Calderwood and to Miss Hannah Howland Harding, as Trustees of the Female Seminary attached to the Free Church of Scotland Mission School at Lovedale and to the Trustees for the time being, of a certain Piece of Land therein mentioned, and described, and therein stated to be granted "for the purpose of being exclusively used as a Female Seminary and Mission of the said Free Church for religious instruction to the Aborigines, on condition that the land thereby granted should revert to the Crown when it ceased to be used for that purpose."

3. Three several Deeds of Grant in Freehold, each dated 7th May, 1859, made by the Colonial Government to the Reverend William Govan, Resident Missionary of the Free Church of Scotland at Lovedale and to his successors in the said office, in trust for the Lovedale Missionary Institution, of certain three Pieces of Land therein respectively mentioned and described, and therein respectively stated to be granted "on condition that the Land hereby granted should be used exclusively for Educational purposes."

No. 21—1876.]

[July 4, 1876.

ACT

To Amend the Law relating to the Jurisdiction and Powers of Resident Magistrates.

Preamble.

WHEREAS it is expedient to give increased jurisdiction and powers to Resident Magistrates in certain cases: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws
and rules of court
repealed.

1. So much of the Act No. 20 of 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," and of any rule, order, or regulation of any such Courts, and of any other Act in force in this Colony, as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

2. [Superseded by § 5 Act 43, 1885.]

3. It shall also be lawful for the defendant, or any two or more of the defendants, if more than one, who may have been summoned to appear before a Court of Resident Magistrate in any such case as aforesaid, in which the sum demanded shall exceed forty pounds sterling, at any time before the hearing of such case, to give notice that he objects, or that they object, to the same being tried in the Court of Resident Magistrate, and if such defendant or defendants shall thereupon give security, to be approved of by the Resident Magistrate, for the amount claimed, and such further sum, not exceeding the sum of one hundred pounds sterling, as may be fixed by the said Resident Magistrate for costs already incurred in the Court of Resident Magistrate and which may be incurred in the superior Court, all proceedings in the Court of Resident Magistrate in any such action shall as to such defendant or defendants be stayed, and the said action, and all the proceedings therein, shall, if the plaintiff so wishes, be, as to such defendants, forthwith removed by order of the Resident Magistrate into such superior Court in this Colony having jurisdiction, as the plaintiff may elect, and upon such removal, the summons in the Court of Resident Magistrate shall, as to such defendant or defendants, stand as the summons in the Court into which the case is removed, the return day ⁽¹⁾ thereof being the date of the order of removal, or if the removal is to a Circuit Court, the date of the first sitting of such Circuit Court: Provided, however, that it shall be lawful for the plaintiff, instead of requiring the said case to be removed, to issue a fresh summons against the said defendant or defendants in any competent Court upon payment to the said defendant or defendants of the costs already incurred by him or them in such Resident Magistrate's Court.

4. The forty-second section of the said Act No. 20 of 1856, ⁽²⁾ shall be read as if the words "without appeal or review" in the commencement thereof were omitted. And from and after the passing of this Act, any person who shall be convicted by the judgment of any Court of Resident Magistrate, and sentenced to any period of imprisonment, or to the payment of any fine, or to receive any number of lashes or cuts, may, if he think fit, appeal against such conviction and sentence to the Supreme Court, or in the Eastern Districts, either to the Supreme Court or to the Court of the Eastern Districts or to the Circuit Court to be holden for the district in which the alleged offence was committed, as the person convicted may elect: Provided that within four days next after such conviction notice, in writing, be given to the clerk of the Court of the Resident Magistrate, by or on behalf of the person convicted, of his intention to appeal, and of the Court to which he elects to appeal: Provided further that no public or private prosecutor shall by virtue of this section be entitled to bring any

No. 21—1876.

Liquid cases over £40 may, on objection of defendant, and security given, be removed to superior court.

Or, upon payment of costs already incurred by defendants, plaintiff may issue fresh summons in any competent court.

Section 42, Act 20 of 1856 amended

¹ See § 6 Act 43, 1885.

² Printed as amended by Act 35, 1893.

No. 21—1876.

case, either in appeal or under review, in any superior Court which could not before the passing of this Act be brought under such appeal or review: Provided also that every such appeal when made to the Supreme Court or to the Court of the Eastern Districts, shall be prosecuted within forty-one days after the giving of such notice, and, when made to the Circuit Court, shall be prosecuted at the next ensuing Circuit Court, and, if not so prosecuted, such conviction and sentence shall be and become final, and it shall not be competent thereafter to bring the same before any superior Court, either by appeal or review, anything contained in this Act or in the Charter of Justice to the contrary notwithstanding; and when any such appeal is made as aforesaid, the provisions of the forty-seventh section of the said Act No. 20 of 1856, in regard to the execution of any sentence of imprisonment for any period exceeding one month, or to pay any fine exceeding five pounds, or to receive any number of lashes or cuts, and the circumstances under which any such sentence may be suspended, shall apply, *mutatis mutandis*, to any sentence so appealed against.

Section 6, Act 17
of 1874 amended.

5. The sixth section of the "Criminal Law Amendment Act, 1874," shall be read as if the words "where the number of lashes or cuts shall exceed twelve" were omitted therefrom.

6. [Repealed by Act 35, 1893.]

Fees of attorneys
and agents and officers
in magistrates'
courts, and allow-
ances to witnesses in
civil cases, may be
altered by rule or
order of Supreme
Court.

7. (1) Notwithstanding anything contained in the thirty-eighth and thirty-ninth sections of the said Act, No. 20 of 1856, and in the schedules to the said Act, it shall be lawful for the Judges of the Supreme Court by any rule or order (to be made in like manner as may from time to time be directed as to general rules and orders of the Supreme Court), to fix and from time to time to alter the fees and charges to be taken and made by attorneys and enrolled agents for or on account of the work and labour by them expended in and about or in connection with the prosecuting or defending of any civil action or proceeding in any Court of Resident Magistrate: the fees to be taken by the officers of the Court of Resident Magistrate, and also the allowances to witnesses in civil cases for personal attendance and travelling expenses (2): Provided that until any such rule or order shall be made, and in so far as the same shall not extend, the fees and charges now by law fixed shall continue to be payable.

Short title.

8. This Act may be cited as "The Resident Magistrates' Court Act, 1876," and the Act No. 20 of 1856 as the "Resident Magistrates' Court Act, 1856."

¹ See also § 13 Act 17, 1886.

² Tariff in *Gazette*, 4th January, 1878.

No. 22—1876.]

[July 4, 1876.

ACT

To Amend the Law relating to Attesting Witnesses.⁽¹⁾

WHEREAS by the Attesting Witnesses Act, 1874, certain amendments were made in the law relating to attesting witnesses, and it is expedient that further amendments be made in such law so as to make the same more in conformity with the law of England, and whereas it will be more convenient that for the purpose of such amendments the said Act should be repealed so that the remaining provisions thereof with the amendments thereto may appear in one Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the taking effect of this Act, the Act No. 16 of 1874, entitled "An Act to amend the Law relating to Attesting Witnesses" is hereby repealed.

Act No. 16 of 1874 repealed.

2. Every person, except as hereinafter excepted, above the age of fourteen years, who is or may be competent to give evidence in any Court of law in this Colony, shall be competent and qualified to attest the execution of a will or other instrument; provided that no person shall be qualified to attest any power of attorney, whereby he shall be appointed an attorney or agent, or under which he shall derive any benefit.

Who are competent to attest execution of a will or other instrument.

3. If any person shall attest the execution of any will or other testamentary instrument, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any property (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, or legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or other testamentary instrument, or the wife or husband of such person, or any person claiming under such person, or wife or husband, be null and void.

Persons attesting execution of a will to forfeit any interest they may have conferred upon them in such will.

4. If any person shall attest the execution of any will or other testamentary instrument, and such person or the wife or husband of such person shall in and by such will or other testamentary instrument be nominated or appointed executor, administrator, or guardian thereunder the appointment of such person or the wife or husband of such person as such executor administrator or guardian, shall be null and void.

Persons attesting execution of a will to forfeit any appointment made as executor, guardian, &c., in such will.

5. This Act may for all purposes be cited as the "Attesting Witnesses Act, 1876."

Short title.

¹ Extended by Proclamation No. 80, 1890, to all the Native Territories. See also § 3, Ord. 15, 1845.

No. 23—1876.

to be paid to him by the said municipality, and for that purpose to transmit to the said municipality within ten days, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said municipality upon receiving the name of the person so selected shall nominate a second arbitrator, and the said arbitrators shall before proceeding in the arbitration choose a third arbitrator, and the said municipality shall cause a deed of submission to be prepared which shall be signed by the chairman of the said municipality and by the said proprietor or person claiming such recompense or compensation as aforesaid, and which deed shall clearly set forth the matter to be determined by the said arbitrators; and the said arbitrators or any two of them shall be authorised to fix and determine the amount of compensation to be paid as aforesaid according to what they shall conceive fair and reasonable, and the award of the said arbitrators or any two of them shall be made a rule or order of the Supreme Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the subject-matter referred to arbitration, and in case such proprietor or person as aforesaid claiming compensation or recompense shall neglect or refuse to name such person to be such arbitrator as aforesaid or to sign the said deed of submission, then it shall be lawful for the said municipality, and they are hereby authorised, to lodge in some joint-stock bank, in Cape Town, the sum of money offered by them aforesaid for or on account and at the risk of such proprietor or person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said municipality upon so lodging the said sum, shall be authorised and entitled to use the land in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and had been paid accordingly. And thereupon, or upon payment of any sum which may be awarded or which may be agreed to be accepted as and for recompense or compensation as aforesaid, the said land shall be held and taken to be vested in the said municipality as fully, absolutely, and effectually as if transfer and conveyance thereof had been duly passed by the respective proprietors thereof, or parties interested therein in favour of the said municipality according to the law and custom of the Colony, or as if all acts by law required for vesting in the said municipality a sufficient title thereto had been duly done and performed, and the said land shall be held and taken to be and shall be the free and absolute property of the said municipality: Provided that the cost of the arbitration as aforesaid shall be in the discretion of the arbitrators.

Payment of costs
of this Act.

7. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys to be borrowed as aforesaid.

8. This Act may be cited for all purposes as the "Heidelberg Canal Act, 1876."

No. 2—1877.
Short title

SCHEDULE A.

We, the undersigned, do hereby acknowledge that the Commissioners for the time being of the Municipality of Heidelberg are truly and lawfully indebted to and on behalf of _____ in the sum of £—— (here write amount in full) being the amount obtained on loan from the said _____ by the said Commissioners acting on behalf of the Municipality of Heidelberg aforesaid under the provisions of the Heidelberg Canal Act, 1876, and hereby undertake, covenant, promise, and agree to repay or cause to be repaid to the said _____ the said sum of £—— with such interest as may be due thereon at the rate of —— per cent. per annum as follows, to wit (here insert when amount is to be paid and generally the conditions under which the loan was effected).

Given under our hands, at Heidelberg, this —— day of —— 18—
Witnesses :

G. H.
J. K.

A. B. } Chairman and Commis-
C. D. } sioners of the Muni-
E. F. } pality of Heidelberg.

No. 24—1876.]

[July 4, 1876.

An Act to enable persons having a right to Water to convey such water across the land of other persons.

[Repealed by Act 26, 1882.]

No. 1—1877.]

[July 9, 1877.

An Act to apply a sum not exceeding £100,000 towards the service of the year ending the 30th day of June, 1878.

[Spent.]

No. 2—1877.]

[August 8, 1877.

ACT

To Provide for the making of Regulations for the Prevention of Obstructions, the Preservation of Order, and other Matters, at certain Ports in this Colony. (1)

WHEREAS it is expedient that powers should be given to make regulations for the due and proper management of and the prevention of obstructions and the preservation of good order on the beach and banks of rivers and on wharfs, jetties, landing places, and approaches thereto, at ports in this Colony where no

Preamble.

¹ See Act 5, 1887.

No. 2—1877.

special law exists enabling such regulations to be made: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Harbour Board, or when no board exists, Governor may make regulations.

1. It shall be lawful for the Commissioners of any Harbour Board, or where no such board exists, for the Governor by and with the advice of the Executive Council, from time to time to make all such regulations as may seem fit and proper for the due and proper management of and the prevention of obstructions and the preservation of good order on the beach and banks of rivers and on the wharfs, jetties, landing-places, breakwaters, and other like erections, and on the approaches to such beach, banks of rivers, wharfs, jetties, landing-places, breakwaters, and other like erections in any port or harbour of this Colony where no special law exists enabling such regulations to be made, and from time to time to alter and amend any such regulations: Provided that no regulations made by any such Commissioners as aforesaid, shall be of any force, unless and until the same be approved of by the Governor, with such advice as aforesaid: And provided, also, that before such regulations shall be submitted to the Government for confirmation, the same shall be published in the *Government Gazette* for a period of six weeks, so as to enable the public to submit to the Government any objection to such regulations.

Regulations by Harbour Board to be approved by Governor.

Penalty for contravening regulations.

2. It shall be lawful for such regulations to provide that persons contravening any of the same may on conviction be sentenced by the Resident Magistrate of the district to pay a fine not exceeding £10 sterling, and in default of payment of any such fine to be imprisoned with or without hard labour for any period provided by such regulations during which the fine may remain unpaid, not exceeding three months; and all fines so to be levied shall be paid into the public treasury.

Regulations to be published in *Gazette*.

3: All regulations which shall be made as aforesaid, as well as all alterations and amendments of the same, shall be published in the *Government Gazette*, and shall thereupon have the force of law for all purposes mentioned therein and allowed thereby.

Short title.

4. This Act may be cited as “The Ports and Harbour Regulations Act, 1877.”

No. 3—1877.]

[August 8, 1877.]

An Act to Amend the Law relative to the payment of Penalties for neglect to pay Transfer Duty.

[Repealed by Act 5, 1884.]

No. 4—1877.]

[August 8, 1877.]

ACT

For the Better Regulation of Electric Telegraphs.

WHEREAS by the eleventh section of "The Telegraph Act, 1872," it is enacted that the Chief Inspector of Public Works shall be considered as substituted in the Electric Telegraphs Act, 1861, for the superintendent of any line of telegraph in the said last mentioned Act mentioned: And whereas it is expedient that the General Manager of Electric Telegraphs, or the person for the time being in charge of the Telegraph Department in this Colony, should be substituted for the said Chief Inspector, and that the Act relating to electric telegraphs should be declared applicable to all lines of electric telegraph now or to be hereafter constructed in this Colony by or on behalf of the Government thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the passing of this Act all and singular the provisions of "The Electric Telegraph Act, (1) 1861," and of the Act No. 5 of 1862, intituled "An Act for Securing Precedence to Public Telegrams," shall, *mutatis mutandis*, extend and apply to all lines of electric telegraph which now belong to, or which may hereafter be acquired, constructed, worked, or maintained by the Government of this Colony, the General Manager of Electric Telegraphs in this Colony, or the person for the time being in charge of the Telegraph Department in this Colony, being considered as substituted in the said Telegraph Act, 1861, for the superintendent of any line therein mentioned, and all powers and authorities therein given to or bestowed upon private individuals or co-partnerships being vested in the Governor and persons duly authorised by him to exercise the same.

General manager or person in charge of telegraphs substituted in Telegraph Act, 1861, for superintendent.

2. This Act may be cited for all purposes as "The Electric Telegraph Act, 1877."

Short title.

No. 5—1877.]

[August 8, 1877.]

An Act to Repeal so much of the "Telegraph Act, 1872," as empowers the Governor to raise Money.

[Spent.]

No. 6—1877.]

[August 8, 1877.

ACT

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

reamble

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

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

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

Provisions for borrowing on debentures.

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

Provisions for borrowing on stock.

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

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

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

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

No. 6—1877.

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

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

Creation of fund for the payment of interest on debentures.

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

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

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

Redeemed debentures to be cancelled by treasurer and advertised.

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

Master may invest in such stock or debentures.

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

Accounts to be rendered to Parliament.

8. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expendi-

EAST LONDON AND QUEEN'S TOWN RAILWAY. 1441

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

No. 7—1877.

9. and 10. [Repealed by Act 17, 1889.]

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

Short title.

No. 7—1877.]

[August 8, 1877.]

ACT

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

WHEREAS, by the "Railways Act, (1) 1874," the Governor was authorised to expend a sum of one million and sixty-nine thousand pounds sterling for the purpose of constructing and equipping a railway from East London *via* Blaney to King William's Town, and from Blaney to Queen's Town, and whereas by reason of the construction of works not contemplated at the time of the passing of the said Act, and otherwise, the said sum will not be sufficient for the due purpose, and it is expedient that the Governor should be authorised to raise and expend a further sum not exceeding one hundred and fifty thousand pounds for the said purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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

Further sum of £150,000 may be raised.

2. All and singular the provisions of the eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth sections of the said "Railways Act, 1874," relating to the money authorised to be borrowed by the said Act, shall apply, *mutatis mutandis*, to the

Certain provisions of Railways Act, 1874, to apply to money borrowed under this Act.

No. 8--1877.
Short title.

sum of one hundred and fifty thousand pounds sterling hereby authorised to be borrowed, as if the same were borrowed under the authority of the said Act.

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

No. 8—1877.]

[August 8, 1877.

ACT

For the Promotion of Irrigation. (1)

Preamble.

WHEREAS it is expedient to make provision for promoting the irrigation of lands in this Colony and for the preservation and improvement by artificial means of the supply and storage of water, and for the purposes aforesaid to provide for the advance of public money to a limited amount: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Short title.

1. This Act may be cited for all purposes as "The Irrigation Act, 1877."

PART I.

THE CONSTITUTION OF IRRIGATION DISTRICTS.

Owners of lands may petition Governor to constitute irrigation districts.

2. It shall be lawful for any three or more owners of lands situate within any area for which in the opinion of such owners it is expedient that there should be a combined system of irrigation or that recourse should be had to artificial means of storing or supplying water, to present a petition, in writing, to the Governor, praying that such area be constituted an irrigation district: Provided that the persons signing such petition be owners of not less than one-tenth part in acreage of the land proposed to fall within such irrigation district.

Petition to state boundaries, &c., and to be notified in *Government Gazette*, &c.

3. Every such petition shall state the boundaries and approximate extent of the proposed irrigation district, and the nature of the works (if any) proposed to be executed, and shall be supported by such evidence as the Governor may require; and the fact of such a petition having been presented, together with a copy or a summary thereof, shall be forthwith notified by the petitioners in the *Government Gazette*, and in some newspaper or newspapers published within the fiscal division or divisions in which the proposed district or any part thereof is situate, or, if there be no such newspaper, in some newspaper or newspapers circulating within such division or divisions.

Governor may dispatch engineer or other person to proposed irrigation district to make inquiries.

4. The Governor may, not later than six months after any such petition has been presented, dispatch an engineer or other competent person to the proposed irrigation district, who shall

¹ See Acts 28, 1879; 7, 1880; 10, 1893.

inquire into the allegations of the petition, ascertain the opinion of the owners of land situated within the proposed district in respect of the said petition, and generally the propriety or otherwise of constituting the said irrigation district, and what should be the boundaries thereof.

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5. The engineer or other person who may be charged with any such inquiry as aforesaid shall, before commencing the same, give such notice as the Governor may direct of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him on the subject of such inquiry.

Engineer or other person to give notice of time and place of making inquiry.

6. The engineer or other person as aforesaid shall, as soon as may be, report the result of his inquiries to the Governor, who may, if satisfied with the propriety of constituting the area mentioned in the petition, with such alterations of boundaries, if any, as he may think fit, an irrigation district, and that the owners of not less than two-thirds of the land within such district, are in favour thereof, by proclamation in the *Government Gazette* declare such district to be duly constituted an irrigation district, and the issue of any such proclamation as aforesaid shall be considered evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the issuing thereof have been complied with; Provided always that it shall be lawful for the Governor after the issue of any such proclamation as aforesaid from time to time as he shall see fit, after causing due inquiry to be made as aforesaid, and with the consent in writing of at least two-thirds of the owners of land as aforesaid, to revoke any such proclamation or alter the boundaries of any such district.

Engineer or other person to report result of inquiry to Governor, who may proclaim the district an irrigation district.

Governor may revoke or alter such proclamation.

PART II.

THE CONSTITUTION AND PROCEEDINGS OF IRRIGATION BOARDS.

7. The performance and superintendence of all acts, matters, and things relating to irrigation, and the storage and supply of water within an irrigation district, shall be vested in a board to be called an irrigation board, and such board shall be a body corporate, and shall take and bear such name as may be given to it in and by any proclamation of the Governor published in the *Government Gazette*, and by that name shall sue and be sued, have perpetual succession and a common seal, hold property, and do all acts, and have and enjoy all the rights and privileges which bodies corporate as such may in this Colony do and have.

Management of irrigation districts to be vested in boards.

8. Every such board shall consist of such number of members, not less than three and not more than seven, as the Governor from time to time by proclamation in the *Government Gazette* may fix.

Number of members to be fixed by proclamation of the Governor.

9. As soon as may be after the issuing of any proclamation constituting any irrigation district, and not later than one month thereafter, the returning officer shall, by notice published in the *Government Gazette*, fix and appoint some day and place to be

Returning officer to give notice of day and place for election of members.

- No. 8—1877. named in such notice for the election of members of the irrigation board for such district: Provided, always, that every such notice shall be published in the *Government Gazette* and in some newspaper or newspapers as in the third section mentioned for not less than thirty-one days before the day named in the notice for such election.
- Who may vote at such election. 10. Every owner of land situated within an irrigation district, and liable to be rated as hereinafter mentioned, shall be entitled to vote at any election for members of the irrigation board for such district.
- Qualification of members. 11. Every owner of land situated within an irrigation district, and liable to be rated as hereinafter mentioned, shall be eligible to be elected as a member of the irrigation board for such district: Provided, always, that no person under the age of twenty-one years, and no insolvent who shall not have obtained his rehabilitation, and no person whose estate shall at the time of any election be under assignment for the benefit of his creditors, and no person who is a contractor under any subsisting contract with any irrigation board, shall be eligible to be elected a member of such board.
- Nomination of candidates and proceedings thereupon. 12. Upon the day which shall be appointed as aforesaid for proceeding to the election of a member or members of any irrigation board for any irrigation district, the returning officer shall hold a public court for the nomination of persons proposed as members of the said board; and every such person shall be nominated by some qualified voter for such district and seconded by some other such qualified voter; and if it shall happen that the number of persons so proposed is not greater than the number of members to be elected, the persons so proposed shall forthwith be declared to be duly elected, and their names shall be forthwith published in the *Government Gazette*; but in case the numbers of persons so proposed exceeds the number of members to be elected, and any of the candidates, or any voter acting on behalf of any of the candidates, shall, after the result of a show of hands of the voters present shall have been declared, demand a poll, the returning officer shall, before adjourning such court for the purposes of such poll, fix and announce the place within the district, and the day, not being less than three and not more than seven clear days from the day of holding the said court, where and upon which such poll is to be taken: Provided always that if, after the demand of any poll as aforesaid and before the day fixed for taking the same, such demand shall with the consent of all the candidates in writing under their hands be withdrawn, such poll shall not be taken; and the person or persons who had been declared elected after such show of hands as aforesaid shall be forthwith deemed to have been duly elected a member or members of the said board.
- Votes may be by proxy. 13. Every person entitled to vote at any election of members of any irrigation board shall be entitled to vote in person or by proxy, and shall vote according to the following scale; that is to say:

- If the property in respect of which he is entitled to vote be valued for Divisional Council purposes at a sum of not exceeding five hundred pounds, he shall have one vote for each candidate; and for every additional five hundred pounds or fractional part of five hundred pounds, an additional vote for each candidate in respect of each such sum of five hundred pounds or fractional part thereof; but no elector shall have more than ten votes for each candidate, and no elector shall be entitled to vote whose rates under this Act shall be due and in arrears for three months and upwards.
14. All proxies shall be appointed under the hand of the appointer; but no proxy shall be entitled to vote unless the instrument appointing him be deposited with the returning officer at the time of polling.
15. Every poll shall be opened at eight o'clock in the morning of the appointed day, and shall close at five o'clock in the afternoon of the same day, and no vote shall be received before or after the hour fixed for opening and closing the poll respectively.
16. The returning officer shall enter or cause to be entered in a book or books the name and address of every voter and the manner in which he votes, and at the close of the poll he shall sum up the votes, and as soon as possible publish a list of the names of the successful candidates, together with the number of votes recorded in favour of each, in the *Government Gazette*, and in some newspaper or newspapers as in the third section mentioned, and by affixing a copy of such list to the outer door of the office of the board, and shall duly forward to each successful candidate a notice in writing, informing him that he has been duly elected a member of the irrigation board of the district.
17. If two or more persons, who cannot be both or all elected, shall be found to have each received an equal number of votes, the question as to which of such persons shall be elected shall be determined by lot, to be drawn in the presence of the returning officer and not fewer than five witnesses.
18. The members of the first irrigation board of any district shall go out of office at the end of the third year from the day of the publication of the notice of their election, and in place of such members so going out of office a like number of other members, to be elected in like manner as the first members, shall come into and remain in office for three years, and at the expiration of such last mentioned time of three years shall in like manner go out of office and be succeeded by other members, who shall remain in office for a like term of three years, and so on for ever: Provided always, that every member so going out of office shall be eligible to be re-elected.
19. The returning officer shall, in regard to every such triennial election as aforesaid, publish or cause to be published in the

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Scale of voting.

Mode of voting by proxy.

Duration of poll.

Mode of taking and publishing result of poll.

Equality of votes to be decided by lot.

Members to vacate office every three years.

Procedure at triennial election.

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Government Gazette, and in some newspaper or newspapers as aforesaid, a notice similar in all respects to the notice for the first election of members, for the election of each new board: Provided always that he shall in every such notice fix some day for the election not later than seven days nor earlier than twenty-eight days next before the day on which such term of years shall expire: And provided also that every successive term of three years shall be reckoned from the day of the publication by the returning officer in the *Government Gazette* of the notice containing the names of the members last elected.

Members to vacate office in certain cases and for certain causes.

20. If any member of any irrigation board shall die, or resign, or in writing refuse to act, or become insolvent, or assign his estate for the benefit of his creditors, or cease to be an owner as in the tenth section mentioned, or by reason of some mental or bodily infirmity become incapable of attending to the business of the board, or become a contractor with the board of which he is a member, or for three months from the time of his last attendance at a meeting of the board absent himself without the leave of the board first had and obtained from the meetings, whether ordinary or special, which may have been held within that period, unless he shall have been prevented by sickness or some other lawful and sufficient cause, to be judged of by the board, then the office of such member shall, *ipso facto*, become vacant: Provided that every member prevented from attending such meetings as aforesaid by sickness or other cause shall be bound to report or cause to be reported to such board, not later than twenty-eight days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance; and if no such report shall have been received, or being received, shall be resolved by the board not to be lawful and sufficient, then the seat of such member shall as aforesaid become vacant: And provided that, in regard to special meetings of the board, absence from the same shall not be reckoned or regarded for the purposes of this section unless notice of the same shall have been given to the member who shall have absented himself in reasonable and customary time.

Mode of supplying casual vacancies.

21. As often as any casual vacancy shall occur in any irrigation board upon any of the grounds in the last preceding section mentioned, or upon any other ground mentioned in this Act, all and singular the provisions of the several sections of this Act, from the eleventh to the seventeenth, both inclusive, shall, *mutatis mutandis*, apply to the election of a member to supply such vacancy: Provided that the dates to be fixed for such election shall be, as regards the filling up of casual vacancies, in the discretion of the returning officer: Provided, also, the person elected to fill such vacancy shall be competent to remain in office until the then next general election of members, but no longer.

In case of failure of returning officer

22. If it shall happen that by reason of any accident or other cause the returning officer of any district shall not, in regard to

the election of a new district board for such district, after the first, give within the time in that behalf provided the notice in that behalf mentioned, or shall not give any other notice, or do any other act by any section of this Act required, whereby it shall happen that the names of at least a quorum of members of any new board cannot be published before the day on which the old board ought regularly to go out of office, it shall be lawful for the Governor to authorise such returning officer to publish or cause to be published such a notice as aforesaid, fixing such day or days for publishing any notice or doing any act as may be most convenient, and the members of the old or expiring board shall remain in office until the publication, in manner and form as in the sixteenth section of this Act directed, of the names of the members elected.

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to give any notice or do any act under this Act, Governor may authorise him to do so.

23. No board shall be deemed to be incomplete by reason of the neglect of any district to elect the fixed number of members of such board, nor by reason of any vacancy in such board, so long as there shall be a sufficient number of members of such board to form a quorum.

Board not to be deemed incomplete so long as there is a quorum.

24. Within one month after the publication of the names of the first members of any irrigation board, the returning officer of the district shall appoint a day for the first meeting of the board, and shall cause a notice of the time and place of such meeting to be served on each member of the board and at such first meeting; and afterwards at the first meeting after every general election of members of the board, the board shall appoint one of their number to act as chairman for any period not exceeding that for which such board is elected; Provided always that in the absence of the chairman at any meeting of the board the members present shall, before proceeding to business, elect some one of their number present to be the chairman of such meeting.

First meeting of board.

Election of chairman.

25. If any casual vacancy occurs in the office of chairman the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some other member of the board to fill such vacancy, and every such chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.

Casual vacancy of office of chairman.

26. Every irrigation board shall have a secretary and such other officers as shall be deemed necessary by such board, and such officers shall be appointed by such board and shall hold office during the pleasure of the board: Provided that the secretary and other officers appointed by any such board shall remain in office notwithstanding the occurrence of any number of general elections of members of such board, unless removed by such board: Provided also that every such board shall take from every officer employed by it who shall be charged with the receipt or disbursement of any

Secretary and other officers may be appointed.

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of the funds of such board, such security as the board shall deem sufficient for the due performance of his duty.

Place of meeting of board.

27. Every irrigation board shall meet together for the dispatch of business at such times and places within their district as they may think fit: Provided always that no business shall be transacted at any meeting unless at least one-third of the whole number when the said board shall consist of more than three members, and when the said board shall consist of three members only, unless two of the members shall be present at the commencement and close of such business: And provided also that no order involving an expenditure of more than one hundred pounds shall be made by the board, unless at the least one month's previous notice, specifying the work to be undertaken, or the other matter to which such order relates, and naming a day upon which a meeting of the board is to be held for considering the matter to be ordered, has been sent by the secretary to each member of the board.

Quorum.

Notice to be given of consideration of any expenditure exceeding £100.

Questions to be decided by majority of votes.

Chairman to have a casting vote.

Committees may be formed.

Minutes of all proceedings to be kept.

To be signed by chairman.

Admissible in evidence.

Members not to receive any salary, &c.

28. All questions for the consideration of the board at any meeting shall be decided by a majority of the votes of the members of the board who shall be present at such meeting, and in case of an equality of votes at any such meeting the chairman of such meeting shall have a second or casting vote; and the names of the members present, as well as of those voting upon each question at such meeting, shall be recorded in a minute-book to be kept for the purpose by the secretary to the board.

29. A board may delegate any of their powers to committees consisting of such members of their body as they shall think fit, and any committee so formed may elect a chairman, meet, adjourn, and decide all questions submitted to them in the same manner as if each committee was a board formed under the provisions of this Act: Provided always that all committees formed as aforesaid shall in the exercise of the powers delegated to them conform to any regulation that may be imposed on them by the board.

30. Every board shall cause minutes to be made in books provided for the purpose of all appointments of officers made by the board, of the names of the members present at each meeting of the board and committees of the board, of all orders made by the board and committees of the board, and of all resolutions and proceedings of meetings of the board and of committees of the board, and such minutes as aforesaid shall be signed by the chairman of each meeting of such board or committee; and any such minutes as aforesaid, if signed by any person purporting to be the chairman of any meeting of the board or committee of the board, shall be receivable in evidence without further proof.

31. No member of any irrigation board shall have or receive any salary or allowances, or exact, accept, or receive any fee or reward whatsoever for, on account, or by reason of his office as such member, nor shall any member of an irrigation board become a contractor with the board of which he shall be a member for the

doing of any work or the supplying of any materials, articles, or things required by such board; nor shall such member be directly or indirectly interested in any such contract as last aforesaid. Any person contravening this section of this Act shall incur and be liable to a penalty not exceeding one hundred pounds.

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32. All acts done by any meeting of an irrigation board, or by any committee of an irrigation board, or by any person acting as a member of an irrigation board shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such board, committee, or person, or that the members of the said board or committee or the said person were or was disqualified, be as valid as if any such board, committee, or person had been and was duly appointed and qualified.

Act done by board or committee, or person acting as member, not to be questioned for certain defects.

PART III.

GENERAL POWERS AND DUTIES OF BOARD.

33. The charge and conservation of every natural river, stream, creek, and watercourse, and of every dam, reservoir, vley, and embankment within the limits of an irrigation district, which is by its nature common to two or more of the owners of land within such district, and the absolute control and regulation (so far as the same can be effected by artificial means) of the supply of water throughout the course of every such river, stream, creek, or watercourse within such limits as aforesaid, shall be vested in the irrigation board of such district.

Duties of board.

34. The powers of an irrigation board acting within the area for which the said board is constituted shall extend to the following acts: that is to say—

Powers of board.

- (i) To cleansing, repairing, or otherwise maintaining in a due state of efficiency any existing natural river, stream, creek, or watercourse, or any existing dam, reservoir, vley, and embankment, which by its nature is common to two or more of the owners of land within such district, hereinafter referred to under the expression "maintenance of existing works."
- (ii) To deepening, raising, widening, straightening, or otherwise improving any existing natural river, stream, creek, and watercourse, and any existing dam, reservoir, vley, and embankment, which by its nature is common to two or more of the owners of lands within such district, hereinafter referred to under the expression "improvements of existing works."
- (iii) To making or erecting any new dam, reservoir, vley, watercourse, or embankment, erecting any machinery, or doing any other act not hereinbefore referred to which may be required or considered expedient for the storage, drainage, or supply of water, or the irrigation of the area comprised within the limits of the district, or for

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the use of travellers and travelling stock within the district, hereinafter referred to under the expression the "construction of new works."

Provided always that

- (a) No person shall by virtue of this Act be compelled to execute at his own expense any works which he would not have been compelled to execute if this Act had not passed.
- (b) No work shall be deemed to be a new work that is in substitution for an old one in cases where such old work is so much out of repair or so insufficient as to make it expedient to construct a new work in place thereof.
- (c) Full compensation shall be made for all injury sustained by any person by reason of the exercise by the board of the above powers
- (d) The exercise of the foregoing powers shall be subject to the restrictions hereinafter mentioned.

May enter upon and take possession of lands, &c.

35. It shall be lawful for the board or their officers or servants, from time to time, to enter upon and take possession of such lands and premises within their district, covered or uncovered with water, as may be necessary to enable them to carry out the purposes of this Act; to purchase any such lands or premises; and to dig, get, and carry away out of and from any such lands any materials which may be necessary to enable them to carry out the said purposes, paying, however, such recompense or compensation to the owners, lessees, and occupiers of such lands, premises and materials, according to their respective interests therein, as may be agreed upon, or if no agreement, as may be settled by arbitration as hereinafter mentioned.

Restrictions.

36. It shall not be lawful for the board to remove or otherwise interfere with any mill-dam, weir, or other like obstruction whereby the level of the water is raised for milling or other purpose of profit so as to injuriously affect the supply of water, otherwise than with the consent of the owner and occupier of such mill-dam, weir, or other like obstruction, until their right to do so has been determined in manner hereinafter mentioned, and until compensation has been made to all parties entitled for the injury which may be caused by such removal or interference.

Questions to be decided by resident magistrate or by arbitration.

37. For the purpose of determining the right of the board to remove or otherwise interfere with any such dam, weir, or other like obstruction, there shall be decided, if the owner and occupier consent, by the nearest or any Resident Magistrate, but if there be no such consent, by arbitration as hereinafter mentioned, the questions following, that is to say:

- (1) Whether the proposed removal or interference is necessary for the effectual carrying out of the provisions of this Act.
- (2) Whether the proposed removal or interference will cause any injury to the owner or occupier.

- (3) Whether any injury that may be caused by removal or interference is or is not of a nature to admit of being fully compensated for by money.

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38. The consequence of any such decision shall be as follows, that is to say :

Consequences of such decision.

- (1) If the decision is that such removal or interference is not necessary for the effectual carrying out of the provisions of this Act, the board shall not be entitled to make the same.
- (2) If the decision is that such removal is necessary for the purposes aforesaid, but that the injury to be caused thereby is not of a nature to be fully compensated for by money, the board shall not be entitled to make the same.
- (3) If the decision is that such removal or interference is necessary, and that any injury that may be caused can be fully compensated by money, the board shall be at liberty to make the same upon making such compensation as may be agreed upon, or if no agreement, as may be decided by such Resident Magistrate, or by arbitration as aforesaid.

39. The board, before entering upon, purchasing, or taking any lands, premises, or materials, or before removing or interfering with any mill-dam, weir, or other like obstruction for the purposes of this Act, shall publish once at least in the *Government Gazette* and once at least in each of three consecutive weeks in some newspaper or newspapers as aforesaid, notice describing shortly the nature of the undertaking in respect of which the lands, premises, or materials are proposed to be entered upon, purchased, or taken, or the mill-dam, weir, or other like obstruction is proposed to be removed or interfered with, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land and specifying the premises, mill-dam, weir, or other like obstruction that they require, and shall serve or cause to be served in manner hereinafter provided a copy of such notice on every mortgagee, if any, of such lands and premises as aforesaid or any part thereof proposed to be entered upon or purchased, and of the lands and premises from which such materials as aforesaid are proposed to be taken, or upon which such mill-dam, weir, or other like obstruction proposed to be removed or interfered with is situate, and shall also serve a notice on every owner or reputed owner and occupier of such lands, premises, mill-dam, weir, or other like obstruction as aforesaid, defining in each case the particular lands, premises, mill-dam, weir, or other like obstruction intended to be entered upon, purchased, taken, removed, or interfered with; and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of the entering upon, purchasing, taking, removing, or interfering with such lands, premises, materials, mill-dam, weir, or other like

Notice must be given by board before entering upon, purchasing, &c., any lands, &c.

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obstruction, and the amount, if any, claimed as compensation for such entry, purchase, taking, removal, or interference: And every such notice as aforesaid shall be served

By delivering the same personally to the person to be served or to his duly authorised agent, or by leaving the same at the usual or last known place of abode of such person.

Procedure on receipt of answer of owner and occupier of lands, &c., proposed to be entered upon, &c.

40. It shall be lawful for the board, on receipt of an answer from the owner and occupier of the lands, premises, materials, mill-dam, weir, or other like obstruction, proposed to be entered upon, purchased, taken, removed or interfered with, to proceed as follows, that is to say:

- (1) If the owner consents to the said entry, purchase, taking, removal or interference, and the sum demanded for compensation or recompense therefore appears to the board to be reasonable, the board may pay the said sum, and the owner and occupier shall thereupon execute such transfer, conveyance, or other instrument as may be necessary for vesting such lands, premises, mill-dam, weir or other matter, and all rights therein and thereto, and the possession thereof in such board: Provided that so often as such property as is hereinbefore described shall be under mortgage the payment referred to in this and in the forty-third section shall, to an extent not exceeding the amount of the mortgage and interest due thereon, be made to such mortgagee, or by his consent, to the owner.
- (2) If the owner and occupier do not consent to the said entry, purchase, taking, removal, or interference, or if they shall consent, but the sum demanded for recompense or compensation is in the opinion of the board excessive and unreasonable, the board may thereupon cause to be served upon such owner and occupier, in the same manner as hereinbefore provided for the first notice, a second notice, stating that the board is unable to agree to the terms demanded, and proposing that all matters in dispute shall be referred to the nearest Resident Magistrate to be decided upon by him, and requiring an answer stating whether the owner and occupier as aforesaid consent to the appointment of the said Resident Magistrate as arbitrator in the matter.

Disputes may by consent be referred to resident magistrate as arbitrator.

41. If the parties interested as aforesaid shall consent to have the matters in dispute relating to the entry, purchase, taking, removal of or interference with the lands, premises, materials, mill-dam, weir or other like obstruction by the board as aforesaid decided by the Resident Magistrate aforesaid, the same shall be referred to such Resident Magistrate, who shall thereupon, within three months from the date of such consent, proceed to adjudicate

upon the matters in dispute between such parties and the board, and shall for the purposes aforesaid conduct such inquiry in the same way, and have all the authority, powers, and jurisdiction, as if he were an arbitrator appointed under the provisions of this Act.

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42. If the parties interested shall not consent to have the matters in dispute, relating to the entry, purchase, taking, removal of or interference with the lands, premises, materials, mill-dam, weir, or other like obstruction by the board as aforesaid, decided by the Resident Magistrate as aforesaid, the same shall be referred to arbitration in the manner hereinafter provided.

If parties will not consent, disputes to be decided by arbitration.

43. Upon the publication of the award of the Resident Magistrate or arbitrator as aforesaid, or at such other time as shall be fixed in and by any such award, the board shall pay to the person or persons to whom the same may be awarded the sum or sums of money directed to be paid by the said award, as recompense or compensation for the entering upon, purchase, taking, removal of, or interference with any such lands, premises, materials, mill-dam, weir, or other obstruction; and the owner and occupier thereof shall thereupon execute such transfer, conveyance, or other instrument as may be necessary for vesting such lands, premises, mill-dam, weir, or other matter, and all their rights therein and thereto, and the possession thereof in the said board: Provided always that if the Resident Magistrate or arbitrator by his award, shall adjudge that the entering upon, purchase, taking, removal of or interference with such lands, premises, materials, mill-dam, weir, or other like obstruction, shall not be necessary for the purposes for which the board is constituted, or is necessary, but that such entry, purchase, taking, removal, or interference as aforesaid is not of a nature to be fully compensated by money, then and in that case the owner and occupier shall not, nor shall either of them, be called upon to execute any such instrument as aforesaid.

Mode of carrying out award of resident magistrate or arbitrator.

PART IV.

RATING POWERS OF BOARD.

44. It shall be lawful for any irrigation board to levy rates to be called irrigation rates, for defraying all costs, charges, and expenses incurred or to be incurred by them under the authority of this Act, upon and in respect of all property situate within the district of such board which is irrigated, or capable of being irrigated by the said board, regard being had to the value to be derived by the owners respectively of such property from the irrigation works.

Board may levy rates.

45. All rates to be levied in pursuance of this Act shall be fixed from time to time by the board, and such rates shall be charged at a sum per acre.

Rates to be fixed by board at a sum per acre.

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Owner or occupier
may be sued for rates.Occupier may in
certain cases recover
from owner.Occupier liable
after ceasing to oc-
cupy.Board may make
reasonable charges
for water.Certain land ex-
empted from contri-
buting.How rights of ow-
ners or occupiers of
land to water to be
dealt with.

46. The board may, in suing for the recovery of rates, proceed against the owner or occupier, either separately or both of them in one and the same action, each for the whole rate, in any competent Court, and recover the same by the judgment and process of such Court: Provided always that any occupier of property on which a rate has been assessed who is not the owner thereof, or who has not entered into such occupation in pursuance of any agreement for becoming the owner thereof, shall, in the absence of any agreement to the contrary, be enabled to retain or recover from such owner the amount of any rate he may have so paid, but not any costs or expenses which he may have incurred or been condemned to pay in the course of any suit or action brought against him by the board for non-payment of any such rate: And provided also that any person who as occupier may have become liable for any rate as aforesaid shall continue to be liable for such rate, although he may have ceased to occupy the property in respect of which the rate had been imposed.

47. It shall be lawful for a board, besides the rates hereinbefore mentioned, to make reasonable charges to be paid by and recoverable from any person buying, receiving, or using any supply of water stored by or belonging to the board in pursuance of and by the authority of this Act.

48. Notwithstanding anything in this Act contained, no land within an irrigation district, which land before the taking effect of this Act has been irrigated or improved by any of the means contemplated by this Act, shall be liable to contribute towards the irrigation rate of the district, unless it shall appear to the board that the value of such land has been increased by any works at any time executed, or acts done, by such board under this Act; and thereupon it shall be lawful for the board to assess such lands to the irrigation rate of the district at such increased value but no more: Provided always that the owner of such lands so assessed shall at all times have the same rights of appeal against such assessment as he would have if he were an ordinary ratepayer assessed to an irrigation rate under this Act.

49. Every board shall be bound to supply, free of all rates and charges, to the owner or occupier of any land within its district, who before the taking effect of this Act, by reason of tenure, prescription, or otherwise, shall be possessed of any right to any water from any river, stream, creek, water-course, dam, reservoir or water-channel, within such district as aforesaid, a quantity of water equal to that which he would have been entitled to from any such river, stream, creek, water-course, dam, reservoir, or water-channel, if this Act had not passed, such quantity if not mutually agreed upon between the board and the said owner or occupier, to be decided by arbitration as hereinafter provided; and if any such board shall neglect or refuse to supply such owner or occupier as aforesaid with such quantity of water as

aforesaid, the said board shall become liable in respect of the same to an action for damages at the suit of such owner or occupier in any competent Court: Provided always that it shall be lawful for the said board in all cases where, by reason of any works constructed or acts done by the said board in pursuance of this Act, the natural supply or flow of water which such owner or occupier shall be entitled to participate in as aforesaid shall have been improved or increased, to levy upon such owner or occupier a rate or rates in respect of such improved or increased supply or flow of water, subject always to the right of appeal which is hereby reserved to such owner or occupier in respect of such rate.

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50. The board shall appoint collectors and agents for the purpose of receiving the rates and charges payable under this Act; and in case of refusal or neglect on demand to pay such rates or charges as have accrued due unto the respective persons appointed to receive the same as aforesaid, the said board may sue for and recover the same by action in the Court of the Resident Magistrate of the district in which the defendant resides; or if the amount is beyond the jurisdiction of such Court, in any other competent Court; and may stop or cause to be stopped the water from flowing into the land or premises in respect of which such rates are in arrear by such means as the board shall think fit.

Board to appoint collectors and agents to receive rates and charges.

Board may also sue for recovery of.

51. When any order or rate has been made by the board, or any act done by them in pursuance of the powers of this Act, any person aggrieved by such order, rate, or act may, in case the amount which such person shall be liable to pay shall not exceed twenty pounds, appeal to the Court of the Resident Magistrate, and in case the amount shall exceed twenty pounds, may appeal to the Supreme Court, or when the land is situated within any district over which the Eastern Districts Court has jurisdiction, to the Supreme Court or to the said Court of the Eastern Districts, or to the Circuit Court, having jurisdiction in the matter, against any such order, rate, or act; and the said Court of Appeal may confirm, annul, or modify the same accordingly; but no such appeal shall be entertained unless it be made within three months next after the making of such order or rate or the doing of such act, nor unless notice in writing of such appeal, stating the nature and ground thereof, is served on the board twenty-one days at least previously to the day fixed for hearing such appeal, nor unless the appellants within ten days after the service of such notice shall enter into recognizances with two sufficient sureties, before a Justice of the Peace, conditioned duly to prosecute such appeal, and to abide by the order of the Court thereof.

Persons aggrieved by any order, rate, or act of board, may appeal.

PART V.

BORROWING POWERS OF A BOARD.

52. It shall be lawful for a board from time to time to borrow and take up at interest on the credit of any rates to be assessed

Board may borrow money on credit of rates or on other security.

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and levied as hereinafter provided, or on such other security as may be in the power of the board from time to time to offer, any sum or sums of money which may at any time be required by the board for the purpose of carrying into effect any of the objects or purposes of this Act; and for the purpose of securing the repayment of any sum or sums of moneys so borrowed on the credit of any rate or rates, together with such interest as aforesaid, to mortgage such rates or any part thereof to the person or persons who may advance such money: Provided always that no such loan as aforesaid shall be capable of being effected except under and by virtue of a resolution of the board at a meeting at which there shall be present not fewer than two-thirds of the members of such board: And provided also that no meeting of the board shall be competent to pass any such resolution unless each of the members shall have had at least twenty-one days' notice in writing of the day appointed for such meeting, signed by the secretary to the board, and stating that the question of such loan will come under the consideration of such meeting, which notice the secretary shall issue at the instance of any member of the board.

Loan to be raised by public tender except it be made out of funds provided by Parliament.

53. Whenever it shall be resolved by any board to raise any such loan as aforesaid, the same shall, except it be made out of funds provided for that purpose by Parliament as hereinafter mentioned, be taken up by public tender, after notice in the *Government Gazette*, and in some one or more newspapers published in or near the district, of not less than two months, calling for tenders for the sum or sums required.

Moneys borrowed to be secured by debentures issued by the board.

54. In all cases of moneys to be borrowed and taken up at interest by a board, under the provisions of this Act, it shall be lawful for such board to grant a security in the form of a debenture for such moneys under the seal of the said board to every person who shall advance the same; and every such debenture shall be numbered in the order of its execution, and shall set forth the amount for which it is issued and the rate of interest payable for the same, and the period to expire before the same shall upon notice become payable; and the moneys mentioned in each such debenture, with the interest thereon, shall be charged upon and paid by such board out of the rates to be levied by the board in respect of the provisions of this Act; and any such debentures may be transferred by endorsement thereon; and all persons to whom any such debenture shall be given, or the person entitled thereto by endorsement as aforesaid, shall be entitled to the moneys accruing and payable in respect of such debenture.

Sinking fund to be formed for the payment of loans

55. In order to discharge the principal money borrowed under the provisions of the Act on the security of the rates of any district, or otherwise as aforesaid, the board of such district shall every year appropriate and set apart out of such rates respectively a sum not less than one-fortieth part of each of the sums so borrowed respectively as a sinking fund, to be applied to paying

off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Government securities and to be increased by accumulation in the way of compound interest or otherwise, and shall from time to time pay off out of such sinking fund the said principal debts at such times and such manner as shall have been agreed upon by and between the board and the persons originally advancing such sums.

56. In every case in which it shall be resolved by a board to raise any such loan as aforesaid the board may present a petition to the Governor, setting forth a description of the proposed works and the purposes for which such loan is required, together with maps and plans of the same, the estimated cost of constructing such works, the nature of the security for the proposed loan, and praying that such loan may be advanced to the board out of funds provided for that purpose by Parliament; and thereupon it shall be lawful for the Governor, if he, with the advice of the Executive Council, shall think fit, after having considered the said petition, and caused such steps to be taken and such inquiries instituted for the purpose of ascertaining the correctness of the said petition, the soundness of the securities offered, and otherwise, as may seem expedient; to cause to be advanced out of any such funds as aforesaid such sum or sums of money as he may direct, upon the security set forth in the petition, or such other security as may seem to him desirable or expedient; and all moneys so lent and advanced as aforesaid shall be repaid with interest thereon at such times and in such manner by the said board as the Governor shall direct: Provided always that the Governor shall at all times dismiss such petition if it shall appear to him from any cause proper to do so: And provided, also, that any money advanced in consequence of any such petition shall be a first charge upon the rates, land, or other matter upon the security of which such advance is made, and no such advance shall exceed one-half of the value of the said security, such value to be fixed and ascertained by such competent person or persons as the Governor, with such advice as aforesaid, may appoint for the purpose.

57. Whenever any sum or sums of money shall have been advanced by the Governor as aforesaid to any board under the provisions of this Act, it shall be lawful for the Governor from time to time to appoint competent officers to inspect all lands and works in respect of which such advances may have been made; and thereupon it shall be lawful for such officers at all times to enter and inspect such lands and works as aforesaid, and if such lands shall not have been irrigated, or such works executed in a satisfactory and workmanlike manner, the officers shall report the same to the Commissioner of Crown Lands and Public Works, who shall thereupon take such steps as shall to him seem proper.

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Board may petition Governor for loan out of funds provided by Parliament.

Governor may grant or refuse loan.

Governor may appoint officers to inspect lands and works upon which loan has been made.

IRRIGATION BY PRIVATE OWNERS.

Owners of lands not within any irrigation district may apply to Governor for loan for works of irrigation or storage of water.

58. It shall be lawful for the owner of any lands within the Colony, not being within the limits of any irrigation district, who may propose to improve the same by works of irrigation or artificial storage of water, and may be desirous of obtaining an advance by way of loan from the Government for defraying the expense of such works, to make application to the Government for such advance, and such application shall be in writing, and shall contain such particulars of the land so proposed to be improved, the proposed manner of effecting such works, the estimated expense of effecting the same, and the estimated increase of the value of the lands to be produced by such works, as may enable the Governor to judge of the expediency of investigating or further proceeding upon such application, and every such application shall specify the estate or interest of the applicant in the lands to which such application shall relate, and shall state whether the advance applied for is intended to cover the whole or what portion of the expense of such works.

59. [Repealed by Act 7, 1880, § 6.]

Governor may cause lands, plans, estimates, and specifications of proposed works to be inspected and reported on.

60. The Governor shall if he shall think fit to entertain such application, cause the land, plans, estimates, and specifications of the proposed works to be inspected by an engineer or other competent person, who shall report his opinion thereon, and on the statements contained in the application, and if such engineer or person shall be of opinion that the proposed works will effect an improvement in the annual value of the land which will exceed the annual amount which can be charged thereon under this Act in respect of the advance applied for, and that the works are proposed to be effected in a substantial and durable manner, he shall annex to his report the plans, estimates, and specifications, or duplicates thereof, and the Governor may make such other inquiries and obtain such other information in relation to such application as he may think fit.

On receipt of report, Governor may grant a provisional certificate in certain cases.

61. Upon receipt of such report and information as aforesaid, it shall be lawful for the Governor, if with the advice of the Executive Council he shall think that an advance in respect of the whole or a proportional part of the cost of such works would be expedient, to cause to be issued to the owner of the lands by whom such application shall have been made, or to the owner for the time being of such lands, a provisional certificate, declaring that upon its being shown to the satisfaction of the Commissioner of Crown Lands and Public Works that the proposed works have been executed according to the plans and specification of the same, in a substantial and durable manner, such Commissioner will authorise the Treasurer-General to make an advance or advances to an amount not exceeding the amount of the whole, or of such

proportional part, as in such provisional certificate shall be expressed, of the expenses which shall have actually occurred in the construction of such works as aforesaid, but limited not to exceed a certain sum in such provisional certificate to be expressed; and such provisional certificate may declare that so often as any part of the works as aforesaid expressed to be undertaken in such certificate shall have been completed to the satisfaction of the said Commissioner, the Treasurer-General may cause an advance on account of such part of such works so executed, to be made, but no such advance on account shall exceed in amount two-thirds of the sum then actually expended: Provided always that no such provisional certificate as aforesaid shall be issued until notice shall have been given by the Commissioner of Crown Lands and Public Works of the application for the advance to which such provisional certificate shall relate by advertisement for four successive weeks in the *Government Gazette* ⁽¹⁾ and in some one or more newspapers circulating in or near the district within which such land may be situate, and two months shall have elapsed from the publication of the last of such advertisements, nor until a copy of such notice as aforesaid shall have been served upon every mortgagee, if any, of such lands personally, and upon every other person who shall to the knowledge of the Commissioner of Crown Lands and Public Works have any estate in or charge upon such lands as aforesaid.

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Provisional certificate not to be issued until notice has been given in *Gazette* of the application.

Copy of notice to be served on certain persons.

62. If within four months from the date of such service as aforesaid any person having any estate in or charge upon the land to which any such applications shall relate shall signify in writing to the Commissioner of Crown Lands and Public Works his dissent from such application, and state the nature of his estate in or charge upon such land, the said Commissioner shall give notice of such dissent to the owner of the land by whom such application shall have been made, and such provisional certificate shall not be issued unless or until such dissent shall have been withdrawn.

Certain persons may dissent to such application within four months.

63. The Commissioner of Crown Lands and Public Works shall from time to time cause the works to which such provisional certificate shall relate to be inspected by an engineer or other competent person to ascertain the due execution of such works, and such engineer or other person as aforesaid may require the production of such vouchers, bills of account, or other documents as may enable him to ascertain such due execution and the amount of the expense which shall have been actually incurred in the execution of such works.

Commissioner of Crown Lands and Public Works to cause such works to be inspected.

64. When the Commissioner of Crown Lands and Public Works shall be satisfied by the report of such engineer or other person as aforesaid that the works referred to in any provisional certificate as aforesaid have been executed according to the terms and conditions of such certificate, or that such part thereof as under the

If Commissioner is satisfied by report of such inspector he shall authorise the advance in terms of certificate.

¹ Amended by Act 7, 1880, § 1.

No. 8—1877.

terms of such certificate would authorise an advance on account has been so executed, and shall be satisfied by such report that such expense has been actually incurred as will justify the advance according to the terms of the said certificate, he shall, by writing under his hand addressed to the Treasurer of the Colony, specifying the sum to be advanced and the person to whom it is to be paid, and the land by reason of the irrigation whereof or the artificial storage of water whereon such advance is to be made, require the payment of such sum to the said person; and the Treasurer on receipt of such writing as aforesaid shall thereupon advance such sum accordingly, and shall cause the same to be recorded in the books of his office. (1)

Before any advance is issued the owner shall pass an instrument before registrar of deeds charging such land with a rent charge at the rate of eight per cent.

65. Before the issue as aforesaid of any advance by virtue of a certificate under this Act, the owner of the land mentioned in such certificate shall pass or cause to be passed an instrument in writing before the Registrar of Deeds (which shall not be chargeable with stamp duty), charging such land with the payment to the Civil Commissioner of the district in which such land is situate, in respect of such advance of a rent-charge after the rate of eight pounds for every one hundred pounds of such advance, and so in proportion for any lesser amount, and to be payable for the term of twenty-four years, to be computed from the issue of such advance, such rent-charge to be paid by equal yearly instalments, commencing from the date of the issue of any such advance as aforesaid to the Civil Commissioner aforesaid, and in case of the non-payment of any such rent-charge as aforesaid the same shall be recoverable by action in any competent Court at the suit of the Treasurer of the Colony. (2)

Such rent-charge to be preferent.

66. Every such rent charge as aforesaid shall be a first and preferent charge upon the land in respect of which it is payable, and no transfer of any such land shall be made in the office of the Registrar of Deeds until the receipt of the proper officer for the payment of the last yearly instalment of such rent-charge and the consent of the Commissioner of Crown Lands and Public Works shall have been produced to and deposited with the said Registrar.

So long as rent-charge continues, the person bound to pay shall uphold the works and certify to the Commissioner the state of the works, &c.

67. So long as any land shall continue to be charged with any such rent-charge as aforesaid, the persons for the time being bound to pay the same shall be bound to uphold the works on account of which the land shall have been charged therewith, and shall once in every year certify to the Commissioner of Crown Lands and Public Works the state of such works, and in default of so keeping and upholding the said works shall be liable to an action at the suit of the said Commissioner for such default and for any damage thereby occasioned.

¹ See Act 7, 1880, § 2.

² See Act 7, 1880, § 3. In lieu of this rent charge there shall be payable in respect of all such loans the amount set forth in the Schedule to Act 11 of 1882. See Act 10, 1893.

PART VII.

No. 8 - 1877.

ARBITRATION.

68. In case of dispute as to the amount of compensation to be made under the provisions of this Act (except when the mode of determining the same is specially provided for,) and in case of any other matter arising or existing which by this Act is authorised or directed to be settled by arbitration, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator to whom the dispute or matter shall be referred; and every such appointment when made on behalf of an irrigation board shall be under the seal of such board and signed by the secretary to such board, and on behalf of any other party, under his hand; and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration by the parties making the same; and after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute or matter shall have arisen, and after a request in writing in which shall be stated the dispute or matter so required to be referred to arbitration shall have been served by one party upon the other party to appoint an arbitrator, such last named party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and the award or determination of such single arbitrator, or of any arbitrator or arbitrators appointed in pursuance of this Act, shall be binding, final, and conclusive upon all persons and to all intents and purposes whatever.

Mode of proceeding to arbitration where not otherwise specially provided under this Act.

69. If before the determination of any matter so referred any arbitrator shall die, or refuse, or become incapable to act, the party by whom such arbitrator was appointed may appoint, in writing, another person in his stead, and if he fail so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrators may proceed *ex parte*, and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made; and in case a single arbitrator shall die, or refuse, or become incapable to act before the making of his award, or fail to make his award within twenty-one days after his appointment, or within such extended time, if any, as shall have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act as if no former reference had been made.

Procedure in case arbitrator shall die or refuse or become incapable to act.

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If more than one arbitrator is appointed they must appoint an umpire.

In case of refusal or neglect so to do the resident magistrate may appoint umpire.

If one arbitrator refuses or neglects to act, the other may proceed *ex parte*.

If arbitrators neglect to make their award within prescribed time the umpire may determine the matter.

Time of making award limited to three months, unless by consent of parties.

Arbitrator or umpire may examine witnesses on oath and call for documents.

Award may be made rule of court.

Mode of making award.

70. When more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, refuse or become incapable to act, they shall forthwith, after such death, refusal, or incapacity, appoint another umpire in his place, and the decision of every such umpire on the matter so referred to him shall be final.

71. If the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Resident Magistrate of the district in which the land in respect of which the dispute arises is situate, or if the dispute is not in respect of land, the Resident Magistrate of the district in which the dispute arose shall on the application of either party to such arbitration appoint an umpire, and the decision of such umpire on the matters on which the arbitrators differ shall be final.

72. If when more than one arbitrator shall have been appointed either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been a single arbitrator appointed by both sides.

73. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid: Provided always that unless by consent of all parties the time for making an award under this Act shall not be extended beyond a period of three months to be computed in the case of an arbitrator or arbitrators from the date of the appointment or last appointment of such arbitrator or arbitrators, or when an umpire has been chosen, from the date of the appointment of such umpire.

74. Any arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession of either party as he may think necessary for determining the matters referred, and may examine the parties or their witnesses upon oath; and the costs of and consequent upon any reference under this Act shall be in the discretion of the arbitrator, arbitrators, or umpire, and any submission to arbitration under the provisions of this Act and any award made thereon may be made a rule of Court on the application of any party thereto.

75. Every award under this Act shall be in writing under the hand of the arbitrator, arbitrators, or umpire, as the case may be, and in duplicate, and shall be transmitted by such arbitrator,

arbitrators, or umpire to each party or the agent of each party; and where the Government is a party, to the Commissioner of Crown Lands and Public Works, and shall be deposited in his office; and no award made under the provisions of this Act shall be set aside for irregularity or error in matter of form.

No. 8—1877.

76. In estimating the purchase-money or compensation to be paid by any irrigation board or private owner under the provisions of this Act, regard shall be had by the arbitrators or umpire as the case may be, not only to the value of the land, premises, works, or materials, to be purchased, taken, removed, or interfered with, but also the damage, if any, to be sustained by the owner of such lands, premises, or works, by reason of the severing of such lands, premises, or works from the other lands, premises, or works of such owner, or otherwise injuriously affecting such other lands, premises, or works, by the exercise of the powers of this Act.

Mode of estimating purchase money or compensation.

PART VIII.

MISCELLANEOUS.

77. When any notice is required to be given by a board under this Act, such notice shall in all cases be sufficiently executed if signed by the secretary to the board; and every such notice purporting to be signed by such secretary shall be receivable in evidence before all legal tribunals and in all legal proceedings without further proof.

Notices to be signed by secretary.

78. All notices served by or on behalf of a board or an owner shall, if due service thereof has been made, be binding on all persons claiming by, from, or under such owner to the same extent as if such notice had been served on such last-mentioned persons respectively.

Notices served on owner to bind all persons claiming under him.

79. Except when a special mode of service is provided by this Act, all notices required to be served by or on behalf of an irrigation board upon any owner of land shall be served personally on such owner, or be left at his last usual place of abode, if any such can after diligent inquiry be found; but in case any such person is absent from this Colony, and his last usual place of abode cannot after diligent inquiry be found; such notices shall be left with the occupier of such land, or if there be no such occupier, shall be affixed upon some conspicuous place of such land.

Mode of service of notices on owners.

80. If any owner of land upon whom notice is to be served is a corporation, joint-stock or other company or body of proprietors, such notice shall be left at the principal office of such corporation, company, or body; or if no such office can after diligent inquiry be found, it shall be served on some officer or agent, if any, of such corporation, company, or body; but if no such officer or agent can be found, it shall be left with the occupier of the land, or if there be no such occupier it shall be affixed on some conspicuous place on such land.

Mode of service of notices on corporations, &c.

No. 8—1877.

Boards may make by-laws and regulations.

81. It shall be competent for every board constituted under this Act, from time to time, to make by-laws and regulations for the regulation of their own proceedings and those of their officers, and for the levying, making, and collection of all rates and charges authorised to be made by this Act; and for determining the times and seasons at which it may be expedient to permit or prevent the flow of water throughout the whole or any portion of any river, stream, creek, watercourse, or water channel in which locks, dams, or other obstructions or works may have been placed, commenced, or constructed by any board under this Act; and for regulating the use of water in any reservoirs, tanks, or dams constructed or maintained by the board under the provisions of this Act, or touching and concerning the supply and distribution of all water running in a natural river or other course in their district, or in any artificial course or channel common to two or more of the owners of land in their district, or contained or collected in any dam, reservoir, vley, common, as aforesaid; and for enforcing by penalties, not exceeding ten pounds for any breach thereof, the observance of such by-laws and regulations; and from time to time to repeal or alter such by-laws or regulations, and make others: Provided that such by-laws and regulations be not repugnant to the provisions of this Act; and all such by-laws and regulations, on being confirmed by the Governor, with the advice of the Executive Council, and published in the *Government Gazette*, shall have the force of law, and shall be binding upon and observed by all persons, and shall be sufficient to justify all persons acting under the same; and copies of all such by-laws and regulations shall be kept in a conspicuous place in the chief office of the board, and shall be supplied to all officers and servants of the board, and to all persons resident within the district and rated by the board for the purposes of this Act, on their demanding a copy of the same and paying for the same a reasonable sum, not exceeding two shillings for each publication of any such by-laws and regulations.

Penalty for fraudulently taking water.

82. Any person fraudulently taking water from any river, stream, creek, watercourse, water-channel, reservoir, dam, vley, or other place belonging to, or under the charge of, or where water is conserved or stored by a board under this Act, or for which water-rent is leviable by the said board, or fraudulently taking more water than he has engaged to pay for, shall, in addition to any other penalty or punishment, be chargeable with double rates for all water so taken.

Penalty for pollut ing water.

83. No person shall, without the consent of the board, cause any filthy or unwholesome water or washings of manufactures or mines, or other foul, noxious, or poisonous liquid to flow into any river, stream, creek, watercourse, water-channel, dam, reservoir, vley, well or drain within the district of or belonging to or in charge of such board; and any person so offending against this enactment

shall incur a penalty not exceeding twenty pounds, and a further penalty of forty shillings for every day during which the offence is continued: Provided, always, that this section shall not apply to any person having a legal right to cause such water, washing, or liquid as aforesaid, to flow into any existing river, stream or watercourse; And provided also that neither the liability to nor the payment of any such penalty shall relieve the offender from any civil action to which he would be liable.

84. Any person who shall wilfully obstruct, impede, or interrupt a board or any officer thereof, or any person authorised by or on behalf of the Government to inspect or report upon any lands, premises, or work under this Act, in the execution of any duty authorised under this Act, and any person who shall wilfully break down, destroy, or injure any lock, dam, reservoir, vley, embankment, or any other work erected or constructed or in course of erection or construction by or under the direction of a board under this Act, or shall knowingly or wilfully hinder the flow or cause the escape of any water in, or retained, or held by or in any river, stream, creek, or watercourse, water-channel, dam, reservoir, vley, well, or drain within the district of and belonging to or in charge of any such board, or shall, except with the permission of the board, erect any new dam or other work in any such river, stream, creek, watercourse, water-channel, dam, reservoir, vley, well, or drain, shall on conviction be liable to a penalty of not exceeding fifty pounds, and on default of payment thereof, to be imprisoned with or without hard labour for a period not exceeding six months.

85. All offences against any of the provisions of this Act, or against any of the bye-laws or regulations framed by any board, and authorised according to the provisions of this Act, shall be heard and determined by the Resident Magistrate of the district wherein such offences shall have been committed; and all penalties and sums of money directed by this Act to be recovered shall be recovered in the same manner and before such Resident Magistrate as aforesaid; and all costs, charges, and expenses incurred by a board in instituting or defending any legal proceedings whatever, instituted or defended by them by virtue of the provisions of this Act in their character of an irrigation board, may be defrayed out of the rates leviable by them; and no member of a board shall be personally liable in respect of any such costs, charges, and expenses; and all penalties to be recovered under this Act by or at the instance of any irrigation board may be proceeded for by the secretary of the board or by some person appointed by the board, and shall be paid to such board.

86. Nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement that may have been entered into between any landlord and tenant before the passing of this Act.

87. Every board constituted under this Act shall keep true and particular accounts of all moneys received and expended by them

No. 8—1877.

Penalty for obstructing, impeding, or interrupting a board or any officer, &c., inspecting or reporting under this Act.

Offences to be prosecuted in resident magistrate's court.

Certain leases, &c., not affected by this Act.

Account of revenue and expenditure to be kept.

No. 8—1877.

in execution of this Act, and shall within one month after the thirty-first day of December in each year render the accounts as aforesaid for such year, signed by the chairman and secretary of the board, to the Auditor-General who, after examination of the same, shall cause them to be delivered to the Commissioner of Crown Lands and Public Works, by whom the same shall, as soon as may be, be published in the *Government Gazette*, and laid before both Houses of Parliament.

Construction of terms.

88. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction, that is to say:

The word "lands" shall extend to lands, premises, and tenements of any tenure.

The word "owner" in this Act shall be deemed and taken to mean the person who is registered as the owner in the Deeds Registry, or the person who, claiming through such registered owner, is entitled to be so registered: Provided that where any owner or mortgagee is a minor, or of unsound mind, or has assigned his estate for the benefit of his creditors, the tutor, guardian, curator, trustee, or assignee, as the case may be, of such minor, person of unsound mind, insolvent, or owner who has assigned his estate as aforesaid, shall be deemed to be the owner or mortgagee within the meaning of this Act; and where several persons are jointly appointed executors, tutors, curators, trustees, or assignees, they shall for the purposes of this Act be accounted as one owner. The concurrence of the owners of two-third parts of such land shall be deemed to be the concurrence of the whole.

The word "person" in this Act shall include the Government, Divisional Councils, Municipalities, Corporations, Joint-stock and other companies and partnerships.

Returning officer.

89. The returning officer for an Irrigation District under this Act shall be the Resident Magistrate of the Magisterial District in which the Irrigation District is situated, or if an Irrigation District extends to more than one Magisterial District such Resident Magistrate or other person whom the Governor may appoint shall be the returning officer for such Irrigation District.

Board to exercise powers given under Act 24, 1876.

90. Every irrigation board constituted under this Act shall be competent to exercise all and singular the powers given to any persons by and under "The Right of Passage of Water Act, 1876." (1)

¹ Act 24, 1876, repealed by Act 26, 1882.

No. 9—1877.]

[August 8, 1877.]

ACT

To Authorise the Leasing of Crown Lands supposed to contain certain Minerals. (1)

WHEREAS in order to encourage the search for minerals in Crown lands it is advisable that power should be given to lease the same upon certain terms as hereinafter mentioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. So much of the Act No. 2 of 1860, intituled "An Act for regulating the manner in which Crown Land at the Cape of Good Hope shall be disposed of," and the schedule thereto; of the "Crown Land Act, 1864," and of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, is hereby repealed.

2. All Crown land containing, or supposed to contain, mineral deposits, may be let on lease for mining purposes for such term as the Governor may prescribe. (2)

3. [Repealed by Act 15, 1883.]

4. All such leases shall be executed by the Surveyor-General on behalf of the Government on the one part, and by the lessee of the other part.

5. Every lessee of any such land shall be bound to pay an annual ground rent of five shillings per morgen for every morgen of land comprised in his lease, and shall also be bound to pay a sum to be fixed by the Governor with the advice of the Executive Council, of which notice shall be given in the *Government Gazette*, not exceeding ten shillings upon or for every ton of ore raised from the land comprised in his lease; and for the purpose of this Act, a ton shall be taken to mean 2,352 lb. weight.

6. The payments aforesaid shall be made to the Civil Commissioner of the division in which the land is situated, or to such other person as the Governor shall from time to time nominate and appoint.

7. Every lessee under this Act shall be bound to keep a book or books in which shall be daily entered the true quantity of ore raised from the land leased under this Act; and all such books shall be open to inspection by the Civil Commissioner of the division, or any person authorised by him in writing to inspect the same, at all reasonable times: and if any such lessee as aforesaid shall not keep or cause to be kept such a book or books as

¹ See also Acts 19, 1883, and 18, 1894. Extended by Proclamation No. 83 of 1888 to Transkei; by Proclamation No. 62 of 1890 to Griqualand East; and by Proclamation No. 63 of 1890 to Tembuland.

² Printed as amended by Act 15, 1883, § 1. See also § 32, Act 19, 1883.

- No. 9—1877.
Penalty.
- Lessee to make certain declaration every year.
- Penalty.
- Lessee may sub-let with Governor's consent.
- Lease can be cancelled by Governor under certain circumstances.
- Holder of existing leases may obtain fresh leases under this Act.
- Lessee not to mine or excavate beyond the limits of his land.
- aforesaid, or shall fail to enter or cause to be entered therein daily the quantity of ore raised as aforesaid, or shall refuse to allow inspection of any such book or books as aforesaid, he shall be liable to a penalty of not exceeding £100, or to be imprisoned with or without hard labour for not exceeding six months.
8. Every lessee under this Act shall be bound within fourteen days after the expiration of each year of his lease to make, before a Resident Magistrate or Justice or the Peace, a solemn declaration in the form as near as may be in the schedule hereunto annexed, stating the true quantity of ore raised from the land comprised in his lease during the then expired year of his lease; and every person who shall make such a declaration, knowing the same to be untrue in any material particular shall be deemed to be guilty of the crime of contravening this section, and shall upon conviction thereof be liable to be imprisoned with or without hard labour for not exceeding twelve months, or to a fine of not exceeding £100.
9. Every lessee under this Act may, with the consent of the Governor signified by any writing under the hand of the Surveyor-General but not otherwise, assign his lease or sublet the land contained therein.
10. If at the expiration of the first and of each succeeding term of three years during the continuance of any such lease as aforesaid there shall not have been raised from the land comprised in such lease during the three years which shall have last expired, a quantity of ore of not less than fifty tons, the Governor shall have the right, should it appear fit and proper to do so, with the advice of the Executive Council, to cancel the said lease, and resume the land comprised in it: Provided that it shall not be competent for the Governor to claim such redemption later than three months next after the expiration of the term of three years during which term the quantity of ore raised as aforesaid shall not have been fifty tons: Provided also that as often as the lessee shall satisfy the Governor that the land comprised in his lease has been, is being, or is about to be worked in a fair *bonâ fide* manner, then such land shall not be resumed under the provisions of this section.
11. All persons holding, or being entitled to, existing leases or rights of occupation of Crown lands for mining purposes, may, upon the taking effect of this Act, surrender such leases or rights, and thereupon obtain leases under this Act, to commence from the date of such leases.
12. No lessee shall be entitled to carry any mine or excavation, either above ground or under ground, made in or at the land comprised in his lease, beyond the limits of the said land; and the Civil Commissioner of the division, and any person authorised by him in writing, shall be at all times entitled to visit the land comprised in any lease granted under this Act, and to inspect the works there carried on.

13. No lease granted under this Act shall convey to the lessee any right or title to any gold, silver, or platinum, or to any precious stones, which may be found in or on the land comprised in his lease. No. 12—1877.
Reservation in lease.

14. This Act may be cited for all purposes as the “Mineral Lands Leasing Act, 1877.” Short title.

SCHEDULE.

I, A. B., do solemnly and sincerely declare that the quantity of ore raised from the land situate at _____, leased by me under the “Mineral Lands Leasing Act, 1877,” during the year of my lease recently expired, is _____ tons and no more; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the eighth section of the said “Mineral Lands Leasing Act, 1877.” Schedule.

(Signed) A. B.

Declared before me at _____ this _____ day of _____, 187—.

(Signed) C. D., Resident Magistrate or Justice of the Peace.

No. 10—1877.] [August 8, 1877.]

An Act to provide for the disposal of Crown Land in this Colony to certain Agricultural Immigrants.

[Repealed by Act 37, 1882.]

No. 11—1877.] [August 8, 1877.]

An Act to amend the Law relating to Roads.

[Repealed by Act 40, 1889.]

No. 12—1877.] [August 8, 1877.]

ACT

For the better preservation of certain Trigonometrical Stations and Land Beacons.

WHEREAS certain Trigonometrical Stations have been accurately determined at various points in this Colony, and beacons erected at such points at considerable expense; and whereas there is reason to believe that some of the said beacons have been injured or destroyed, and it is important, in view of the future extension of trigonometrical surveys as well as for other purposes connected with the survey and allotment of Crown land and the partition of private property, that the beacons aforesaid should be preserved and maintained: Be it enacted by the Governor of the Cape of Preamble.

No. 12—1877.

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

Certain officers may enter on lands and erect signals or beacons.

1. It shall be lawful for the Surveyor-General or any officer employed by him, by himself, his servants, horses, wagons, or other vehicles, and the animals drawing the same, to enter upon any land, whether belonging to the Crown or to a private individual, and to erect thereon any signals or beacons for the purpose of a trigonometrical survey of the Colony or of any part thereof, or for the survey of Crown land under the provisions of any Act or Acts applicable to the disposal of such land, or for the purpose of examining and, if necessary, repairing or recovering or causing to be recovered or repaired any signal or beacon that may be already in existence; and it shall also be lawful for the Surveyor-General or officer employed by him as aforesaid to take material for the purpose of such repairs from the farm whereon such signal or beacon is situate, provided that no injury be done thereby to land which has been improved by cultivation or otherwise, or if such injury be done then the owner or owners of the said land shall be compensated, such compensation being determined in the manner set forth in the twelfth section of Act No. 9, 1858, entitled "An Act to provide for the management of the Public Roads of the Colony."

Penalty for injuring, removing, or destroying beacons.

2. If any person shall unlawfully and wilfully injure, remove, or destroy, or cause to be injured, removed, or destroyed, any signal or beacon already erected, or to be hereafter erected, for any of the aforesaid purposes, whether such signal or beacon be upon his own property or not, he shall be liable to a fine of not exceeding fifty pounds sterling, and in case of non-payment thereof, to imprisonment with or without hard labour for any term not exceeding three months.

Penalty for obstructing, &c., duly authorised persons from entering lands.

3. If any person shall obstruct, hinder, or prevent the Surveyor-General, or any person duly authorised by him in that behalf, or the servants, horses, wagons, or other vehicles, and the animals drawing the same, of such Surveyor-General or other person from entering upon any land for any of the aforesaid purposes, or from erecting, repairing, or examining any signals or beacons as aforesaid, or from doing what may be required for the purpose of any such survey as aforesaid, he shall be liable to a fine of not exceeding twenty pounds sterling, and, in case of non-payment thereof, to imprisonment, with or without hard labour, for any term not exceeding two months.

Fines may be recovered in resident magistrate's court.

4. All fines imposed under or by virtue of this Act may be recovered by criminal process in the Court of the Resident Magistrate of the district in which the offender resides; but the person condemned may, if he feels himself aggrieved, appeal to the Supreme Court, the Court of the Eastern Districts, or the Circuit Court for the district as the case may be, first paying the penalty and giving security to the satisfaction of the Resident Magistrate for the costs of the appeal.

Appeal

No. 13—1877.]

[August 8, 1877.]

ACT

To Amend the Law relating to the Dealing in Gunpowder and Firearms.

WHEREAS it is expedient that the law relating to the dealing in gunpowder and firearms should be amended as hereinafter provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the taking effect of this Act the 16th section of the Ordinance No. 81, intituled "Ordinance for the better regulation of the trade carried on beyond the land boundaries of this Colony between the inhabitants thereof and the Kafirs and other natives residing in Africa." the 10th section of the Ordinance No. 7 of 1834, intituled "Ordinance for regulating the trade in gunpowder within this Colony," the 2nd section of the Act No. 14 of 1866-67, intituled "An Act to amend Ordinance No. 2 of 1853, relative to the issuing of licences and permits for the purchase of gunpowder, firearms, and lead, and to extend the operation of section 2 of the Act No 14 of 1857"; so much of the Ordinance No. 2 of 1853, intituled "Ordinance to regulate till the expiration of the year 1854 the dealings in gunpowder, firearms, and lead"; and so much of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act shall be and are hereby repealed: Provided that such repeal shall not affect anything done under any of the said repealed enactments, but the same shall be in the same position as if the said enactments were still in force.

Repugnant law repealed.

2. It shall be lawful for the Governor, with the advice of the Executive Council, when, and as often as he shall see fit, by proclamation to be issued for that purpose and published in the *Govern-ment Gazette*, to prohibit, throughout the whole, or such part or parts of this Colony as he shall see fit, the issue of gunpowder and percussion caps, or either of such articles, from any bonding store or magazine, for such time as may be fixed in that behalf in any such proclamation; or to subject such issue, during such time as aforesaid, to such conditions, to be mentioned in any such proclamation, as may to him, with such advice as aforesaid, seem necessary or expedient; and any person who shall issue any gunpowder or percussion caps from any bonding store or magazine after the issuing of the same shall be prohibited as aforesaid, or who shall issue the same contrary to, or without observing, or performing, the conditions prescribed in any such proclamation, shall, upon conviction thereof, be liable to a fine of not exceeding five hundred pounds, or to be imprisoned with or without hard labour for not exceeding five years, or to both such fine and such imprisonment.

Governor may prohibit the issue of gunpowder and caps from stores or magazines.

No. 13—1877.

Certificates not to be granted to certain persons without special permission.

3. No person shall give, sell, or barter, or give or grant any permit, licence, or certificate authorising any gift, sale, or barter within this Colony to any person usually residing beyond the boundaries of the same, and whom such person shall know, or shall have reason to believe, belongs to any of the native tribes beyond the said boundaries, any fire-arm, part of a fire-arm, gunpowder, or percussion caps, unless with the permission in writing to that effect of the Colonial Secretary or Secretary for Native Affairs, or of some person duly authorised in that behalf by either of such Secretaries, under a penalty for each offence of not exceeding five hundred pounds, or imprisonment with or without hard labour for not exceeding five years, or to both such fine and such imprisonment.

Penalty.

Guns, &c., not to be removed beyond the boundary without licence.

4. No person shall remove or convey, or cause or procure to be removed or conveyed, from any part of this Colony to any place beyond the land boundaries thereof, any fire-arm or part of a fire-arm, or any gunpowder or percussion caps, not being for the private use of such person, without having a licence for conveying or removing the same signed by the Colonial Secretary or the Secretary for Native Affairs, or by some person duly authorised in that behalf by either of such Secretaries; and it shall be lawful, as a condition of the grant of any such licence, for the person granting the same to impose such terms or conditions upon the grant of the same as to him may seem proper; and any person who shall remove or convey, or cause or procure to be removed or conveyed, from any part of this Colony to any place beyond the land boundaries thereof, any fire-arm, part of a fire-arm, gunpowder, or percussion caps, not being for the private use of such person, without having a licence as aforesaid, or who shall fail to perform or who shall break any of the conditions upon which such licence was granted, shall be liable to a fine of not exceeding five hundred pounds, or to imprisonment with or without hard labour for not exceeding five years, or to both such fine and such imprisonment.

Penalty.

Interpretation clause.

5. In this Act, and in all other laws relating to the dealing in gunpowder, the word "gunpowder" shall, unless there is something in the context repugnant thereto or inconsistent therewith, be taken and construed to include cartridges containing gunpowder.

Short title.

6. This Act may be cited as the "Gunpowder and Fire-arms Act, 1877."

No. 14—1877.]

[August 8, 1877.]

An Act To Regulate the Postage payable in this Colony upon Letters and other matters arriving from certain other places.
[Repealed by Act 4, 1882.]

No. 15—1877.]

[August 8, 1877.]

ACT

To Amend the Law relating to Stamp Duties.

WHEREAS, by the "Resident Magistrates' Court Act,⁽¹⁾ 1876," the jurisdiction of Resident Magistrates was in certain cases extended, and it is therefore necessary to provide for the stamp duties to be paid on documents falling within such extended jurisdiction: and whereas it is expedient in other respects to amend the law relating to stamp duties: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The tariff numbered nineteen, headed "Magistrates' Courts," annexed to the schedule to "The Stamp Act,⁽²⁾ 1864," paragraph 4 of the tariff numbered fifteen in the same schedule headed "licences," and so much of the said Act, of "The Stamp Act,⁽³⁾ of 1870," and of the schedules to the said Acts, as are repugnant to or inconsistent with any of the provisions of this Act or of the schedule hereto, shall be and are hereby repealed.

Repugnant laws repealed.

2. The tariff in the schedule to this Act contained and numbered nineteen shall take the place and be in stead of the tariff numbered nineteen hereby repealed, and shall have the force of law accordingly; and all and singular the several explanations, conditions, directions and provisions contained in the said schedule to this Act shall be of the same force and effect as if the same had been contained in the body of this Act,

Substituting tariff in schedule for repealed tariff.

3. From and after the first day of January next no licence under "The Stamp Act, 1864," as or for an apothecary, chemist or druggist, shall be issued to any person who has not obtained the licence enabling him to practise as such mentioned in the third section of the Ordinance No. 82,⁽⁴⁾ intituled "Ordinance for altering and amending the Laws and Regulations relating to Medical Practitioners and Apothecaries in this Colony"; and if any such licence under the said Stamp Act shall be issued to any such unlicensed person the same shall be void and of no effect.

Apothecary's licence to be issued to qualified practitioners only.

4. A licence as an apothecary, chemist or druggist issued under the said Stamp Act, 1864, shall cover all dealings as an apothecary, chemist and druggist, as well as all dealings covered by a retail shop licence, and must be taken out by every surgeon, doctor of medicine, or other person selling or supplying any medicines other than patent and homœopathic medicines and medicines commonly known as "Dutch medicines."

Apothecary's licence to cover certain dealings.

5. Every wholesale and every retail licence shall authorise the sale of patent and homœopathic medicines, of the medicines com-

Must be taken out by surgeons, &c.

¹ No. 21.² No. 3.³ No. 13.⁴ Act 34, 1891, takes the place of this Ordinance.

№ No. 15—1877.

Medicines which may be sold under wholesale or retail licence.

¶ Instruments insufficiently stamped may be rectified.

Procedure to compel notary to stamp any instrument.

monly known as “Dutch medicines,” and of any article or thing which although used as a medicine is not solely used as such and is not mixed or prepared for use as a medicine; and no licence as an apothecary, chemist or druggist shall be necessary for the sale of any such things as in this section mentioned.

6. If any instrument required to be stamped with a stamp or stamps of a particular amount or value shall be stamped with a stamp or stamps of less than the required amount or value, such instrument may afterwards be stamped with an adhesive stamp or stamps to make up the required amount or value affixed and cancelled as mentioned in the fourteenth section of the said “Stamp Act, 1864”; and the double and treble duty mentioned in the said fourteenth section, and the stamps of not less than five times the value of the stamp in the eighteenth section of the said Act mentioned shall be calculated upon the value of the deficiency of value or amount of duty instead of on the value or amount of duty originally required.

7. Besides the penalty mentioned in the sixteenth section of the said “Stamp Act, 1864,” the notary public who has prepared or attested an instrument not stamped at all, or insufficiently stamped, so as to render him liable to the said penalty, shall be obliged, upon notice in writing given to him to that effect by any commissioner for the examination of notaries’ protocols, to cause such instrument to be forthwith properly stamped at his own expense; and in case of his not doing so it shall be competent for the Supreme Court, upon the application of the Attorney-General, to order him to do so, and in default of compliance with such order to suspend him for such period and upon such terms as to such Court shall seem to be proper under the circumstances.

8. [Repealed by Act 20, 1884, schedule 1.]

9. This Act may be cited as the “Stamp Act, 1877,” and shall be read as one with the Stamp Act, 1864, and the Stamp Act, 1870, and the said Acts may be cited together as the “Stamp Acts, 1864, 1870, and 1877.”

SCHEDULE.

19. Magistrates’ Courts.

Schedule.

	£	s.	d.
On every liquid document upon which judgment is prayed for an amount not exceeding £10 ..	0	0	6
For an amount exceeding £10 and not exceeding £20	0	1	0
And for each additional £10 or fractional part thereof	0	0	6
On every document of which a copy must, by the 10th rule of the Resident Magistrates’ Courts, be served upon the opposite party.. .. .	0	0	6
On every authority to sue or defend	0	0	6

	£	s.	d.
On every summons for an amount not exceeding £10	0	0	6
For an amount exceeding £10 and not exceeding £20	0	1	0
And for each additional £10 or fractional part thereof	0	0	6
On every warrant of execution not exceeding £50	0	0	6
Exceeding that amount	0	1	0

1. Summonses must either be written upon stamped paper or have an adhesive stamp of the proper denomination affixed thereon, and cancelled by writing on such stamp the name of the cause in which it is issued. The other documents mentioned in this tariff may be covered with stamped paper.

2. The stamps upon all documents issued by any officer of a Resident Magistrate's Court, or upon the paper covering such documents, shall, before being issued, be cancelled by the officer issuing the same by writing his name or initials upon such stamp together with the date.

3. As often as provisional sentence shall be prayed upon or in regard to any liquid document which shall, before being produced in Court, have been duly stamped under the Stamp Act, 1864, or the Stamp Act, 1870, no other or covering stamp shall be necessary.

4. As often as any covering stamp shall be used upon any document delivered into the hands of any officer of the Court, such stamp shall before being received be cancelled by writing upon such stamp the name of the cause in which it is used, or in some similar way.

No. 16—1877.]

[August 8, 1877.]

ACT

To Provide for the Collection by means of Stamps of Fees payable in the Supreme Court and other Courts of this Colony, and in the Public Departments and Offices thereof.

WHEREAS it is expedient to provide for the collection by means of stamps of fees payable in the Supreme Court and other courts of law in this Colony, and in the offices belonging thereto, and in the other public departments and offices of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, by notice published in the *Government Gazette*, to declare and direct that from and after the time specified in such notice all or any of the fees for the time being payable in money in any court of law or in any public department or office in this Colony connected with the public service or to any officer thereof, in so far as such fees are payable into or accountable for to the public revenue of the

Governor to give notice of day after which fees will be payable by stamps and not in money in any office.

No. 16—1877.

Colony, shall be collected by means of stamps; and every such notice shall be in accordance with the form given in the schedule to this Act with such variations as circumstances may require, and, from and after the time specified in any such notice, the fees therein mentioned shall be received by stamps denoting the amount of fees payable and not in money.

Stamps used to be adhesive.
Documents to which the stamps are to be affixed.

2. All stamps to be used under this Act shall be adhesive.
3. When any fee comprised in any such notice is payable in respect of a document, the stamp denoting the amount of fee shall be affixed to such document; and when any such fee is payable, otherwise than in respect of a document, the stamp denoting the amount of fee shall be affixed to such document as the Governor may require to be used.

Duty of officer in respect to fees payable by stamps.

4. Every officer whose duty it may be to receive any fee or sum of money for any matter or thing to be done or performed, and for which payment is to be made by stamps, shall, before doing or performing such matter or thing, see that there is affixed to the document, instrument, matter, or thing in respect whereof the fee or sum of money is payable, a stamp of value not less than the fee or sum of money payable for the performance of such matter or thing, and shall immediately cancel such stamp by writing, or stamping, or impressing in ink on the same, his name or initials, and the date of such cancellation, so as effectually to obliterate and cancel such stamp, and so as not to admit of the same being used again.

Two or more stamps may be used instead of a single stamp

5. It shall be lawful when, and as often as occasion shall render it necessary so to do, to use two or more stamps for denoting or expressing the amount or value of any one stamp by this Act required; and all instruments stamped with any two or more stamps which shall together denote or express an amount or value not less than the amount or value of any single stamp so required shall be held and taken to be as good, valid, and effectual as if the said single stamp had been alone affixed.

Instruments over-stamped to be good and valid.

6. Every instrument which shall be stamped with a stamp or with stamps denoting or expressing a greater value or amount than that of the stamp appointed for such instrument under or by virtue of this Act, shall be deemed and taken to be as good, valid, and effectual as if the particular stamp so appointed had been used.

Documents to be properly stamped.

7. No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped, but if any such document is through mistake or inadvertence received, lodged, filed, or used without being properly stamped, or if it shall appear upon any such document being tendered in evidence or for any other purpose that the same through mistake or inadvertence has not been properly stamped, it shall be competent for any Court, Judge, or Resident Magistrate to order that the same be stamped with stamps of such amount beyond the fee due thereupon as may be thought reasonable, not exceeding five

times the amount of the stamp which should have been affixed thereon as in such order may be directed; and on such document being stamped accordingly the same, and every proceeding relative thereto, shall be as valid as if such document had been properly stamped in the first instance.

No. 16—1877.
Penalty.

8. The Governor may, from time to time, make such regulations as may appear to be necessary for carrying out this Act, and for regulating the use of stamps under it, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purpose of such stamps, and for ensuring the proper cancellation of stamps and keeping accounts thereof, and for issuing stamps in exchange for spoilt stamps; and all such regulations when published in the *Government Gazette* shall have the force of law, and shall be laid before both Houses of Parliament forthwith if Parliament be sitting, and, if not, then within twenty-one days after the commencement of the next session of Parliament.

Governor may make regulations.

9. Nothing in this Act shall interfere with the exercise by any authority of any power of altering, or otherwise regulating the amount of any fees for the time being, payable in any Court of Law in this Colony, or in any office connected therewith, or in any public department or office, or to the officers thereof.

Act not to interfere with power of altering, &c., fees.

10. All and singular the provisions of the 4th, 5th, 6th, 7th, 8th, and 9th sections of the Stamp Act, 1864, shall apply, *mutatis mutandis*, to the stamps required under this Act, as if they were stamps required by the said Stamp Act, 1864, or the schedule thereto.

Applying certain provisions of Stamp Act, 1864.

11. This Act may be cited for all purposes as "The Public Office Fees Act, 1877."

Short title.

SCHEDULE.

Office of the Registrar of the Supreme Court.

[Or as the case may be.]

Notice under the "Public Offices Fees Act, 1877."

Notice is hereby given, in pursuance of the provisions of the said Act, that from and after the _____ day of _____, the fees for the time being payable in the office of the Registrar of the Supreme Court (or as the case may be), or to the officers thereof, shall be collected by means of stamps.

No. 17—1877.]

[August 8, 1877.]

ACT (1)

To Provide for the more Convenient Administration of the Extradition Acts 1870 and 1873 of the Imperial Parliament.

Preamble.

WHEREAS by the Act of the Imperial Parliament, known as "The Extradition Act, 1870," it is amongst other things enacted that the said Act when applied by order in Council shall, unless it is otherwise provided by such order, extend to every British possession, but with the following among other modifications, namely:

No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under the said Act by the Police Magistrates and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone, and any prison in the British possession may be substituted for a prison in Middlesex.

And whereas by the said Act it is also enacted that

If by any Law or Ordinance made before or after the passing of the said Act, by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may by the Order in Council applying the said Act in the case of any foreign state, or by any subsequent order, either

Suspend the operation within any such British possession of the said Act or any part thereof so far as it relates to any foreign state, and so long as such Law or Ordinance continues in force there and no longer,

Or direct that such Law or Ordinance or any part thereof shall have effect in such British possession with or without modifications and alterations as if it were part of the said Act:

And whereas by another Act of the Imperial Parliament known as "The Extradition Act of 1873," it is enacted that the said Act shall be construed as one with "The Extradition Act of 1870," and that the said two Acts may be cited together as "The Extradition Acts 1870 and 1873":

And whereas it is expedient to provide for the more convenient administration within this Colony of "The Extradition Acts, 1870 and 1873," by conferring on the Resident Magistrates of the Colony the like powers and authorities in relation to the surrender of fugitive criminals as are by the said Acts vested in Police Magistrates and Justices of the Peace in the United Kingdom:

¹ See Act 22, 1882.

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

No. 19—1877.

1. This Act may be cited as “The Extradition Act, Cape of Good Hope, 1877.” Short title.

2. All powers vested in and acts authorised or required to be done by a Police Magistrate or any Justice of the Peace in relation to the surrender of fugitive criminals in the United Kingdom under “The Extradition Acts 1870 and 1873” are hereby vested in and may in this Colony be exercised by any Resident Magistrate in relation to the surrender of fugitive criminals under the said Acts. Certain powers vested in resident magistrates.

3. This Act shall not come into operation until Her Majesty shall by order in Council direct that this Act shall have effect within this Colony, as if it were part of “The Extradition Act, 1870,” but this Act shall thereafter come into operation as soon as such Order in Council shall have been publicly made known in this Colony. (1) Act not to come into force until Her Majesty shall order.

No 18—1877.]

[August 8, 1877.]

An Act to Repeal the Inter-Colonial Extradition Act, 1874.

[Not printed.]

No. 19—1877.]

[August 8, 1877.]

ACT

To Provide for the more effectual Punishment of certain Offenders.

WHEREAS it is advisable to extend the provisions of the Act No. 21 of 1869, intituled “An Act to make better provision for the punishment of Juvenile Offenders convicted in Courts of Resident Magistrates,” to all convictions of juvenile offenders in Courts of Resident Magistrates, and to provide that persons convicted of contravening the third section of the “Forest and Herbage Preservation Act, (2) 1859,” and the fourth and fifteenth sections of “The Regulation of Railways Act, (3) 1861,” may be punished by whipping: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The said Act No. 21 of 1869 shall be read and construed as if the words “for which the punishment of whipping might be lawfully inflicted in case of a second or subsequent conviction” in the second section thereof were omitted therefrom. Amending section
2 of Act 21 of 1869.

¹ Order in Council published in *Gazette* of 5th April, 1878.

² No. 18.

³ No. 19.

No. 21—1877.
Amending Act 18
of 1859, and Act 19,
1861.

2. Any person who may be convicted of any offence made punishable by the third section of the "Forest and Herbage Preservation Act, 1859," or by the fourth or fifteenth sections of "The Regulation of Railways Act, 1861," shall be liable in addition to or in lieu of the punishment provided for any such offence in or by the said sections to corporal punishment in any number of lashes, or cuts with a cane or rod, not exceeding twenty-five.

No. 20—1877.]

[August 8, 1877.]

An Act to correct certain errors in the tenth section of the Act No. 19 of 1874; the eighth section of the Act No. 8 of 1876, and the fifth section of the Act No. 13 of 1876.

[Not printed.]

No. 21—1877.]

[August 8, 1877.]

ACT

To Amend the Law with reference to Bankers' Books Evidence. ⁽¹⁾

Preamble.

WHEREAS it is a serious inconvenience to bankers, and also to the public, to have the ledgers and other account-books removed from banks for the purpose of being produced in legal proceedings, and whereas it is expedient to facilitate the proof of the transactions recorded in such ledgers and books: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Entries in certain
books admissible in
evidence in certain
cases.

1. From and after the commencement of this Act the entries in ledgers, day-books, cash-books, and other account-books of any bank shall be admissible in all legal proceedings as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by the affidavit in writing of one of the directors, managers, or officers of such bank, or by other evidence, that such ledgers, day-books, cash-books, or other account-books, are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

Examined copies
also admissible.

2. Copies of all entries in any ledgers, day-books, cash-books, or other account-books used by any such bank may be proved in all legal proceedings as evidence of such entries, without production of the originals, by means of the affidavit of a person who has examined the same, stating the fact of the said examination, and that the copies sought to be put in evidence are correct.

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

3. Provided always that no ledger, day-book, cash-book, or other account-book, of any such bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Act, unless ten days' notice in writing, or such other notice as may be ordered by the Court, containing a copy of the entries proposed to be adduced, and of the intention to adduce the same in evidence, shall have been given by the party proposing to adduce the same in evidence to the other party or parties to the said legal proceeding, and that such other party or parties is or are at liberty to inspect the original entries, and the accounts of which such entries form a part.

No. 21-1877.

Notice that such evidence will be adduced must be given, and liberty given to inspect.

4. On the application of any party to any legal proceedings who has received such notice, a Judge may order that such party be at liberty to inspect and to take copies of any entry or entries in the ledger, day-books, cash-books, or other account-books, of any such bank relating to the matters in question in such legal proceedings, and such orders may be made by such Judge, at his discretion, either with or without summoning before him such bank or the other party or parties to such legal proceedings, and shall be intimated to such bank at least three days before such copies are required.

Party receiving notice may apply to a judge for liberty to inspect.

5. On the application of any party to any legal proceedings who has received notice, a Judge may order that such entries and copies mentioned in the said notice shall not be admissible as evidence of the matters, transactions, and accounts recorded in such ledgers, day-books, cash-books, and other account books.

Judge may order that entries and copies shall not be admissible.

6. No bank shall be compelled to produce the ledgers, day-books, cash-books, or other account-books, of such bank in any legal proceedings, unless a Judge specially orders that such ledgers, day-books, cash-books, or other account-books should be produced at such legal proceedings.

Bank not compelled to produce any books unless ordered by judge.

7. Nothing in this Act contained shall apply to any legal proceeding to which any bank whose ledgers, day-books, cash-books, or other account-books, may be required to be produced in evidence shall be a party.

Act not to apply to proceedings to which bank is a party.

8. The word "bank" in this Act shall mean any joint-stock company trading as bankers in this Colony. The words "legal proceedings" in this Act shall include all proceedings in Courts of Justice, both criminal and civil, and all proceedings by way of arbitration, examination of witnesses, assessment of damages, compensation or otherwise, in which there is power to administer an oath. The words "the Court" in this Act shall mean the Court, Judge, Resident Magistrate, Master of the Supreme Court, Arbitrator, or other person authorised to preside over the said legal proceedings for the time being, and shall include all persons, judges, or officers, having jurisdiction and authorised to preside over to or exercise judicial control over the said legal proceedings or the procedure or any steps therein. The word "Judge" shall

Interpretation of terms.

No. 22—1877.

mean any Judge of the Court including a Court of Resident Magistrate, in which the legal proceedings are pending.

Short title.

9 This Act may be cited for all purposes as the "Bankers' Books Evidence Act, 1877."

No. 22—1877.]

[August 8, 1877.

ACT

To Establish a Register of Trade Marks in this Colony. (1)

Preamble.

WHEREAS it is expedient to establish in this Colony a register of trade-marks: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Register to be kept
by Registrar of
Deeds.

1. A register of trade-marks as defined by this Act and of the proprietors thereof shall be established and kept by the Registrar of Deeds in the office of the said Registrar of Deeds; and from and after the first day of July, one thousand eight hundred and seventy-eight, a person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of any trade-mark as defined by this Act until and unless such trade-mark is registered in pursuance of this Act.

How to be regis-
tered.

2. A trade-mark must be registered as belonging to particular goods or classes of goods, and when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in such particular goods or classes of goods, and shall be determinable with such goodwill, but subject as aforesaid, registration of a trade-mark shall be deemed to be equivalent to public use of such mark.

Effect of registra-
tion as first pro-
prietor.

3. The registration of a person as first proprietor of a trade-mark shall be *prima facie* evidence of his right to the exclusive use of such trade-mark, and shall after the expiration of five years from the date of such registration be conclusive evidence of his right to the exclusive use of such trade-mark, subject to the provisions of this Act as to its connection with the goodwill of a business.

Effect of regis-
tration as subsequent
proprietor.

4. Every proprietor registered in respect to a trade-mark subsequently to the first registered proprietor shall as respects his title to that trade-mark stand in the same position as if his title were a continuation of the title of the first registered proprietor.

Court may be ap-
plied to in certain
cases to rectify re-
gister.

5. If the name of any person who is not for the time being entitled to the exclusive use of a trade-mark in accordance with this Act, or otherwise in accordance with law, is entered on the register of trade-marks as a proprietor of such trade-mark, or if the Registrar refuses to enter on the register as a proprietor of a trade-mark the name of any person who is for the time being entitled to the exclusive use of such trade-mark in accordance with

¹ See Acts 27, 1891, and 12, 1895.

this Act, or otherwise in accordance with law, or if any mark is registered as a trade-mark which is not authorised to be so registered under this Act, any person aggrieved may apply in the prescribed manner for an order of the Court that the register may be rectified, and the Court may either refuse such application, or it may, if satisfied with the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved. Where each of several persons claims to be registered as proprietor of the same trade-mark, the Registrar may refuse to comply with the claims of any such persons until their rights have been determined by the Court, and the Registrar may himself submit or require the claimants to submit in the prescribed manner their rights to the Court. The Court may, in any proceeding under this section, decide any question as to whether a mark is or not such a trade-mark as is authorised to be registered under this Act; also any question relating to the right of any person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register; also any other question that it may be necessary or expedient to decide for the rectification of the register. Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

6. The Registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or classes of goods a trade-mark identical with one which is already registered with respect to such goods or classes of goods, and the Registrar shall not register with respect to the same goods or classes of goods a trade-mark so nearly resembling a trade-mark already on the register with respect to such goods or classes of goods as to be calculated to deceive. It shall not be lawful to register as part of or in combination with a trade-mark any words the exclusive use of which would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court of Equity in England, or any scandalous designs.

Certain trade-marks not to be registered without special leave of court.

7. The Registrar of Deeds may from time to time, with the consent of the Governor, as to fees, make, and when made, alter, annul, or vary such general rules ⁽¹⁾ as to the registry of trade marks and as to notices to be given by advertisement before the registration of trade-marks, and as to the classification of goods for the purposes of this Act, and as to the registration of first and subsequent proprietors of trade-marks, and as to the fees to be charged for registration, and also for the continuance of a trade-mark on the register or otherwise, and as to the removal from the register of any trade-mark, as to notices and as to the persons entitled to

Registrar may make general rules.

¹ Rules promulgated by Government Notice No. 236, 1893. Gazette March 1, 1893.

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inspect the register, and as to any proceedings to be taken to obtain the judgment or leave of the Court in any matter in which the judgment or leave of the Court is required to be obtained under this Act, and generally for the purpose of carrying into effect this Act, as he may deem expedient. Any rules made in pursuance of this section shall be forthwith laid before both Houses of Parliament if Parliament be then sitting, or if not then sitting then within ten days after the then next assembling of Parliament, and shall be of the same validity as if they had been enacted by Parliament: Provided that if either House of Parliament resolve, within one month after such rules have been laid before such House, that any of such rules ought not to continue in force, any rule in respect of which such resolution has been passed shall after the date of such resolution cease to be of any force, without prejudice nevertheless to the making of any other rule in its place, or to anything done in pursuance of any such rules before the date of such resolution.

Effect of registrar's certificate.

8. The certificate of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be evidence of such entry having been made, and of the contents thereof, and such matters and things having been done or left undone.

Definition of terms.

9. For the purposes of this Act: (1)

* * * * *

“Prescribed” means prescribed by general rules made in pursuance of this Act, and

“Court” means the Supreme Court, or as to matters within the districts over which the Court of the Eastern Districts has jurisdiction, the Court of the Eastern Districts, or any Court which may be declared to be a Court for the purposes of this Act, by such general rules as aforesaid.

Short title.

10. This Act may be cited for all purposes as the “Trade Marks Registration Act, 1877.”

No. 23—1877.]

[August 8, 1877.]

An Act for Authorising the payment of certain allowances to Members of Parliament for the second Session held in the year 1875, not already provided for.

[Spent.]

No. 24—1877.]

[August 8, 1877.]

An Act to Apply a Sum of Money for the Service of the Year ending the 30th day of June, 1878.

[Spent.]

¹ See § 2 Act 12, 1895, to ascertain what a trade mark for the purposes of this Act must consist of or contain.

No. 25—1877.] [August 8, 1877. No. 29—1877.
 An Act for authorising certain Expenditure not provided for
 by Parliament in the year 1873.
 [Spent.]

No. 26—1877.] [August 8, 1877.
 An Act for authorising certain Expenditure not provided for by
 Parliament in the year 1874.
 [Spent.]

No. 27—1877.] [August 8, 1877.
 An Act for authorising certain Expenditure not provided for
 by Parliament in the year 1875.
 [Spent.]

No. 28—1877.] [August 8, 1877.
 An Act for authorising certain Expenditure not provided for
 by Parliament in the half year ending 30th June, 1876.
 [Spent.]

No. 29—1877.] [August 8, 1877.

ACT

To Release a portion of the Estate Orangezigt of the Entail
 of *Fidei Commissum*, and to Authorise the Town
 Council of the City of Cape Town to acquire said
 Lands for the purpose of constructing thereon one or
 more Reservoirs.

WHEREAS it is expedient to extend and improve the water-
 works of the Municipality of the City of Cape Town, and to
 construct a new reservoir or reservoirs to increase the supply of
 water of the said City: And whereas it is expedient that the Town
 Council of the said City of Cape Town should acquire for such
 purpose certain lands forming part of the estate Orangezigt
 situate in Table Valley, the property of the family of Van Breda,
 held by them subject to the burthen and entail of *fidei commissum*:
 under the provisions, conditions, and stipulations set forth and
 provided in the deed of transfer of the said estate, duly registered
 in the Registry of Deeds of this Colony from the Executors
 Testamentary of the estate of the late Michael van Breda, senior,
 to and on behalf of Dirk Gysbert van Reenen van Breda, and
 dated the 13th day of February, 1851: That is to say,—that the
 whole of the estate Orangezigt shall for ever, and for the utmost
 and longest time which the law of this Colony may permit such
 fiduciary limitations to subsist, be and remain an alienable
 hereditary family estate of the family of “Van Breda,” to be

Preamble.

No 29—1877.

possessed and succeeded to as hereinafter mentioned: That, at the death of said Dirk Gysbert van Reenen van Breda, the said estate shall devolve upon and be succeeded to by his eldest son, or his male descendants in a direct line, and such failing, in the indirect line of succession, and in case there shall be none such, then to his second son or his male descendants in the direct or indirect line as aforesaid, and so on until there be no more male descendants begotten by, or issued from, the said Dirk Gysbert van Reenen van Breda, and in case there should be no male descendants of the said Dirk Gysbert van Reenen van Breda, subject to the further conditions in the said deed of transfer expressed and declared.

And whereas Gerrit Hendrik van Breda, son of the said Dirk Gysbert van Reenen van Breda, the person now entitled to and in possession of the said estate, subject to the said burthen and entail did on the 2nd day of June, 1876, enter into an agreement in writing with the said Town Council, whereby, after reciting that negotiations had been pending for the purchase by the Town Council of certain portion of the said entailed estate Orangezigt, subject to an Act being obtained from Parliament to authorise the said Gerrit Hendrik van Breda to dispose of the same, and that the said parties having been unable to agree upon the purchase price, it was declared and agreed that the question as to what sum of money should be paid by the Town Council for the said land should be submitted to the award and final determination of certain three arbitrators in the said deed named, or any two of them, provided that such award be made in writing before the 30th day of June, 1876: and whereas the said arbitrators accepted the burden of the said submission, and by an instrument, in writing, dated the 10th day of June, 1876, under the hands of two of them, they, the said two arbitrators, appraised the value of the said land at the sum of one thousand seven hundred and fifty pounds, and awarded accordingly: And whereas it is expedient that the said Gerrit Hendrik van Breda should be authorised to sell, and the said Town Council to purchase, the said land, and that so far as relates to the said piece of land the entail of *fidei commissum* should be removed, and also that provision be made for securing the principal sum and the payment of the annual interest to the persons for the time being entitled to the possession and enjoyment of the said entailed estate Orangezigt: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The burthen and entail of *fidei commissum* set forth in the deed of transfer in favour of the said late Dirk Gysbert van Breda, dated the 13th day of February, 1851, is hereby removed and annulled so far as relates to a certain portion of the said estate Orangezigt, commonly known as the Kampement, containing 12

Part of estate
"Orangezigt" called
Kampement, releas-
ed from entail.

morgen and 190 square roods or thereabouts, and more particularly described in the diagram framed by the surveyor, C. R. Borchers, and bounded northerly by Camp-street and vacant ground; easterly by vacant ground, Orange-street, and part of the remainder of the estate Orangezigt; southerly by vacant ground, and the remainder of the estate Orangezigt; westerly by vacant ground and a thoroughfare.

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2. It shall be lawful for the said Gerrit Hendrik van Breda to sell, and for the said Town Council to purchase, the piece of land in the preceding section mentioned for the said sum of one thousand seven hundred and fifty pounds sterling, and for the said Gerrit Hendrik van Breda to give transfer thereof to the said council in full and absolute property, subject only to the conditions hereinafter mentioned.

Said piece of land may be sold to Town Council for £1,750.

3. The said sum of one thousand seven hundred and fifty pounds is hereby charged upon the revenues of the municipality of the city of Cape Town as a preferent debt ranking in order next after any debt heretofore contracted under the authority of any Ordinance or Act of Parliament: and shall continue until by any Act of Parliament, the decree of any competent Court, or the happening of any event whereby the said estate Orangezigt shall pass free and discharged from the said entail to any person or persons in full and absolute property, and shall then be payable to such person or persons.

The said sum to be a preferent charge on the revenues of the municipality.

4. Interest upon the said sum of one thousand seven hundred and fifty pounds, calculated at the rate of six per centum per annum from the day upon which transfer of the said land shall be passed by the said Gerrit Hendrik van Breda to the said Town Council shall be payable, and paid, half-yearly by the said Council to the said Gerrit Hendrik van Breda so long as he shall be entitled to the use and enjoyment of the said estate Orangezigt, and thereafter to the person for the time being entitled to the use and enjoyment thereof so long as the said entail shall subsist.

And to bear interest at 6 per cent. per annum.

5. The said land shall be used wholly and exclusively for the construction of one or more reservoirs thereon, wherein to store water for the supply of Cape Town and neighbourhood.

The land to be used for one or more reservoirs.

6. The walls of any reservoir or reservoirs to be so constructed shall in no case exceed sixteen feet above the present surface of the said ground at its highest level, and before the commencement of any work the plan of the said reservoir or reservoirs shall be submitted for the approval of the Government.

Height of walls.

7. This Act may be cited for all purposes as "The Orangezigt Purchase Act, 1877."

Short title

No. 30—1877.]

[August 8, 1877.

ACT

For Constituting the Town of Uitenhage a Municipality.⁽¹⁾

Preamble.

WHEREAS it is expedient to repeal so much of the Ordinance No. 9 of 1836, entitled "An Ordinance for the creation of Municipal Boards in the Towns and Villages of this Colony," of the Ordinance No. 2 of 1844, entitled "An Ordinance for Amending Ordinance No. 9 of 1836," of the Ordinance No. 8 of 1848, entitled "An Ordinance for enlarging in certain respects the powers of Municipal Commissioners in regard to the common Pasture Lands of the Municipality," and of the Ordinance No. 5 of 1852, entitled "An Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9 of 1836, to purchase or hire immovable property for Municipal purposes," in so far as such Ordinances severally and respectively shall apply to the Municipality of Uitenhage, and to make other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1 The said Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, and No 5 of 1852, in so far as the same are applicable to the Municipality of Uitenhage, shall continue to be of legal force and operative as heretofore until after the first election of councillors as provided for in and by this Act; and immediately upon and after the declaration of the names of the said councillors shall have been published as hereinafter provided, the said Ordinances, in so far as the same apply as aforesaid, shall be and are hereby repealed.

Boundary of municipality.

2. The Municipality of Uitenhage shall comprehend the town and township of Uitenhage, including all common lands and property within the area formed by the following boundary lines,—namely: On the north by the farms Kruis River, Kamees and Hiltwacht; on the south by the farms Cuyler Manor and Little Grass Ridge; on the east by the farm Sandfontein; and on the west by the farms Mimosa Dale and Narroes.

Creating a body corporate.

3. There shall be in the said municipality a body corporate which shall take and bear the name of "The Mayor, Councillors, and Ratepayers of Uitenhage," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges, which bodies corporate, as such, may in this Colony do and have.

Constitution of council.

4. The council of the said municipality shall consist of fifteen councillors, one of whom shall be the Mayor.

Municipality divided into seven wards.

5. The said municipality shall be divided into seven wards, to wit:

¹ See Act No. 12, 1883.

- No. 1. An area bounded by part of Caledon-street and the Cuyler Manor road on the north-east; by Market-street and a line in continuation thereof on the north-west; and shall include the town commonage to the boundary of the municipality in every other direction.
- No. 2. An area bounded by a part of Caledon-street on the north-east; by Baird-street and a line in continuation thereof on the north-west; by Market-street and a line in continuation thereof on the south-east; and shall include the town commonage towards and across the river Zwartkops, between the said lines, to the boundary of the municipality to the south-west.
- No. 3. An area bounded by a part of Caledon-street on the north-east; by John-street and a line in continuation thereof on the north-west; by Baird-street and a line in continuation thereof on the south-east; and shall include the town commonage towards and across the river Zwartkops between the said lines, to the boundary of the municipality to the south-west.
- No. 4. An area bounded by a part of Caledon-street on the north-east; by Cuyler-street and a line in continuation thereof on the north-west; by John-street and a line in continuation thereof on the south-east; and shall include the town commonage towards and across the river Zwartkops, between the said lines, to the boundary of the municipality to the south-west.
- No. 5. An area bounded by a part of Caledon-street on the north-east, that is to say, from the Malay Mosque (in a north-westerly direction) to the entrance to Bain's-road; and on the south-east, by Cuyler-street and Bain's-road, respectively, and lines in continuation of them (taking Bain's Graaff-Reinet-road, towards and up to the north-east boundary of the municipality, to be the line of extension for Bain's-road; and a straight line in continuation of Cuyler-street, towards and across the river Zwartkops, up to the south-west boundary of the municipality, to be the line of extension for Cuyler-street), and shall include the town commonage to the boundary of the municipality in every other direction.
- No. 6. An area bounded by a part of Caledon-street on the south-west; by the Cuyler Manor-road on the west and south-west; by Church-street and the old Graaff-Reinet-road on the north-west; and shall include the town commonage to the boundary of the municipality in every other direction.
- No. 7. An area bounded by a part of Caledon-street on the south-west; by Bain's-road to Graaff-Reinet on the north-west; by Church-street and the old Graaff-Reinet-

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road on the south-east; and shall include the town commonage between the lines of Bain's-road and the old Graaff-Reinet-road, up to the boundary of the municipality on the north-east.

Boundaries of wards may be altered.

6. The said council may, from time to time, if they shall think fit, alter the boundaries of the said wards: Provided that the council shall, before making any such alteration, give, in the *Government Gazette*, and one or more of the newspapers published in Uitenhage, public notice of the intention to make such alteration, and of the particular alteration intended to be made, which notice shall be published for not less than thirty-one days before any such alteration shall be made, and a copy of the same shall also be posted in some conspicuous place upon or near the Town Hall.

Ward No. 1 to have three councillors and each of the others two.

7. Three councillors shall be elected for Ward No. 1, and two for each of the other wards in manner hereinafter mentioned.

Qualification of voters at elections.

8. Every person of full age, who is the owner or occupier of any immovable property in any ward of the municipality of the yearly value of ten pounds sterling, in regard to which property no municipal rate shall, at the time of any election of councillors, or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote at such election, in respect of such ward; provided that his name shall appear as a ratepayer in the assessment roll of such ward which shall have been made next or latest before the election at which such person shall be elected: Provided, also, that the assessment roll in existence at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act and that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act.

Disqualification of voters.

9. The following persons shall be disqualified from voting at any such election: Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

Qualification of councillors.

10. Every male person of full age who shall have been the owner or occupier of immovable property of the yearly value of twenty pounds sterling and upwards within the limits of the said municipality, for a period of not less than twelve months next before such election, and in regard to which property no municipal rate shall at the time of the commencement of the election be due and in arrear, shall be eligible to be elected a councillor: Provided that different premises or properties owned or occupied in immediate succession shall satisfy this section as fully and effectually as if they had been one and the same premises or properties.

Candidates to be invited by requisition.

11. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward, until he shall have been invited to become such candidate by a requisition, signed by at least five qualified voters of such ward, and shall have

transmitted such requisition, with his acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.

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12. The Town Clerk shall, at least ten days before the day appointed for the election in each ward, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter mentioned.

Names of candidates to be published

13. On the second Wednesday in the month of September in every year, an election shall take place for councillors of the said municipality.

Day of election.

14. The poll in every ward shall be taken by some person to be appointed for that purpose by the Mayor, or, in case of the first election, by the Resident Magistrate: Provided that as often as the number of candidates nominated for any ward shall not exceed the number of councillors to be elected for such ward, no poll shall be deemed necessary for such ward, but the candidate or candidates so nominated shall be deemed and taken to be duly elected: Provided, also, that the Resident Magistrate or Mayor, as the case may be, shall be the returning officer of the said municipality.

By whom polls to be taken.

15. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

16. The election shall take place in the following manner:— Every ratepayer, qualified as aforesaid, may vote for any candidate for his ward, not being more than the number to be elected for the ward, by delivering to the polling officer a voting paper, containing the christian and surname of the candidate or candidates, and signed by the person voting, or by the polling officer at his request, and stating his place of abode and description.

Mode of voting.

17. The polling officer shall receive such voting paper, and register the vote.

Votes to be registered.

18. The poll shall commence at eight o'clock in the forenoon and shall finally close at five o'clock in the afternoon of the same day.

Duration of poll.

19. No inquiry shall at any election be permitted to be made as to the right of any person to vote, except as follows;—that is to say, the polling officer may, of himself, or at the request of any qualified householder, put to any voter the following questions, or either of them, and no other:

Questions which may be put to voters.

1st. Are you the person whose name appears as A. B. to the voting paper now delivered in by you?

2nd. Has the last municipal rate assessed upon the immovable property now occupied or owned by you been paid?

20. If any person shall wilfully make a false answer to either of these questions he shall be liable to a penalty not exceeding ten pounds, to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for any period not exceeding one month.

Penalty for false answers.

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Polling officer to transmit voting papers to returning officer.

21. The polling officer shall, at the close of the election, transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and so many candidates, being equal to the number to be chosen, as shall have the greatest number of votes shall be declared duly elected; and such returning officer shall forthwith cause a list thereof, with the numbers of the wards for which such persons are elected, to be published in manner hereinafter mentioned.

Equality of votes to be determined by lot.

22. In case of an equality of votes at any election of councillors the returning officer shall cause to be determined by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected

Election of councillors and duration of office.

23. At the first election of councillors under this Act, the ratepayers shall elect, in manner hereinbefore provided, three councillors for Ward No. 1, and two for each of the remaining six wards, who shall enter upon their office on the first day of October following, and shall hold office as such councillors until the expiration of one year from the said date.

How office of councillor to become vacant.

24. If any councillor shall die, resign, or become insolvent, or shall be absent without leave from the ordinary meetings of the council for a period of three calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office until the next annual election.

Election of mayor by first council.

25. On the Wednesday following the first general election under this Act, the councillors then elected under this Act shall choose from among themselves, by a majority of votes, the Mayor of the municipality, who shall hold office for one year from the date of the councillors entering upon their office: Provided that in case of an equality of votes at any election of Mayor the question between the candidates so equal shall be determined by lot.

Election of mayor by subsequent council.

26. On the Wednesday following every subsequent yearly election, the newly-elected councillors shall choose from among themselves, by a majority of votes, the Mayor of the municipality for the following year; and every such Mayor shall hold office for one year from the date of the newly-elected councillors entering upon their office: Provided that in case of an equality of votes at any election of Mayor, the question between the candidates so equal shall be determined by lot.

Mayor may resign.

27. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do, whereupon the council shall forthwith elect one of their own number as his successor in office for the remainder of his term of office.

How office of mayor may become vacant.

28. If any Mayor shall die, become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or

shall be absent from the municipality, without the permission of the council, for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months without leave, such Mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the year.

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29. On the Wednesday following the first and every succeeding yearly election, the council shall appoint from among the rate-payers two persons to be auditors of the municipality, who shall continue in office until the same day in the year following.

Appointment of auditors.

30. No person shall be eligible as an auditor who shall be a councillor, treasurer, clerk, or other officer of the municipality.

Disqualifications for auditor.

31. If any auditor shall die, resign, or be declared insolvent, or shall assign his estate for the benefit of his creditors, or compound with his creditors, another auditor shall be elected in his stead, on a day to be fixed by the Mayor.

Death, resignation, &c., of auditor.

32. No person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for any purpose. And any person contravening the provisions of this section shall, if a councillor, be deemed to have *ipso facto* vacated office, and if a person holding any office in the gift or disposal of the council, he may be summarily dismissed from such office without notice and without any claim for compensation for loss of office.

Officers of council to have no interest in contracts.

33. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges within the limits of the municipality; to excavate, construct, and lay watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person, or company of persons, to lay down pipes or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines with pipes and utensils; to order, establish, alter, or remove markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and places for slaughtering sheep and cattle, and the state and condition of slaughter-houses, tanneries, and wool-washing establishments; to appoint one or more competent persons to examine meat and other provisions exposed for sale, and who, in case such meat or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and

Powers of council.

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abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality, and for fixing the number and description of cattle which each ratepayer shall be allowed to depasture on such lands; to establish and provide for the management of tolls and public pounds: Provided that no toll, due, or fee, or charge, for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the thirty-fifth section mentioned.

Certain powers vested in the council.

34. The provisions of Act No 3 of 1867, entitled "An Act for enabling the Commissioners of the Municipality of Uitenhage to procure a better and purer Supply of Water for the Inhabitants of such Municipality"; Act No. 27 of 1874, entitled "An Act to authorise and empower the Municipality of Uitenhage to borrow a further sum under Act No. 3 of 1867," and Act No. 14 of 1876, entitled "An Act for enabling the Commissioners of the Municipality of Uitenhage to appropriate and dispose of certain Lands for the purpose of Raising Funds for building a Town-hall, Library, Reading-room, Town Office, Market Office, and other necessary buildings, for the use of the resident Householders and Inhabitants of the said Municipality," shall apply to the municipality constituted under this Act, and all powers and duties therein vested in or given to the commissioners for the municipality of Uitenhage are hereby vested in and given, *mutatis mutandis*, to the councillors elected under this Act.

Council may frame municipal regulations.

35. (1) It shall be lawful for the council, at any meeting, to frame, from time to time, all such municipal regulations as may seem meet for the good rule and government of the municipality: Provided that all municipal regulations in force in the municipality of Uitenhage at the time of the taking effect of this Act shall be of the same force and effect as if they had been duly framed, approved, and published under this Act, and shall continue to be in force and operative until such time as the same shall be altered or new ones published under this Act.

Regulations to be approved by Governor.

36. No municipal regulation shall be of force to subject any person to any fine, penalty or payment, until it shall have been submitted to the Governor by the council, and shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

Matters not necessary to be proved in regard to regulations

37. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Limitation of punishment under regulations.

38. It shall not be competent, by means of any municipal regulation, to punish the contravention thereof in any higher or

more severe manner than by a fine not exceeding five pounds : Provided that it shall be competent for any such municipal regulation to provide that, if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation : Provided, moreover, that such period shall not exceed three months.

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39. All property which shall at the time of the taking effect of this Act be vested in the commissioners for the municipality of Uitenhage, elected under and by virtue of Ordinance No. 9 of 1836, shall from and after the taking effect of this Act become and be vested in the council elected under this Act, upon the like trusts and purposes for which the same was originally granted or transferred ; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into, by the said commissioners, or their predecessors in office, on behalf of the municipality of Uitenhage, shall be taken over by the council.

Certain property vested in the council.

40. The council elected under this Act may, with the consent of the Governor of this Colony, testified by any writing under the hand of the Colonial Secretary, sell by public sale any of the land or property in the last preceding section mentioned for any purpose of a municipal nature which the council shall deem desirable and the said Governor shall approve of : Provided that the said council shall, before applying to the said Governor for his consent, give public notice, in the manner hereinafter mentioned, of their intention to apply for such consent, in which notice so published shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold, and of the object or purpose for which the money to arise from the sale is required : Provided, also, that when and as often as any land or property shall be sold under and according to the provisions of this section, then such land or property shall be subject to such servitudes, conditions, and provisions as shall be inserted in the transfer deed of the land or property so sold : Provided, further, that the said council may, with such consent as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such council shall not, except with such consent, alienate any such land or property ; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

Council may sell certain lands.

41. The council elected under this Act may, with the consent of the Governor aforesaid, testified as aforesaid, raise by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be required for any purpose of a municipal nature which the said council shall deem desirable and the said Governor shall approve of : Provided that the provisions

Powers of council as to borrowing money.

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of the last preceding section requiring the publication of notice of an intended sale shall, *mutatis mutandis*, apply to the case of an intended mortgage or issue of debentures: Provided, also, that as often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, and the Governor aforesaid shall approve of, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

Limitation as to amount.

42. The sum of money to be raised under the last preceding section in any one year, reckoned from the 1st day of January till the 31st day of December, shall not exceed double the amount which shall be estimated as the probable sum to be yielded by the municipal rate assessed, or to be assessed, in manner hereinafter mentioned, for that year: Provided that no mortgage granted or debentures issued under the said last preceding section shall be invalidated or affected, either wholly or in part, by reason that the sum secured by such mortgage or debentures shall prove to have exceeded the sum which, under and according to the provisions of this section, ought to have been raised.

Security for loans.

43. The council may, for any such purpose as is in the forty-first section described, mortgage or charge by debentures the municipal rates of the said municipality in security for any sum of money to be borrowed by the said council: Provided that no sum of money shall be capable of being borrowed under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said municipality present at a meeting to be convened by the council, upon a notice of not less than twenty-one days, to be published in the manner hereinafter mentioned: And provided that it shall not be lawful for the said ratepayers to sanction or for the said council to borrow upon security of the said rates any sum or sums exceeding at any one time the sum of three thousand pounds sterling.

How mortgages or powers of attorney to be executed.

44. Every mortgage aforesaid or power of attorney for authorising the execution of a mortgage of any land or property under this Act shall be under the common seal of the corporation, and shall be executed by two councillors and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner.

When mortgages or debentures are called in fresh ones may be issued.

45. As often as any mortgage granted, or debenture issued, under any of the preceding sections of this Act shall be called up or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates which was or were mortgaged by such mortgage, or to

raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

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46. The council may lease with the consent of the Governor any portion of the common pasture lands belonging to the municipality for the purpose of erecting woolwashing establishments, for building, and for any other purpose, for a period not exceeding thirty-three years: Provided that no such lease shall be granted by the council until a notice in writing of the proposals of the council to grant such lease shall have been posted for general information at some conspicuous place of public resort, within the municipality, for a period of not less than fourteen days, and shall cause the same to be published in a local paper for the same period, which notice shall in some part thereof describe the part or portion of land proposed to be leased, and the object, terms, and conditions of the proposed lease, and shall require any person objecting to the proposed lease to lodge with the council within fourteen days from and after the posting and publication of such notice his objection thereto in writing, whereupon the council shall receive and consider the objections, if any, and shall grant or refuse the said lease as they shall think fit: Provided also, that all such leases shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Council may let certain lands on lease for certain purposes.

47. The Council may, by public sale or tender, lease the privilege of working any quarries belonging to the corporation.

Quarries.

48. No lessee of any such land, or of any quarries, shall assign or sub-let the same without the previous consent of the council testified in writing first had and obtained.

Power of lessee to sub-let.

49. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, then, and in that case, it shall be lawful for the said council, and it is hereby authorised and empowered, to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, or materials as aforesaid, and generally to enter into such contract or contracts for the obtaining of any such land, buildings, or materials, upon such terms and conditions as the said council shall deem expedient, and in case any such person or persons and the said council shall not agree

Powers of council to treat for lands, buildings, &c., required for making widening or improving streets, &c.

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upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator, upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony or of the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law brought for, or on account of, the same subject matter; and in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorised, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid in its first notice in this section mentioned, for or on account, and at the risk, of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorised and entitled to take or use the said land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of or property in the land, buildings, or materials aforesaid, had been duly done and performed.

50. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials in the last preceding section mentioned, of which the owner or owners shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government Gazette*, and one or more newspapers published in the town of Uitenhage, for four successive weeks, describing as accurately as may be the materials, land, or buildings which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorised by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner or owners to apply, within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such person shall make oath before some Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, or materials in question at into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorised and entitled to take or to use the land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the said land, buildings, or materials aforesaid, had been duly done and performed.

51. All acts hereby authorised or required to be done by the council, and all questions that may come before them, shall, except

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Procedure in case
owner of such land
cannot be found.

Quorum.

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as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than five members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-fifth and sixtieth sections of this Act.

Meetings of council.

52. An ordinary meeting of the council shall take place at least once in every fortnight, and all such ordinary meetings shall be open to the public.

Special meetings.

53. The Mayor or any two councillors may at any time call a special meeting of the council, provided that he or they cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them or by the Town Clerk, to be notified to every councillor, either personally, or at his usual place of abode, twenty-four hours at least before such meeting.

Chairman.

54. At every meeting of the council, the Mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from amongst themselves.

Casting vote.

55. In all cases of an equality of votes, the Mayor or chairman shall have a second or casting vote.

Minutes of proceedings.

56. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

Committees.

57. It shall be lawful for the council to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided always, that the proceedings of every such committee shall be submitted to the council for its approval: the Mayor to be *ex-officio* member of all such committees.

Town clerk and treasurer, and other officers.

58. It shall be lawful for the council, from time to time, to appoint fit persons (not being members of the Council) to be Town Clerk and Treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or in case of misconduct, without notice.

Street-keepers constables, policemen, &c.

59. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers, location constables, policemen, overseers, labourers, and others as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night, and for other purposes; and to provide all such street-keepers, constables, and policemen with such clothing, arms,

ammunition, and weapons, and shall appoint to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations, relative to such street-keepers, constables, policemen, and others, and their duties, as shall be deemed fit.

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60. For the purpose of raising the means of making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water pipes, fire-engines, and appurtenances; and for the effecting of all other permanent public works and improvements within the municipality; for the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets and pounds; for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have the power to impose, levy, and recover all such market dues, water rates, and pound fees as shall be deemed necessary and reasonable, and shall be authorised by any such municipal regulations as aforesaid; and shall also have the power, as often as shall be deemed necessary, to make and levy, in manner hereinafter provided, a rate or assessment upon all immovable property within the municipality, the value of such property to be ascertained in manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed, at least ten members of the said council; ⁽¹⁾ and provided also, that no rate or assessment, excepting water rates, shall be imposed upon any immovable property belonging to Her Majesty the Queen, nor on public prisons, or police-stations, alms-houses, or hospitals, nor on any buildings appropriated for public worship, nor upon burial-grounds, nor upon buildings and lands attached thereto solely appropriated to the purposes of education.

Rates may be assessed for certain purposes.

61. All persons owning or occupying property within the limits of the municipality, excepting such property as is hereinbefore excepted, shall be liable to be rated on account of such property to the municipal rate in such manner and to such extent as is hereinafter provided: Provided that nothing in this Act contained shall be taken to authorise the assessment of a rate both upon the owner and the occupier of any one property in respect of such property.

Who liable to be rated.

62. Within three months after the passing of this Act the council shall appoint one or more competent appraisers, not being members of such council, for the purpose of valuing all and singular the immovable property situate within the municipality.

Appraisers to be appointed.

63. As soon as any valuation as aforesaid shall be completed, it shall lie in the office of the Town Clerk for the inspection of every

Valuation to be open to inspection, &c.

¹ Explained by § 2, Act 12 of 1883.

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owner or occupier of any property included therein, who may, upon all lawful days and at reasonable times, inspect the same and take extracts therefrom, and the council shall, by public notice, announce for general information that it will, upon some day and at some hour and place to be fixed by such notice, hold a court for the purpose of hearing and determining objections to such valuation: Provided that the notice shall be published fourteen days at least before the day appointed therein for the holding of such court, and provided, also, that it shall not be necessary in any suit or action for the recovery of any rate to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid in one or more of the local newspapers.

Objections may be made.

Court to be held to hear objections.

64. Upon the day and at the place and hour mentioned in such notice the council shall hold a court, and shall hear all objections which may be urged to any valuation, by any owner, or occupier, or other person on his behalf, and shall inquire into the merits of such objections, and shall confirm or correct any valuation objected to: Provided that the said court may be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

Decision of court to be final.

65. The decision of the said court upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any court or proceeding whatever.

Annual estimate to be framed.

66. The council shall annually, in the month of September, make an estimate of the amount of money required for municipal purposes, and shall assess the rate accordingly, and give public notice thereof in one or more of the newspapers within the municipality; and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rate or rates amounting in the aggregate to more than one penny in the pound, exclusive of any rate that may be assessed and levied under and by virtue of the provisions of Acts No. 3 of 1867 and No. 27 of 1874, on the value of the immovable property subject to such rates, without obtaining the consent of the majority of the ratepayers present and entitled to vote at a public meeting, to be called for the purpose of considering such rate or rates; of the object and the time and place of holding such meeting, at least seven days' notice shall be given by publication in one or more of the Uitenhage newspapers: Provided, also, that it shall be lawful for any two or more ratepayers, entitled to vote at such meeting, to demand a poll, which poll shall be taken on a

day to be fixed by the Mayor, not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in one or more of the local papers, and which poll shall commence at eight o'clock a.m., and be closed at five o'clock p.m. of such day.

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67. Every rate so assessed as aforesaid shall become due and payable upon a certain day, to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in one of the local newspapers: Provided that it shall not be necessary in any suit or proceeding for the recovery of any such rate to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

When rate to become due.

68. When the council shall have announced in one of the local papers the day on which any rate duly assessed under this Act will become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to any person whom the council may have authorised to receive the same, on or before the day fixed in the said announcement for the payment of the same, which shall on non-payment thereof be recoverable at the suit of any such collector, by action in the Court of the Resident Magistrate of Uitenhage. Provided, also, that any occupier who shall have paid any such rate shall be entitled to recover the same from the owner, unless there be any agreement between them to the contrary.

Payment of rate.

69. The council may, in suing for the recovery of rates, proceed against the owner, or in the case of his absence from the district of Uitenhage, his agent or the person receiving the rents for him, or the occupier, either separately or together in one and the same action, each for the whole rate, in any competent Court, and recover the same by the judgment and process of such Court: Provided that no occupier of any immovable property shall be liable for any rate which had become due and payable thereon at any time before he entered on the occupation thereof; and provided, further, that any person who as occupier may have become liable for any rate as aforesaid shall continue to be liable for such rate although he may have ceased to occupy the property in respect of which the rate had been imposed.

Who may be sued for rate.

70. The council may once in every year publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.

Statement of arrear rates to be published.

71. The first valuation to be made as aforesaid, for the purposes of this Act, shall subsist and be in force for three years from the date of the first assessment under this Act; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as is hereinbefore directed with regard to the first valuation.

Valuations to be triennial.

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New buildings and additions to buildings may be valued.

72. In case any new buildings shall be erected during any such period of three years, or in case of any addition to, or alteration of, any buildings then already rated, increasing the value thereof, it shall be lawful for the council to proceed to have the land and such buildings thereon valued or re-valued as the case may be, in the same manner as is hereinbefore provided with regard to the first valuation; and after such valuation is completed the property so valued or re-valued shall be in the same plight and condition as to future rates as if it had been included in the first or then preceding general valuation.

Tolls.

73. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such tolls or dues as may be reasonable upon all persons making use of any road, bridge, or market-place within the municipality, which the council is hereby empowered to make and maintain; and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such other manner as may be by the municipal regulations be in that behalf provided.

Exemptions from payment of tolls.

74. No toll shall be payable by any officer or soldier, or member of any volunteer corps, being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any member of the Frontier Armed and Mounted Police Force, of any burgher force, of any police force appointed under the Divisional Police Act, 1873, or any judicial or civil officer, mail carrier, or other Government servant, whilst travelling on public duty; and further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock in the next succeeding night, for and in respect of the same vehicle or animal.

Treasurer to keep proper books and accounts.

75. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof, shall yearly, at such times as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality.

Publication of notices.

76. Every notice calling a public meeting of the ratepayers, and every notice or other document or thing required by this Act to be published, shall (except when otherwise provided) be so published by causing a copy thereof to be inserted in one or more of the newspapers within the municipality, and a copy of the same shall also be affixed in some conspicuous place upon or near the Town-hall: Provided, always, that the Mayor shall call a meeting on

receiving a requisition to that effect signed by not less than twenty duly qualified ratepayers.

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77. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council in the name of the "Municipal Council of Uitenhage," and all such penalties and fines, when recovered, shall be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be founded; and provided, also, that in all such prosecutions the Town Clerk may appear on behalf of the council.

Recovery of fines and penalties.

78. The storing of kerosene, gunpowder, or other explosive material shall not be permitted, except by Her Majesty's Government for public purposes in such places as may be approved by Her Majesty's Officers, or by other persons in such places as may be approved of and licensed by the said council for that purpose.

Storing of gunpowder, &c.

79. So soon as any burial-ground or portion thereof within the limits of the municipality shall become so crowded as to be, in the opinion of two-thirds of the council, dangerous to the public health, the council shall be empowered to give six months' notice that burials therein shall cease, and after the expiration of the said term of six months, any person or persons causing any interment to be made therein shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Burial-grounds.

80. This Act may for all purposes be cited as "The Uitenhage Municipality Act, 1877."

Short title.

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[August 8, 1877.]

ACT

To enable the Municipal Council of Port Elizabeth to provide the Inhabitants of the Town of Port Elizabeth with Water, and for that purpose to take Water from the Van Staden's River, to acquire Government and other Lands required for the Construction of the necessary Waterworks, and to erect a line of Telegraph along or near to the Line of such Waterworks. (1)

WHEREAS it is desirable that the inhabitants of the town of Port Elizabeth should be supplied with good water, and the municipal council thereof have caused surveys to be made, and are advised that the same can be obtained from the Van Staden's River, in the district of Uitenhage: and it is expedient that the works necessary to accomplish that object should be constructed either by the said council or by a joint-stock company or co-partnership

Preamble.

¹ See Acts 8 of 1890; 25, 1895.

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of individuals or an individual with whom the said council may contract either for the whole or any portion of the said works, or the material therefor: And that to enable the said council to procure the necessary funds, the said council shall be empowered to issue debentures from time to time for any sum or sums of money not exceeding in the aggregate the sum of one hundred and fifty thousand pounds. And that in order that the said council may be enabled to pay the interest on the said debentures as well as to contribute annually a sum not less than one per cent. on the said capital by way of a sinking fund in order to enable the said council to pay off the said debentures, the said council should be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest and contribution as aforesaid.

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

Borrowing powers conferred.

1. It shall be lawful for the said council, from time to time, to borrow and to take up at interest such sum or sums of money, not exceeding in the whole one hundred and fifty thousand pounds sterling as may be required for the purposes of this Act, and to charge the municipal rates of the said municipality as security for any such sum to be borrowed by the said council.

Powers conferred on Council in regard to Van Staadens River.

2. The said council shall be empowered to take, impound, divert, appropriate, and convey from the Van Staden's River in the district of Uitenhage, such a supply of the water of the said river as they may require for the purposes of this Act. And for the purpose of enabling them so to do, it shall and may be lawful for the Governor of this Colony, and he is hereby authorised, to give and grant to the said council in full and free property all Government land on which the said Van Staden's River takes its rise, or all such Government land as is situate at or immediately adjoining the point on the said river from whence it is intended that such supply shall be so taken, impounded, diverted, appropriated, and conveyed: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance, shall deprive any person of any water or right of water which he may, at the time of the taking effect of this Act, possess or be entitled to, in reference to the said Van Staden's River, or in any way, interfere with, or lessen such water, or right to water, such person shall be entitled to recompense or compensation, to be settled in case of difference, as in the ninth section of this Act provided.

Council may construct necessary works for securing supply of water.

3. The said council is hereby empowered to construct and make all such works as may in the opinion of the said council be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be

deemed requisite for the purposes of the said works, for securing an adequate supply of water for the inhabitants of the said town of Port Elizabeth and for the shipping visiting that port.

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4. The said council is hereby further empowered to construct and maintain a line of telegraph between Port Elizabeth and the source of the said water supply in such manner as the said council may determine, and to enter into any contract or contracts with any joint-stock company or co-partnerships of individuals, or an individual, for the performance of the whole or any portion of the works in this and the preceding section mentioned and set forth.

May construct line of telegraph.

5. The council is hereby empowered to enter upon, occupy, enclose, take and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown Lands," or any land set apart for church purposes, commonly called "Glebe Lands," and also to enter upon, occupy, enclose, take and use any land the private property of any person or persons whomsoever which may be required for the purposes of this Act, and may agree as hereinafter provided for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purposes of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes or other works upon such terms and conditions as may be mutually agreed to.

Powers of council in regard to lands and materials for carrying on works.

6. It shall be lawful for the said council to acquire and take possession in the manner hereinbefore and hereinafter provided of any land, whether belonging to Her Majesty the Queen, commonly called "Crown Lands," or land belonging to private persons that may be required for the purpose of protecting the sources of the said Van Staden's River, or the sources of supply from whence the water may flow into the reservoirs, dams, places or place, where the said works may take off the water of the said river.

Lands may be taken for protecting sources of rivers.

7. The said council are hereby further empowered to lay down pipes or construct conduits under or along any public road or street or under or along any ground set apart in the diagram or conditions of sale of any sale of land as a street or thoroughfare, without making or being liable to make any compensation in respect thereof.

May lay down pipes &c.

8. It shall be lawful for the said council at all times by themselves, their engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said council required under the provisions of this Act, for the purpose of adding to, repairing, relaying, or supervising the said works, or for any other purpose whatsoever that may be deemed expedient

Right of way over lands.

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by the said council in or about carrying out the purpose of this Act.

Mode of acquiring
lands or material.

9. If any person or persons from whom any water or right of water, land, or any stone, gravel, or other material may be required to be taken for the purposes of this Act, and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given and accepted, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such person or persons to state, in writing to the said council, or to some other person by them appointed, within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice, whether he is willing to accept the sum therein mentioned or not,—and if such person or persons should refuse the sum offered, or neglect to reply to the said notice, then the said council or other person aforesaid shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council or other person aforesaid, and for that purpose to transmit to the said council, or other person as aforesaid within a reasonable time to be specified in the last mentioned notice, the name of some person whom he shall select to be an arbitrator,—and the said council, or other person as aforesaid, upon receiving the name of the person so selected, shall nominate a second arbitrator, and the said two arbitrators shall, before proceeding in the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said council or other person as aforesaid shall cause a deed of submission to be prepared, which shall be signed by the said council or other person aforesaid, and by the person claiming such compensation or recompense as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the council or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in their first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council or other person aforesaid, upon so lodging the said sum, shall be authorised and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid,

or had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said council or other person aforesaid a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

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10. In case the said council or other person aforesaid shall require to take or use any land or dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorised in his capacity as such guardian or curator to treat and agree with the said council or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said council or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said council or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorised to receive the same, and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall by way of *fidei-commissary* limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisement shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest to draw the interest payable on the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. And in case the said council shall require to take or use any land or materials, as in the last preceding sections mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for

As to lands or materials of minors or persons under curatorship.

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the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government Gazette* and one or more local papers for four successive weeks, describing as accurately as may be the land or materials which are required to be used or taken, and calling by name on the owner or owners of the said land or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners or any person duly authorised by him or them, for the recompense or compensation to be made by the said council for the said land and materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner or owners shall not apply within the said period then the like proceedings in regard to the agreement for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last two preceding sections, precisely as if the said owner or owners had from the first been in actual possession: And in case the owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said council to pay whatever sum such person shall have valued the land or materials in question into the Guardian's Fund to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony: And the said council, upon so paying the said sum, shall be authorised and entitled to take or use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land or materials as aforesaid had been duly done and performed.

Penalty for injuring, &c., buildings or other works.

11. Any person who shall wilfully injure, damage, disturb, obstruct, or interrupt any building, line of telegraph, erection, conduit, reservoir, dam, watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining the works contemplated by this Act, shall, upon conviction, forfeit for the use of the said council a sum not exceeding one hundred pounds, or be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that nothing in this section contained shall be held or

taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted both under this Act and any other law for or in regard to one and the same act.

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12. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said municipal council, or in any stream flowing into such dam or reservoir, or shall wash, throw or cause to enter therein any dog or other animal, or who shall place or throw any rubbish, dirt, filth, or other noisome thing in any such dam, reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, shall for every offence, on being convicted thereof, forfeit for the use of the said council a sum not exceeding five pounds, and in failure of the payment of such fine, the party convicted shall be liable to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

Penalty for polluting water.

13. The council are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings and the supply of water to the shipping visiting the port of Port Elizabeth shall be regulated, and the payment for all private water-leadings and for the supply of water to the said shipping shall be in accordance with such tariff: Provided, nevertheless, that the said council, or any person duly authorised by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

Tariff of charges.

14. It shall be lawful for the said council, at any meeting at which a majority of the members shall be present, to frame from time to time such bye-laws as they shall deem necessary for regulating the system of water supply to the town of Port Elizabeth, such bye-laws to be submitted for the approval of the Governor in manner provided by the Act No. 14 of 1868, entitled "An Act for Constituting the Town of Port Elizabeth a Municipality."

Bye-laws.

15. In order to pay the interest and to establish the sinking fund hereinafter mentioned, and to provide for all other claims arising under this Act, the council shall be empowered and compelled to impose, levy and collect a sufficient annual rate or assessment over and above what the said council is already empowered to impose and levy upon the annual rental, or if no rental be paid then upon the estimated annual value of the whole of the immovable property within the limits of the said municipality; and every rate or assessment so imposed and made by the said council shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed under the provisions of the said Act No. 14 of 1868, so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or

Annual rate may be levied.

No. 31—1877.

any future owner or occupier thereof: Provided that it shall be lawful for the said council to apply for payment of interest or principal or interest and principal of the moneys aforesaid any funds or moneys coming to the said council from any source whatever and not specifically appropriated or required for any other object.

Assessment of rate.

16. The amounts for assessment entered on the tenants' assessment roll in force within the said municipality for each and every year shall be the amounts on which the rate shall be levied for the purposes of this Act so far as the properties included in such tenants' assessment roll are concerned, but for any or all properties not included in such tenants' assessment roll, and for all properties not liable to assessment under the said Act No. 14 of 1868, the annual value shall be made and determined annually by some competent person to be appointed by the council: Provided that such valuation shall lie open for public inspection at the office of the council for the space of one calendar month from the levying of the said annual rate, and the council shall give notice in one or more of the newspapers published within the said municipality that the same lies open for inspection, and the provisions of the 66th section of the Act No. 14 of 1868 shall apply to the hearing and deciding upon objections to such valuation.

When rate to be payable.

17. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day to be fixed by the said council, of which day and of the amount of the rate or assessment so to become payable not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town-hall.

Collector to be appointed.

18. As soon as any rate shall be assessed as aforesaid the council shall appoint under the corporate seal a person to collect the same, and which rate shall, on non-payment thereof, be recoverable as a separate and distinct rate at the suit of such collector by action in the Resident Magistrate's Court having jurisdiction within the said municipality, or in any Resident Magistrate's Court in which such defaulter shall reside.

Applying Public Bodies Debts Act, 1867.

19. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of this Act shall be subject to the "Public Bodies Debts Act, 1867."

Council to keep accounts of revenue and expenditure.

20. The council shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for rates imposed under the provisions of this Act, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: And the said council shall yearly and every year, so long as any part of the debt contracted

PORT ELIZABETH DIVISIONAL COUNCIL LOAN. 1513

under the authority of this Act shall be in existence, prepare and deposit in the office of the municipality, for the inspection at all reasonable times of any householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said council shall deem necessary or expedient to impart: Provided that every such account shall be made up to the 31st December in each and every year.

No. 32—1877.

21. In order to provide a fund for the payment of all moneys borrowed under the provisions of this Act, and for the gradual extinction of the debt to be incurred under the authority of this Act, there shall be set apart an annual sum equal to the interest of the whole amount of such debentures as shall be issued under authority of this Act, and a further sum of not less than one pound sterling per centum on the total amount of the principal or capital sum which shall be raised under the authority of this Act, and such last-mentioned sum shall be annually invested as and by way of a sinking fund, and applied towards the redemption of the said debt so long as any portion of the same or any interest thereon shall remain unpaid and unextinguished.

Fund for payment of moneys borrowed.

22. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said council out of the moneys to be so borrowed as aforesaid.

Costs of this Act.

23. The word "municipality" used in this Act shall mean the municipality of Port Elizabeth as established by the said Act No. 14 of 1868; the word "council" the municipal council of Port Elizabeth.

Interpretation of terms.

24. This Act may be cited for any purpose as "The Port Elizabeth Water Supply Act, 1877."

Short title.

No. 32—1877.]

[August 8, 1877.

ACT

To Authorise the Divisional Council of Port Elizabeth to borrow Moneys upon the security of Road Rates and Tolls within the Division of Port Elizabeth.

WHEREAS the bridge known as the Rawson Bridge, situate within the division of Port Elizabeth, crossing the Zwartkop's River, dividing the divisions of Port Elizabeth and Uitenhage, and connecting the main road from Port Elizabeth with the eastern and north-eastern frontier towns, was on the 22nd day of February, 1876, carried away: and whereas it is expedient that a bridge should be constructed in the place of the one so destroyed: and whereas the Colonial Government, upon a representation of the necessities of the case, has agreed to bear one moiety of the total cost of the construction of the said bridge: and whereas it is expedient that the said Council should be authorised to borrow

Preamble.

1514 PORT ELIZABETH DIVISIONAL COUNCIL LOAN.

No. 32 -1877.

moneys upon the security of road rates and tolls of the said division for the payment of one moiety of the cost of the construction of the said bridge, and that provision should be made for the gradual extinction of the debt incurred for the cost of such construction : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Repugnant laws repealed.

1. So much of the Act No. 9 ⁽¹⁾ of 1858, intituled “An Act to provide for the management of the Public Roads of the Colony,” so much of the Road Act No. 10, 1864, and so much of the Road Act No. 22, ⁽¹⁾ 1873, as is repugnant to or inconsistent with the provisions of this Act shall in so far as relates to this Act but not otherwise be repealed.

Borrowing powers conferred.

2. It shall be lawful for the said Council from time to time to borrow and take up at interest such sum or sums of money as may from time to time be required by the said Divisional Council for the purposes hereinbefore mentioned, not exceeding in the whole a sum of five thousand pounds sterling.

Mode of raising loan.

3. It shall not be competent for the said Divisional Council to raise any loan under this Act except in pursuance of a resolution passed at an ordinary meeting of the said Council, of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be raised in any year in which the rates assessed by the said Council shall be less than one penny in the pound sterling upon the value of the property liable to be rated in the division.

Security for loan.

4. For the due payment of the moneys to be paid as aforesaid, and the interest thereof the rates, tolls, and other revenues of the said Council are hereby charged and hypothecated.

Acknowledgments to be given for sums borrowed.

5. The said Council shall grant written acknowledgments of or for such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in the form annexed to this Act, and shall be signed on behalf of the said Council by three of its elected members duly authorised by resolution of the said Council.

Fund for payment of interest and extinction of loan.

6. In order to provide a fund for the payment of the interest upon and for the gradual extinction of the loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said Council as aforesaid an annual sum equal to the interest on the whole amount of such loans, and a further sum equal to twenty-five per cent. on the total amount of the capital sum of such loans, and such sums shall be annually charged upon and payable out of the revenues of the said Council so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

¹ Repealed by Act 40, 1889.

PORT ELIZABETH DIVISIONAL COUNCIL LOAN. 1515

7. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section as shall not be required for the payment of the interest for the time being due upon the loans raised under the authority of this Act shall be paid to a separate account in a bank to be chosen for that purpose by the Council, and shall be applied in liquidation of the obligations or acknowledgments of the said Council for moneys raised under the authority of this Act in such manner and form as shall be provided by the terms and conditions whereon such obligations or acknowledgments shall respectively have been granted; and all moneys so paid into a bank for the purpose aforesaid shall be drawn out by cheques to be signed by some member or members specially authorised by resolution of the said Council.

No. 32--1877.
Application of the said fund.

8. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December preceding.

Accounts to be kept.

9. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of "The Divisional Councils Act, 1865," and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loans.

Accounts to be audited.

10. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the "Public Bodies' Debts Act, 1867."

Public Bodies' Debts Act, 1867, to apply.

11. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act, and carrying the provisions thereof into effect out of the moneys to be raised under the provisions thereof.

Costs of this Act.

12. This Act may be cited for all purposes as the "Port Elizabeth Divisional Council Loan Act, 1877."

Short title.

SCHEDULE.

Schedule.

PORT ELIZABETH DIVISIONAL COUNCIL LOAN ACT, 1877.

Acknowledgment for Loan of £-----

We, the undersigned, members of the Divisional Council, duly authorised by a resolution of the said Council, do hereby acknowledge that the Divisional Council of Port Elizabeth is indebted to ----- in the sum of ----- for so much money, borrowed for the purposes mentioned in the "Port Elizabeth Divisional Council Loan Act, 1877," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

No. 34—1877.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say—(Here insert the conditions).

Given under our hands at Port Elizabeth this _____ day of _____ 18—
 _____ }
 _____ } Members of the
 _____ } Divisional Council
 of Port Elizabeth.

Entered :

_____ Secretary.

No. 33—1877.]

[August 8, 1877.]

An Act to Declare the validity of certain valuations of Im-
 movable Property situate in the Division of Worcester.

[Temporary].

No. 34—1877.]

[August 8, 1877.]

ACT

To Legalise the Loan of Twelve Hundred and Fifty Pounds Sterling borrowed by the Municipality of Worcester, and expended in the Construction of Waterworks, for the purpose of providing a supply of Pure Drink Water for the use of the Inhabitants of the Town of Worcester, and the Locations of the Poorer Classes adjoining thereto, and laying down Water Pipes throughout said Town of Worcester, and erecting a Reservoir and Filtering Bed for such purpose ; as also for enabling the said Municipality to borrow a further Sum of Seven Hundred and Fifty Pounds Sterling, required for completing the Waterworks aforesaid ; and to amend Act No. 23 of 1873.

Preamble.

WHEREAS by Act 23 of 1873, entitled " An Act for enabling the Municipality of Worcester to borrow a sum of money not exceeding two thousand and two hundred pounds sterling, for the purpose of providing a supply of Pure Drink Water for the use of the Inhabitants of the Town of Worcester and the Locations of the Poorer Classes adjoining thereto, and laying down Water Pipes throughout said Town of Worcester, and erecting a Reservoir and Filtering Bed for such purpose," the Municipality of Worcester was empowered to borrow moneys for the purposes aforesaid, which said sums were to be charged upon, and made payable out of, all and singular the rates and general revenues of the said municipality :

And whereas the said municipality was, in and by said Act, authorised and empowered to raise by way of loan, from time to

time, such sum or sums of money, not to exceed in the whole the sum of two thousand and two hundred pounds sterling, for the purposes aforesaid, which said sum was to be charged upon, and made payable out of, all and singular the rates and general revenues of the said municipality :

And whereas the cost of constructing and completing the waterworks aforesaid having been estimated to exceed the said sum of two thousand and two hundred pounds sterling, the said municipality has borrowed on credit the further sum of twelve hundred and fifty pounds sterling, which sum has been expended on the construction of the said waterworks :

And whereas a further sum of seven hundred and fifty pounds sterling will be required by the said municipality to complete the said waterworks :

And whereas it is just and right that the said sum of twelve hundred and fifty pounds sterling and seven hundred and fifty pounds sterling respectively (making together the sum of two thousand pounds sterling), borrowed and required for completing the said waterworks, should also be made a charge upon, and payable out of, all and singular the rates and general revenue of the said municipality :

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

1. The said Act No. 23 of 1873 shall be and hereby is amended by substituting in the title and in the first, fifth, and sixth sections thereof the sum of four thousand and two hundred pounds sterling, in lieu and stead of the sum of two thousand and two hundred pounds sterling in the said title and sections mentioned : Provided always that any loan already contracted or which may hereafter be contracted, under the terms and provisions of said Act No. 23 of 1873, and of this present Act, shall not exceed the sum of four thousand and two hundred pounds sterling.

Act 23 of 1873 amended.

2. This Act may be cited for all purposes as “ The Municipality of Worcester Loan Amendment Act of 1877.”

Short title.

No. 35—1877.]

[August 8, 1877.]

ACT

To Amend the “ Heidelberg Canal Act, 1876.”

WHEREAS by the “ Heidelberg Canal Act, 1876,” the commissioners of the Municipality of Heidelberg are empowered to borrow for the purposes of the said Act a sum not exceeding two thousand pounds, and to impose for the purpose of providing for the payment of the principal and interest of the moneys to be borrowed special rates upon the immovable property situate within

Preamble.

No. 35—1877.

the said municipality and liable to be rated, not exceeding at one time or within one year one penny in the pound: And whereas a rate not exceeding in one year one penny in the pound upon the value of the property liable to be rated would be insufficient to provide for the payment of the interest on the amount required to be borrowed, and a fund for repayment of the principal: And whereas it is expedient to remove the restriction to impose for the purposes of the said Act rates not exceeding one penny in the pound in any one year, and otherwise to amend the said Act: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Amendment of Act
23 of 1876.

1. The following proviso to the first section of the said Act, to wit, "Provided that no such rate shall at any one time, or within one calendar year, exceed one penny in the pound on the value of such immovable property as aforesaid," shall be, and the same is, hereby repealed.

Payment of moneys
borrowed under Act
23 of 1876.

2. All moneys borrowed by the commissioners of the municipality of Heidelberg for purposes of the "Heidelberg Canal Act, 1876," are hereby charged upon and made payable out of the rates to be imposed under the first section of the said Act: Provided that it shall be lawful for the commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt, any funds or moneys coming to them from any source whatever, and not specially appropriated or required for any other purpose.

Supreme Court
may impose rate if
necessary.

3. It shall be lawful for the Supreme Court, in case any petition shall be presented to such Court under the provisions of the "Public Bodies Debts Act, 1867," for enforcing payment of any judgment for the recovery of money borrowed under the provisions of the "Heidelberg Canal Act, 1876," to assess and impose such rates exceeding one penny in the pound as to such Court shall seem fit, anything in the third section of "Public Bodies Debts Act, 1867," to the contrary notwithstanding.

Costs of this Act.

4. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money to be borrowed under the said Act.

Short title.

5. This Act may be cited for all purposes as the "Heidelberg Canal Amendment Act, 1877."

No. 36—1877.]

[August 8, 1877.]

ACT

To enable the Commissioners of the Municipality of Hanover to borrow a Sum of Money not exceeding Two Thousand Pounds Sterling for the purpose of Constructing a Covered Watercourse in the said Municipality or otherwise improving the Water Supply of the Village of Hanover, and of repaying Moneys already borrowed and expended for that purpose.

WHEREAS the inhabitants of the Municipality of Hanover have been for a number of years, and still are suffering great inconvenience in consequence of a very deficient and defective supply of pure water: And whereas it has been considered expedient that the said water supply should be improved: And whereas the commissioners of the municipality, acting in conformity with the desire and representations of the inhabitants, have borrowed certain moneys for the improvement of the said water supply, and have expended them upon the same: And whereas it is expedient that the said commissioners should be empowered to borrow a sum of money, not exceeding two thousand pounds sterling, for the purpose of constructing a covered watercourse in the said municipality, or otherwise improving the water supply of the village of Hanover, and of repaying the moneys heretofore borrowed and expended by them for the said purposes as aforesaid:

Preamble.

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

1. It shall be lawful for the commissioners of the municipality of Hanover to borrow and take up such sum or sums of money, not exceeding in the whole the sum of two thousand pounds sterling, for the purposes aforesaid, and any amounts borrowed as aforesaid are hereby charged upon and made payable out of all and singular the rates and revenues for the said municipality, and shall be a first and preferent charge upon the same.

Borrowing powers.

2. It shall be lawful for the commissioners of the said municipality, whenever the general revenue of the municipality is insufficient, to impose for the purpose of providing for the payment of the principal or interest, or principal and interest of such loan, a certain annual rate or tax upon the value of the immovable property of the inhabitants, not exceeding two-pence in the pound, and every rate so imposed shall be levied in the same manner as if it had been imposed under the provisions of Ordinance No. 9, 1836.

Special rate may be levied.

No. 86 - 1877.

Acknowledgments
to be given for
moneys borrowed.

3. The commissioners aforesaid shall grant to the party or parties or company or society from whom they shall borrow such money a written acknowledgment of or for the money so borrowed not exceeding in the whole the abovementioned sum of two thousand pounds sterling, such acknowledgment to be in substance in the form annexed to this Act, and to be signed on behalf of the said commissioners by at least three of the commissioners for the time being.

Applying Act 11
of 1867.

4. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."

Account to be kept.

5. The said commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and shall, as long as any part of any debt contracted by virtue of this Act shall be in existence, make an annual statement thereof up to the 31st December, which statement shall be deposited in the office of the Civil Commissioner or Resident Magistrate, or of the said municipality, for the information and inspection of resident householders.

Costs of this Act.

6. The necessary costs, charges, and expenses for obtaining this Act and carrying the provisions thereof into effect, shall be paid by the commissioners out of the general revenue of the municipality.

Short title.

7. This Act may be cited as the "Hanover Municipal Water Act, 1877."

SCHEDULE.

Schedule.

We, the undersigned commissioners of the municipality of Hanover, do hereby acknowledge that the said commissioners, in their said capacity, are indebted to _____ in the sum of _____ pounds sterling for so much money borrowed by the said commissioners for the purposes set forth in the Hanover Municipal Water Act, 1877: and certify that the said sum is and stands secured by the said Act, in manner and form as by the said Act provided: and we further covenant and engage in our said capacity that the principal and interest of the said debt shall be payable and paid in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Hanover, this _____ day of _____ 18 .

A. A., Chairman.
B. B. } Commissioners.
C. C. }

Witnesses,
D. D.
E. E.

No. 37—1877.]

[August 8, 1877.]

ACT

To Legalise the Loan of One Thousand Pounds, borrowed by the Divisional Council of Tulbagh, and for enabling the said Divisional Council to borrow a further sum of Six Hundred Pounds for the Construction of the Verlaten Kloof Road, and to Amend the Act No. 18, 1875.

WHEREAS by the Act No. 18 of 1875, intituled "An Act for enabling the Divisional Council of Tulbagh to borrow Moneys upon the security of Road Rates and Tolls for the Construction of a Road through the Karroo in the Division of Fraserberg," the Divisional Council of Tulbagh was empowered to borrow moneys upon the security of road rates and tolls of the said division for the purpose of constructing a public road through the Tulbagh Karroo to the boundary of the said division, and in connection with a new line of road in course of construction by the Divisional Council of Fraserberg through the Verlaten Kloof, by which the inhabitants would be benefited :

Preamble.

And whereas the costs of making and completing the said road having proved to be far greater than was contemplated, and the annual amount of road rates to be levied under the Act No. 9, 1858, and Act No. 10, 1864, not having sufficed to meet the additional outlay, the said Divisional Council borrowed on credit the further sum of one thousand pounds required to complete the said road, and expended the same in completing said road :

And whereas it is expedient that the said Divisional Council should be empowered to borrow upon the security of the road rates and tolls of the said division a further sum of six hundred pounds for the purpose of constructing a second section of the above mentioned road through the Karroo to the Verlaten Kloof lying within the boundaries of the division of Worcester, but it has not been deemed just that any portion of the cost of the said section should be required to be defrayed by the Divisional Council of Worcester :

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

1. It shall be lawful for the Divisional Council of Tulbagh aforesaid to raise by way of loan on credit of any tolls to be levied or rates to be assessed under the Act No. 9 ⁽¹⁾, 1858, or under the Act No. 10, 1864, a further sum not exceeding one thousand six hundred pounds, to be appropriated as follows : the sum of one thousand pounds to meet certain expenditure already incurred in completing the section of the said road described in the Act No.

Borrowing powers.

No. 38—1877.

18 of 1875, and the sum of six hundred pounds to meet the costs of construction of the said section of the road aforesaid, lying within the limits of the division of Worcester.

Certain sections of Act 18 of 1875 applied.

2. All and singular the provisions contained in the sections, from No. 2 to No. 8, inclusive, of the said Act No. 18, 1875, shall be and are hereby made applicable to the said sum of one thousand six hundred pounds, to all intents and purposes as if the same were inserted herein.

Short title.

3. This Act may be cited for all purposes as the "Tulbagh Divisional Council Loan Act, 1877."

No. 38—1877.]

[August 15, 1879.]

ACT

To Provide for the Annexation to the Colony of the Cape of Good Hope of the Country situated between the Bashee and the Kei, commonly known as Fingoland and the Idutywa Reserve, and the Country situated between the Umtata and the Umzimkulu, commonly known as Nomansland, and for the government of the said Territories⁽¹⁾

Preamble.

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

¹ See Act 30, 1887, giving Parliamentary representation.

ment of the said Territories so annexed: And whereas it is expedient that a law should be enacted providing that the said respective Territories shall on the day to be mentioned in that behalf in a proclamation or proclamations of the Governor as aforesaid become part of this Colony; but, in consequence of the said Territories being for the most part occupied by Natives who are not yet sufficiently advanced in civilisation and social progress to be admitted to the full responsibility granted and imposed respectively by the ordinary laws of this Colony to and upon other citizens thereof, subject to the laws in force therein only as the same may from time to time be applied and modified as hereinafter mentioned and hereinafter provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

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

Governor may proclaim date from which Fingoland, Idutywa Reserve, and Nomansland shall become part of the Colony,

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

Provision as to laws.

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

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

¹ See Proclamation of 12th Aug., 1879, in *Gazette* of 15th Aug., 1879; also Proclamation No 112, 1879, of 17th September, 1879, in *Gazette* of 19th Sept., 1879.

No. 39- 1877.

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

3. [Repealed by Act No. 40, 1882.]

Short title.

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

No. 39—1877.]

[August 15, 1879.

ACT

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

Preamble.

WHEREAS it is expedient that the Province of Griqualand West should be annexed to and form part of the Colony of the Cape of Good Hope, and that provision should be made by the Legislature of the said Colony for such annexation, and for the representation in the Parliament of the said Colony of the inhabitants of the said Province, as hereinafter is provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

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

Annexing Griqualand West.

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

Griqualand West to be a new electoral province for the purposes of Legislative Council elections, returning one member, which Council shall,

3. The entire of the said Province of Griqualand West shall, for the purpose of election to the Legislative Council of the Cape of Good Hope, be and become from and after the annexation of the said Province to the said Colony, a new Electoral Province of

the said Colony, and such new Electoral Province shall be entitled to return to the Legislative Council of the said Colony one member; and the entire of the said council shall consist, from and after the said annexation, of twenty-two ⁽¹⁾ elective members instead of twenty-one as heretofore.

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in future, consist of twenty-two members instead of twenty-one.

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

Griqualand West to be divided into two electoral divisions.

5. Each of the said Electoral Divisions shall be entitled to return to the House of Assembly of the Colony of the Cape of Good Hope two ⁽²⁾ members.

Each division to return two members to House of Assembly.

6. As soon as may be after the taking effect of this Act, the member to be returned as aforesaid for the said new Electoral Province to the said Legislative Council and the members to be returned as aforesaid for the said two Electoral Divisions to the said House of Assembly shall be elected; and for the purposes of such respective elections the said Electoral Province and the said Electoral Divisions respectively shall be treated and considered as if members had been returned for the same to the said Legislative Council and the said House of Assembly respectively and their seats had become vacant by death or resignation, and the fact of the occurrence of such vacancies had been duly notified to the Governor; and the like proceedings shall, *mutatis mutandis*, be taken to fill the said seats as would take place if the said Electoral Province and the said Electoral Divisions respectively had been immediately before the taking effect of this Act a Province and Electoral Divisions respectively of the said Colony, and the members elected to fill such seats shall be in the same position in all respects as other members of the said respective Houses of Parliament of the said Colony: Provided that in case of a dissolution of either House of Parliament before any such election as aforesaid, but after the taking effect of this Act, the said new Electoral Province and the said two Electoral Divisions respectively shall in regard to the general election of members be treated in all respects as any other Electoral Province or Electoral Division of the said Colony entitled to return members to the Parliament thereof.

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

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

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

Provision as to election and qualification of members.

¹ Twenty-three members now, instead of twenty-two. See Act 41, 1895, § 3.

² Two additional members granted to Electoral Division of Kimberley by Act 13, 1882. Three members for Bechuanaland added to Assembly by § 5, Act 41, 1895.

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Divisions respectively of the said Colony after such annexation as aforesaid.

Provision as to voters.

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

Number of puisne judges of Supreme Court.

9. From and after the annexation of the said Province to the said Colony, the Supreme Court of the said Colony shall consist of one Chief Justice and five ⁽¹⁾ Puisne Judges, instead of four as heretofore, the additional judge being the Recorder ⁽²⁾ for the time being of Griqualand; and in case of any vacancy in the said office of Recorder, such vacancy may be filled up in like manner as by law provided with respect to a vacancy in the office of any other judge of the said Supreme Court: Provided that nothing in this section contained shall be construed so as to confer on the said Recorder any larger jurisdiction or powers within the said Province

¹ Increased to 6 by Act 12, 1880, and to 8 by Act 40, 1882.

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

than he shall have possessed immediately before the said annexation, or to render his consent or assistance necessary to the making, alteration, or amendment of any rules or orders of the Supreme Court or Court of the Eastern Districts.

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

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

Appeals to Supreme Court.

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

Provision as to pending appeals.

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

Provision as to pending appeals from Land Court.

12. ⁽²⁾ Except as is otherwise provided by this Act, the duties, powers, and authorities of the Sheriff for the said Province shall

Duties of Sheriff.

¹ As to constitution of High Court, see §§ 6-12, Act 40, 1882.

² See Act 40, 1882, § 9.

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

Duties of Master.

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

Removal of suits or actions.

14. As often as any suit or action shall be brought or depending in the Supreme Court, or in the Court of the Eastern Districts, or in the said High Court of Griqualand West respectively, and it shall be made to appear to the Court before which such suit or action may be pending, that the same may be more conveniently

or more fitly heard or determined in another of the said courts, it shall be lawful for the Court before which such suit or action is pending, to order the same to be removed to such other court, and such order shall be certified by the Court granting the same to the Court into which this suit or action shall be intended to be removed; and thereupon it shall be lawful for such lastmentioned Court to proceed in such suit or action, in like manner as if the same had been originally commenced and prosecuted in such lastmentioned Court.

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

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

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

Copies of records to be received in evidence.

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

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

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same force and effect as the process of the Eastern Districts Court in regard to the summoning of witnesses residing or being elsewhere in this Colony than in any of the Eastern Districts.

Rules of the Court.

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

Prosecution of crime.

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

Courts of resident magistrates.

20. From and after such annexation as aforesaid the districts of Resident Magistrates existing in the said Province at the time of such annexation, and the Court of Resident Magistrates established in such districts, shall become and be districts and Courts of Resident Magistrates of this Colony, and be in the same situation and condition as if such Courts had been created by the "Resident Magistrates' Court Act, 1856": Provided that nothing in this Act contained shall be deemed or taken to affect or alter any of the laws of the said Province specially relating to the jurisdiction of such Courts or to the procedure of practitioners therein: And provided also that all appeals from any decision of any of such Courts after such annexation may be made either to the said High Court or to the said Supreme Court; and all decisions of any of such Courts which are required by law to be sent for revision by a Judge of a superior Court shall be sent for revision to the Judge of the said High Court as theretofore.

Admission of advocates and attorneys.

21. From and after such annexation as aforesaid, every advocate and attorney duly admitted and enrolled in the Supreme Court of the Colony of the Cape of Good Hope, or in the said Court of the Eastern Districts, shall be entitled, upon proof of such admission and enrolment, and that he is still entitled to practice therein, to be admitted and enrolled as an advocate or attorney, as the case may be, in the said High Court of Griqualand, without the payment of any fee or charge, and every advocate or attorney duly

admitted and enrolled in the said High Court shall be similarly entitled, upon proof as aforesaid, to be admitted and enrolled as an advocate or attorney, as the case may be, in the said Supreme Court and Court of the Eastern Districts; and service rendered under articles by any clerk to any attorney of either of the said Courts before such annexation shall, for the purpose of entitling the article clerk so serving to be admitted and enrolled as an attorney of either or both of the other said Courts be reckoned as if the attorney to whom such service was rendered had been, when the articles were executed, an attorney of such Court; and every notary public who shall have obtained authority to practise as such in the said Province shall, after such annexation as aforesaid, upon proof of such authority, and that he is still entitled to practise therein, be entitled to receive the authority of the Supreme Court of this Colony to practise as such notary public in this Colony, without examination, and without the payment of any fee or charge; and the provisions of this section relative to service rendered under articles by any clerk to an attorney as aforesaid before such annexation shall, *mutatis mutandis*, apply to the service rendered under articles to a notary public of Griqualand West, in like manner as if such notary public had during such service been duly authorised to practise as such by the said Supreme Court.

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

Land surveyors.

23. The Fiscal Divisions into which the said Province shall be divided at the time of the taking effect of this Act shall thereupon become and be Fiscal Divisions of the Colony of the Cape of Good Hope: Provided that it shall be lawful for the Governor, with the advice of the Executive Council, at any time before the commencement of the Session of Parliament next after such annexation, by proclamation in the *Government Gazette*, to alter such divisions, or to increase or diminish the number thereof in such manner as to him may seem fit.

Fiscal divisions.

24. So soon as may be after the taking effect of this Act, unless Divisional Councils shall before then have been established in the said Province, elections of Divisional Councillors shall take place in the several Fiscal Divisions into which the said Province may then, or shall in pursuance of the provisions of the last preceding section, be divided, so that the said Province in that respect may be in the same position as the other Fiscal Divisions of this Colony, and all and singular the provisions of the Acts of this Colony relating to Divisional Councils shall, from and after the taking effect of this Act, as far as may be, apply to the said divisions of the said Province and to elections of Divisional Councillors

Divisional councils
to be established.

No. 39—1877.

therein as aforesaid, and where in any of the said Acts any dates or times are fixed for the performance of any matter or thing relating to the nomination or election of Divisional Councillors or otherwise, it shall be lawful for the Governor, with the advice of the Executive Council, in regard to the first election of councillors for such divisions which shall take place under this Act, to fix such dates and times as to him may seem fit.

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

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

Qualification of members of divisional council.

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

Laws of the province.

27. All laws in force in the said Province at the time of the annexation thereof as aforesaid, in so far as the same shall be repugnant to or inconsistent with any of the provisions of this Act shall from and after such annexation stand repealed; but all other laws shall remain in force within that portion of this Colony formed by the said Province until the same shall be altered or repealed by law: Provided that nothing in this Act contained shall affect the decision of any question which may at the time of taking effect of this Act be pending in any Court of the said Province.

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

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

Deeds registry.

29. (1) Nothing in this or any other law which shall be in force in this Colony at the time of such annexation as aforesaid

¹ See Proclamation (G. W.) No. 25, 1872.

shall be construed so as to introduce into that part of the Colony formed by such annexation, the operation of the Deeds Registry of the Cape of Good Hope: and the Deeds Registry of the said Province shall, in regard to that part of the Colony formed by such annexation, remain and be of the same force and effect after such annexation as before such annexation; and no deed of transfer or hypothecation executed by any person domiciled in that part of the Colony formed by such annexation shall be registered otherwise than in the local Deeds Registry there established, or if registered elsewhere, shall derive any benefit from such registration.

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

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

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

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

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

No. 39—1877.

Revenue of province to become payable to Colonial Government.

Compensation to officers for loss of office through abolition.

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

Act to take effect when proclaimed in Government Gazette.

Short title.

¹ See Proclamation in Gazette 15th October, 1880.

No. 40—1877.]

[August 1, 1879.

ACT

To Empower the Governor to Raise a Sum of not exceeding One Hundred and Seventy-five Thousand Pounds for the purpose of liquidating certain Liabilities of the Province of Griqualand West. (1)

Preamble.

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

Governor to raise
£175,000 debentures
or stock.

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

Provisions to be
observed in borrow-
ing on debentures.

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

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

Provisions to be
observed in borrow-
ing on stock.

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

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

¹ See Act No. 24, 1880.

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

No. 40—1877.

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

Fund for payment of interest and gradual extinction of debt.

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

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

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

Redeemed debentures to be cancelled.

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

Guardian fund may be used in purchasing stock or debentures.

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

Accounts to be laid annually before Parliament.

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

¹ See Act 16, 1886.

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

No. 3—1878.

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

Short title.

SCHEDULE.

Schedule.

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

No. 1—1878.] [August 2, 1878.
An Act to apply a Sum of not exceeding £100,000 towards the Service of the Year ending the 30th day of June, 1879.
[Spent.]

No. 2—1878.] [August 2, 1878.
An Act to impose an Excise Duty upon Spirits Distilled or Manufactured within the Colony of the Cape of Good Hope.
[Repealed by Act 18, 1884.]

No. 3—1878.] [August 2, 1878.

ACT

For the Amendment of the Law relating to Wills and other Testamentary Dispositions.⁽¹⁾

WHEREAS some doubts have arisen with respect to the Law relating to Wills and other Testamentary Dispositions and the execution and attestation thereof:

Preamble

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories. See also Ordinance 15, 1845.

No. 5—1878.

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

Notarial wills to be valid though not read over in presence of witnesses.

1. From and after the taking effect of this Act no notarial will, whether made before or after the passing of this Act, shall be deemed or taken to be invalid, null or void, by reason that the same was not read over by the notary before whom such will was passed, or by any other person, to the testator in the presence of the subscribing witnesses to such will: Provided that nothing herein contained shall alter or affect any judgment or sentence in regard to any notarial will, pronounced by any competent court before the taking effect of this Act.

Repeal of inconsistent laws.

2. Every existing Law, Ordinance, or Act of Parliament, in conflict or inconsistent with the provisions of this Act, shall be, and the same is hereby, repealed, so far as such conflict or inconsistency may exist, but not further or otherwise.

Short title.

3. This Act may be cited for all purposes as the "Wills Attestation Amendment Act, 1878."

No. 4—1878.]

[August 2, 1878.

An Act for the Better Regulation of the Public Service of the Colony.

[Repealed by Act 42, 1885.]

No. 5—1878.]

[August 2, 1878.

ACT

For the establishment of a Colonial Yeomanry Force.⁽¹⁾

Preamble.

WHEREAS it is expedient to make better provision for the defence of this Colony, and for that purpose to establish a Mounted Yeomanry force therein: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Enrolment of not more than 3,000 men as colonial yeomanry

1. It shall be lawful for the Governor aforesaid, to cause fit and able men, of European extraction, not exceeding in number three thousand, who are willing to serve, to be enrolled and embodied as Mounted Yeomanry, for the defence of the said Colony, and for general military service within the said Colony or beyond the borders thereof, wherever the interests of the Colony may require.

Three regiments to be formed.

2. There shall be three regiments of such Mounted Yeomanry, each not exceeding one thousand in number, of which number as many as the Governor shall deem fit shall be specially trained to artillery practice.

¹ This force was disbanded on the 31st September, 1881. See Government Notice No. 1136, 1881, in *Gazette* of 30th September, 1881. Law relating to Colonial Forces consolidated by Act 32, 1892.

3. The said several regiments shall respectively be as follows, that is to say : There shall be for the divisions of King William's Town, East London, Victoria East, Peddie, Albany, Bathurst, and Alexandria, one regiment, to be styled the First Cape Yeomanry Regiment ; for the divisions of Queen's Town, Aliwal North, Albert, Middelburg, Cradock, Fort Beaufort, Wodehouse, Stockenstrom, and Bedford, one regiment, to be styled the Second Cape Yeomanry Regiment ; and for the divisions of Graaff-Reinet, Somerset East, Uitenhage, Port Elizabeth, and Humansdorp, one regiment, to be styled the Third Cape Yeomanry Regiment.

No. 5—1878.

Divisions represented in each regiment.

4. The head-quarters of the said First Cape Yeomanry Regiment shall be stationed at King William's Town ; of the said Second Cape Yeomanry Regiment at Queen's Town ; and of the said Third Cape Yeomanry Regiment at Uitenhage ; but the Governor, may hereafter, whenever it may appear desirable so to do, order and direct that the head-quarters of any of the said regiments be changed to a more convenient place.

Stations of each regiment.

5. The Governor shall have the power of appointing a qualified person to be Commandant-General (1) of all the Colonial Forces, who shall be responsible for the efficiency of such forces.

Governor to appoint commandant-general.

6. Every person enrolled and embodied in any of such regiments of Yeomanry as aforesaid, shall be resident within some one of the said several divisions for which such regiment shall be raised as aforesaid, and in enrolling and embodying men under this Act they shall be chosen with a view, as nearly as may be, to convenient access to places of muster as in this Act provided.

Men enrolled must be residents of divisions represented by their regiment.

7. It shall and may be lawful for the Governor, as occasion shall require, to appoint for every such regiment the following permanent staff, that is to say : One commanding officer to be styled Colonel, one Adjutant or Instructor of Musketry, one Paymaster and Quartermaster, one Sergeant-Major, five Staff-Sergeants, and two Clerks : Provided always that the said Governor may at any time, if he so thinks fit, accept the resignation of, and may displace, remove, or dismiss, all or any of such persons ; and in all cases of vacancy by resignation, death, removal, or otherwise, it shall and may be lawful for the said Governor to appoint other persons to fill such vacancies.

Officers to be appointed.

8. It shall and may be lawful for the Governor, from time to time as occasion may require, to appoint and issue commissions to a sufficient number of Captains, Lieutenants, and Surgeons for every such regiment.

Commissions to be issued.

9. It shall and may be lawful for the commanding officers of the said regiments respectively, to appoint such number of Sergeants and Corporals as the Governor may from time to time authorise to be appointed : Provided always, that the said respective commanding officers, acting upon the judgment of a regimental court-martial, shall have the power to displace or reduce to a lower rank,

Non-commissioned officers—how removable

¹ See § 9, Act 32, 1892.

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such Sergeants and Corporals respectively; such court-martial to consist of three officers of the said Yeomanry force, of whom one shall be of at least the rank of a Captain, and the displacement or reduction to be subject to the review and approval of the Commandant-General of the Colonial Forces.

Oath to be taken.

10. Every person who shall be enrolled in any of the said regiments shall be bound to serve for three years, and shall, upon enrolment, be required to pass a medical examination, and take the following oath, or make an affirmation to the same effect, before some duly authorised person, that is to say:—

“I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, according to law, and that I will faithfully serve in the Mounted Yeomanry of the Colony of the Cape of Good Hope for three years, unless I shall be sooner discharged.”

Mustering and drill.

11. Persons enrolled in the said several regiments shall be bound to muster and to attend local drill and rifle or artillery practice one day in each month, and they shall further be liable to be called out and to muster once in each year for training, for a period not to exceed seven consecutive days. And it shall and may be lawful for the Governor to name convenient times and places for the said monthly and yearly musters, and to make regulations for giving due notice of the times and places for the same, and for the general management of such musters.

Every man bound to keep horse, saddle and bridle.

12. Every person so enrolled, as aforesaid, shall be bound to supply himself with, and to maintain and keep in good order and condition, a suitable horse, saddle, and bridle, which shall be subject to the approval of such person or persons as the Governor may appoint for that purpose, to defray the expenses of which the yearly sum of £25 for the first year, and for each of the two succeeding years the sum of £15 shall be granted to him, one moiety thereof to be payable at the end of each half-year of service, upon satisfactory proof that during such time as he has owned, maintained, and kept serviceably the said horse, saddle, and bridle, and under such other conditions as the Governor shall provide by any regulations to be framed under this Act.

Allowances for that purpose.

Pay.

13. Pay shall be allowed for the yearly trainings only, at the following rates, that is to say:—

Captains	..	..	..	15s.	per diem.
Lieutenants	..	..	..	11s.	„
Surgeons	..	..	..	31s. 6d.	„
Sergeants	..	..	..	6s.	„
Corporals	..	..	..	5s.	„
Privates	..	..	..	4s.	„

In all cases with rations and forage for horses. In case the force shall be called out for actual service they shall be paid at the same rate for every day they shall be in such service.

14. It shall and may be lawful for the Governor to provide from time to time, as occasion may require, arms, ammunition, and all necessary equipments and camp epuipage for persons enrolled in the said several regiments, and to provide for such regiments a sufficient number of pieces of field artillery, and to procure the necessary store and other accommodation.

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Governor to provide arms, &c.

15. It shall and may be lawful for the Governor from time to time to make such regulations respecting the training, arms, ammunition, and equipment of the said regiments respectively, and respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof: Provided, however, that all such regulations shall be laid before both Houses of Parliament within fourteen days from the making thereof, if Parliament be in session, and if Parliament be not then in session, within fourteen days next after the commencement of the next ensuing session thereof.

Regulations to be made by Governor subject to sanction of Parliament.

16. It shall and may be lawful for the Governor from time to time to dispense with the services of any of the persons enrolled under this Act, and to grant, if he should so think fit, the discharge of any person enrolled in any of the said regiments, upon such conditions as to him shall seem proper.

Governor's power to discharge men.

17. Every commanding officer appointed under this Act shall return, or cause to be returned, to the Governor or to the Commandant-General of Colonial Forces, within one month after the said annual muster, a true state of his regiment, and shall at the same time report upon the quantity and condition of the arms, accoutrements, ammunition, horses, saddles, bridles, and camp necessaries and stores, provided for the use of the said regiment, and shall make thereafter quarterly returns and reports of the same.

Commanding officers to make returns to commandant-general.

18. It shall and may be lawful for the Governor, to provide from time to time, as occasion may require, the necessary transport for the arms, clothing, ammunition, accoutrements, and stores, for the use of the said regiments.

Governor to provide transport.

19. If the services of any person enrolled under the provisions of this Act shall be dispensed with, or his term of service shall have expired, he shall deliver up, in good order, fair wear and tear only excepted, all arms, accoutrements, and appointments, being public property issued to him, or in his possession or custody, and shall pay all money due or becoming due by him under the regulations framed under this Act, and the rules of the regiment to which he shall belong; but nothing herein contained shall prevent the Governor from giving such directions with respect to any of such cases as may appear just and proper.

Discharged men to give up arms and accoutrements.

20. Every person enrolled under this Act, who shall not appear at the time and place appointed for any of the said monthly or annual musters, shall forfeit and pay a sum not exceeding £5, unless he shall have duly obtained leave of absence from the commanding officer of his regiment, or unless his absence be caused by

Penalty for not attending musters.

No. 5-1878.

illness, in which case he shall be bound to furnish at or before such muster to the said commanding officer of his regiment a certificate to that effect from a duly qualified medical practitioner, or other proof to the satisfaction of such commanding officer.

Penalty for selling, destroying, or damaging arms or accoutrements.

21. In case any person so enrolled, as aforesaid, shall sell, pledge, destroy, or wilfully damage any arms, accoutrements, or other regimental effects, he shall be liable, upon conviction by the Resident Magistrate of the district within which the offence shall have been committed, to be imprisoned with or without hard labour for a period not exceeding three months, or to pay a fine not exceeding £10, and, in default of payment, to be imprisoned with or without hard labour for a period not exceeding the term of three months, or until such fine be paid, and in each case to pay the value of the said articles.

Offences.

22. Every person enrolled as aforesaid, who is guilty of any of the offences following, that is to say:—

- (1.) Absenting himself without leave from any muster, inspection, or parade during any part of the time provided therefor.
- (2.) Refusing or neglecting to obey any lawful order of his superior officer while at any muster, inspection, or parade.
- (3.) Being insolent towards his superior officer while in the execution of his duty as such officer.
- (4.) Behaving in a disorderly manner, or in a manner contrary to good discipline, while attending any muster, inspection or parade.
- (5.) Being in a state of intoxication during the period fixed for any muster, inspection, or parade.
- (6.) Failing to keep in proper and serviceable order his horse, saddle, bridle, arms, accoutrements, ammunition, or equipments,

Penalty.

shall incur a penalty not exceeding £2 for each offence.

Penalty for obstructing regiments.

23. Any person interrupting or obstructing any of the said regiments, or any part thereof, at muster, inspection, or parade, shall upon conviction by the Resident Magistrate of the district be liable to a penalty not exceeding £5 for every such offence; and if such person, after having been warned to desist, shall continue to offend, he may be arrested by the order of the senior officer present, and detained in custody until he can be brought before the Resident Magistrate of the district in which the offence was committed, to be dealt with according to law.

How penalties to be accounted for.

24. All fines paid by persons enrolled as aforesaid, and recovered under this Act, shall be paid to the commanding officer of the regiment to which the offender belongs, and shall be accounted for to the Commandant-General of Colonial Forces and paid into the public treasury.

Arms, &c., not liable to seizure under legal process.

25. The arms, ammunition, accoutrements, and other equipments of persons enrolled under this Act, and the horses, saddles, and

bridles kept or used by such persons for the discharge of their duties under this Act, shall be exempt from seizure in execution under legal process.

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26. No person enrolled as aforesaid shall, while in the discharge of his duty under this Act, be liable for any tolls, and no carts, wagons, carriages, horses, or other beasts, shall, while employed or used in duties, provided for by this Act, be liable to any tolls.

No tolls payable by men on duty.

27. Any person enrolled under this Act may, for any offence specified in this Act, be placed under arrest by his superior officer until such offence can be conveniently adjudicated upon, and all offences shall unless otherwise in this Act provided, be disposed of and penalties inflicted by the commanding officer of the regiment to which the offender shall belong, or in his absence by the senior officer present. All fines not paid within such time as the said commanding or senior officer shall name at the time of infliction, and the value of the articles which any person shall be liable to pay under section twenty-one, shall be recoverable in the Court of any Resident Magistrate in a suit in the name of the said commanding officer on production of a certificate of the conviction signed by the officer by whom the fine was inflicted, and for the purposes of this section the provisions of Ordinance No. 6 of 1839 shall apply.

Arrest, &c., of offenders.

Fines, how recoverable.

28. The Governor may at any time, if he should think fit, order a court of enquiry to be assembled for the hearing upon oath and for adjudication of any complaints arising out of the management or discipline of the said regiments and the constitution of such Court shall be subject to any regulations which the Governor may from time to time make with regard thereto, under the provisions of this Act.

Courts of inquiry.

29. All orders by the Governor or by any officer authorised to be given by this Act or given in execution of this Act, shall be valid and effectual, if verbally given on parade or issued in any other manner customary in Her Majesty's military service, unless in cases when this Act specially requires any such order to be in writing and the production of an order in writing purporting to be made according to the provisions of this Act shall be *prima facie* evidence of such order without proving the signature thereto or the authority of the person making such order.

Orders by Governor and officers may be verbal.

30. The cost and charges of carrying out this Act shall be defrayed out of such moneys as Parliament shall vote for the purpose.⁽¹⁾

Costs of carrying out Act.

31. The words "the Governor" in the enacting clauses of this Act shall mean the Governor acting by and with the advice of the Executive Council.

Meaning of term "Governor"

32. This Act may be cited as the "Cape Mounted Yeomanry Act, 1878."

Short title.

¹ No provision made by Parliament. Force disbanded on 31st September, 1881. See Government Notice No. 1136, 1881, Gazette, 30th September, 1881.

No. 6—1878.]

[August 2, 1878.

ACT

For enabling the Municipality of Aliwal (Mossel Bay) to borrow a Sum not exceeding Three Thousand Pounds Sterling for the purpose of Erecting a Town and Market-house for the use of the Inhabitants of the Town of Aliwal (Mossel Bay).

Preamble.

WHEREAS it is expedient to provide the inhabitants of the town of Aliwal (Mossel Bay) with a suitable Town and Market-house: And whereas, at a public meeting of resident householders convened for that purpose on the 20th day of November, 1877, it was resolved, by a majority of such householders then present, that the commissioners of the said municipality of Aliwal (Mossel Bay) be authorised to carry out the object beforementioned at an expense not exceeding the sum of Three Thousand Pounds Sterling: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Municipality authorised to borrow not more than £3,000.

1. It shall be lawful for the commissioners of the municipality of Aliwal (Mossel Bay) to borrow, from time to time, such sum or sums of money, not exceeding in the whole the sum of three thousand pounds sterling, for the purpose aforesaid, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal, of the moneys aforesaid, rates upon the immovable property situate within the municipality and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed by the provisions of the Ordinance No. 9 of 1836, section 28.

Money borrowed to be charged on rates.

2. The aforesaid sum of three thousand pounds sterling, or such lesser sum as shall have been borrowed for the purpose aforesaid by the said commissioners, is hereby charged upon and made payable out of the rates and revenues in the last preceding section mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal of the said debt, any funds or moneys coming to them from any source whatever, and not specially appropriated or required for any other object: Provided, also, that nothing in this section contained shall be construed to impair or affect the provisions of any of the next succeeding sections of this Act.

Written acknowledgment to be given to lenders.

3. The commissioners aforesaid shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such moneys as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the

purpose aforesaid, not exceeding in the whole the aforesaid sum of three thousand pounds sterling; which acknowledgment shall in substance be in the form annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

4. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867" Moneys borrowed subject to "Public Debts Act, 1867."

5. The commissioners shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys in the construction and maintenance of the said Town and Market-house: And the said commissioners shall yearly, and every year, as long as any part of the debt contracted under this Act shall be in existence, prepare and deposit in the office of the municipality of Aliwal (Mossel Bay) for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of September in each year, and shall be deposited in the office of the municipality not later than the 1st day of March in the year next succeeding. Separate accounts to be kept of moneys borrowed.

6. The necessary costs, charges, and expenses of obtaining this Act and of obtaining suitable plans, drawings, designs, and specifications for the said Town and Market-house, may be paid by the said commissioners out of the money or moneys so to be borrowed as aforesaid. Costs of Act may be paid out of moneys borrowed.

7. This Act may be cited for all purposes as the "Town of Aliwal (Mossel Bay) Town and Market-house Act, 1878." Short title.

SCHEDULE.

We, the undersigned, commissioners of the municipality of Aliwal (Mossel Bay), do hereby acknowledge that the commissioners in their said capacity are indebted to _____ in the sum of _____ for so much money borrowed by the said commissioners for the purpose set forth in the "Town of Aliwal (Mossel Bay) Town and Market-house Act, 1878," and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage for and on behalf of the commissioners that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert according to the agreement the rate of interest and the times

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of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands at Aliwal (Mossel Bay) this _____ day of _____, 18—.

A. B., Chairman of the Municipality.
C. D., } Commissioners.
E F., }

Witnesses :

G. H.

I. J.

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[August 2, 1878.

ACT

To Provide for the Organisation of the Inhabitants of this Colony for the Defence thereof. ⁽¹⁾

Preamble.

WHEREAS it is expedient to make provision for enrolling and organising the able-bodied inhabitants of this Colony for the defence thereof and the protection of life and property therein: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act 16 of 1855 repealed.

1. The Act No. 16 of 1855, intituled “ An Act for the Organisation of the Inhabitants of the several Divisions of this Colony for the Internal Defence of their respective Divisions,” is hereby repealed.

Field-cornets to frame lists of all males between 18 and 50 years of age.

2. The Field-cornets throughout the Colony shall, within the first month of the next ensuing year, make out a list containing the names of all the male residents in their respective Field-cornets between the ages of 18 and 50 years, who are not exempted from liability to serve under this Act, and in such list shall state the age, residence, and calling, and as nearly as possible the race to which each person belongs, and in the case of Kafirs from what tribe they take their origin, which lists shall be, as nearly as may be, in the form to this Act annexed, and the said Field-cornets shall, as soon as such lists are made out, transmit the same to the Civil Commissioner of the district within which their Field-cornetcy is situate. Provided, however, that until such lists have been completed, the lists which have already been framed under the provisions of the said Act No. 16 of 1855, shall be and remain the lists for the purposes of this present Act; provided also that for performing the aforesaid services, each Field-cornet shall be entitled to such remuneration as to the Governor shall seem just.

Until framed, lists under repealed Act to remain lists for this Act.

Persons exempt from burgher service

3. All persons disqualified for service as burghers or levies by bodily or mental infirmity, the members for the time being of the Legislative Council and House of Assembly, Ministers of Religion, Judges, Teachers in Schools, Constables, persons serving in any of the Military or Naval Departments of Her Majesty, or in the

¹ Amended by Act 4, 1884.

Cape Mounted Yeomanry, or in the Frontier Armed and Mounted Police, or any other force to be created upon the basis thereof, or in the divisional or other police, or in the Civil Service of this Colony, and all merchant seamen under articles, shall be exempt from serving in the burgher force or levies under this Act, except with their own consent.

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4. In any municipality or borough for which there shall be no Field-cornet, the duties devolving upon that officer under this Act shall be executed by such person as may be appointed in that behalf by the Governor, and every municipality or borough shall for the purposes of this Act be deemed to be one or more Field-cornetcies, as the Governor may direct.

When no field-cornet, special officer to be appointed.

5. If any Field-cornet shall neglect to make out the list as hereinbefore mentioned and furnish it to the Civil Commissioner of his division as aforesaid, or shall furnish an imperfect list, it shall be made out or compiled as the case may be, by such person or persons as may be appointed in that behalf by the Governor.

In case of failure by field-cornet to make proper list

6. Every such Civil Commissioner shall forthwith upon the receipt of such list, cause a copy thereof to be affixed at the residence of each Field-cornet, and at each Court-house within the division, and shall cause a notice to be inserted in a local newspaper, if any, and posted at or near the residence of each Field-cornet, and at each Court-house as aforesaid, of the day on which and the place at which he will hold a court for the purpose of hearing objections to such list, which day shall not be sooner than two weeks nor later than four weeks after the day of affixing the aforesaid copy at the Court-house of such Civil Commissioner.

Provisions for hearing objections to lists.

7. Upon the day and at the place so notified the Civil Commissioner shall hold a court, at which he shall, on due proof by the oath of such persons as he shall see fit to examine, or by declaration or affidavit, correct all errors in such list, either by adding the names of persons liable to service which may have been omitted therein, or by striking out from the list of those so liable the names of any persons entitled to be exempt: Provided that such court may be adjourned from day to day until all questions as to the correctness of the list are determined, and provided that the decision of such Civil Commissioner shall be final. Provided also that the Governor shall from time to time distinguish in every such list between persons to be enrolled as burghers and persons to be enrolled as levies, and shall thereupon cause separate lists thereof to be made, which shall respectively be the lists for the purposes of this Act: Provided also, that the lists which have been already framed under Act No. 16 of 1855, shall also be subject to this lastmentioned proviso.

Civil commissioner to hold court for the purpose.

8. In every case in which exemption shall be claimed on account of bodily or mental infirmity, the party so claiming shall be required to furnish proof to the satisfaction of the Civil Commissioner, and if he claim it on account of age, but cannot afford proof

Mode of proving title to exemption.

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How burgher forces
to be officered.

of the validity of his claim, the decision of his liability to service shall be in the discretion of the said Civil Commissioner.

9. The burgher force to be enrolled under this Act shall be officered by Field-captains, one of whom shall command the burghers enrolled in each Field-cornetcy, and by a Field-commandant in each Division, who shall command all the burgher forces enrolled therein; and all such officers shall be elected as hereinafter enacted: Provided that if the burghers in two or more Field-cornetcies be called out and assembled together, and the Field-commandant be not present, the senior Field-captain present shall act as provisional Field-commandant during the absence of the Field-commandant. The levies to be enrolled under this Act shall, when called out, be officered by persons appointed by the Governor: Provided, further, that seniority or the relative precedence of officers of the same rank, elected or appointed under this Act shall be determined by the date of the election or appointment, and where the election or appointment shall have been on the same day, by the order in which the names of the parties so elected or appointed shall appear in the *Government Gazette*: Provided that no person employed in the civil service of the Colony shall be eligible to be elected or appointed either as Field-commandant, Field-captain, or Deputy Field-captain.

Mode of electing
field-captains.

10. Upon the completion of such lists as aforesaid each Field-cornet shall fix a day, not to be later than one month after the date of such completion, on which the burghers of his Field-cornetcy shall assemble, at a place to be by him appointed, to elect a Field-captain and a deputy to act in the absence of such Field-captain, and subject to such regulations or orders as may be made by the Governor, as hereinafter mentioned, to assist the Field-captain for such Field-cornetcy: Provided that such election shall be decided by a majority of burghers belonging to the said Field-cornetcy then present, and that notice of the names of the Field-captains and their deputies so elected be forthwith transmitted by the chairman of such meeting to the Civil Commissioner of the division: Provided, moreover, that every such election shall be subject to the approval of the Governor: Provided, further, that in the case of non-election on the day so fixed as aforesaid, the Governor shall appoint such Field-captains and deputies respectively from amongst the said burghers.

Field-captains to
elect field-command-
ants.

11. Within one month after the election or appointment of the Field-captains and their deputies, and in the case of election the approval of such election by the Governor, the said Field-captains or their deputies not being less than two-thirds of the said Field-captains in the said division, shall assemble on a day and at a place to be fixed by the Civil Commissioner, and shall by a majority of those present, elect their Field-commandant: Provided that such election shall also be subject to the approval of the Governor: Provided also, that in the event of an election not taking place on

the day so fixed as aforesaid, the Governor shall appoint a Field-commandant from amongst the Field-captains elected or appointed.

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12. All Field-commandants, Field-captains, and Deputy Field-captains elected and approved of or appointed, as above provided, shall serve for three years or until other persons be elected or appointed in their stead, in the manner above provided for their first election or appointment, and shall be then re-eligible. If any Field-captain or Deputy Field-captain shall at any time decline to serve he shall give notice thereof to the Field-commandant of his division, and if any Field-commandant shall so decline to serve he shall give notice thereof to the Civil Commissioner of the division, and thereupon proceedings shall be taken in the same manner as above provided for the election or appointment of a successor to such officer.

Officers' term of service.

13. When and as often as any Field-commandant, Field-captain, or Deputy Field-captain shall die or resign during the period for which he has been elected or appointed to serve, or any Field-commandant, Field-captain, or Deputy Field-captain shall during such period be absent from his Division or Field-cornetcy, as the case may be, for three consecutive months, another Field-commandant, Field-captain, or Deputy Field-captain, as the case may be, shall be elected or appointed in the place of one so dying or resigning or being absent, in manner above provided for a first election or appointment: Provided that any Field-commandant, Field-captain, or Deputy Field-captain vacating office by reason of absence shall be eligible to be re-elected or re-appointed.

Provisions for cases of death or resignation of officers.

14. (1) Every Field-cornet shall (*within the first month of each succeeding year*) furnish to the Civil Commissioner of his division a list of all burghers or levies who have died or have passed the age of fifty, or have ceased to reside in his Field-cornetcy during the preceding year, together with a list of all persons liable to serve as burghers or levies who have reached the age of eighteen or have taken up their residence during the same period in his Field-cornetcy; and unless such latter persons prove their claim to exemption before the Civil Commissioner within fourteen days after they shall have received notice, as in the sixth section provided, that their names have been included in the list so furnished as aforesaid, their names shall be added by the said Civil Commissioner at the end of the respective rolls, and the names of all such former persons shall be erased from the respective rolls by the said Civil Commissioner: Provided always that in case of addition, the Governor shall distinguish between burghers and levies as hereinbefore mentioned.

Field-cornets to furnish lists of burghers who have died or left or attained 50 years.

15. The Governor may from time to time assemble the burgher force and levies, or such part or parts of such forces respectively as may appear to him expedient, for inspection or for inspection

Power of Governor to assemble burgher forces.

¹ Amended by Act 4, 1884, § 3 *List to be furnished at such time as the Governor may direct.*

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and rifle practice under their own officers, at such time and times and at such place or places within their respective divisions as he may direct.

Burghers to be divided into two classes.

16. The Governor shall, from time to time, cause the burghers enrolled under this Act, exclusive of officers, to be divided into two classes, the first class to include all enrolled burghers between the ages of eighteen and thirty, and the second class to include all enrolled burghers between the ages of thirty and fifty.

Governor may call out portions or whole of force.

17. Whenever it shall be necessary for the defence of the Colony or any part thereof, or for the protection of life and property therein or any part thereof, the Governor, may by proclamation call out the burgher force and levies, or such part or parts of the said forces respectively as he may consider necessary, for service at such place or places within the said Colony or beyond the borders thereof, as he may from time to time think fit to direct: Provided, however, that no person actually serving in any volunteer corps enrolled as such under any law for the time being in force in this Colony as to volunteer corps shall be called upon to serve in any other way than in and with such volunteer corps: Provided, also, that in case a portion only of the said burgher force be called out, the first drafts shall be taken in the respective divisions from the said first class of burghers.

Volunteers exempted from service as burghers.

Mode of calling out burghers.

18. Whenever it shall be necessary to assemble or to call out the whole or part of the burgher force of any division, the Civil Commissioner shall give notice thereof to the Field-commandants and to the Field-captain or captains whose companies or any part of whose companies it may be necessary to call out, who shall thereupon proceed to call out in such manner as they may be directed by the Governor, the required number of burghers, and shall at the same time appoint a time and place at which the burghers so called out shall assemble; and if it be required to summon a general assembly of the burghers of the division, or the burghers or any of the burghers of more than one Field-cornetcy, the Civil Commissioner shall in his summons to the Field-commandants and Field-captains signify at what time or times, and in what place or places, such burghers shall meet for the service required of them. The calling out of levies shall be subject to such regulations as the Governor may make under the provisions of this Act.

Ballot to determine who to serve in case a portion only called out.

19. In case it shall be necessary to call out a portion only of the burghers of any class, the persons so to be called out shall be determined by ballot, to take place under such regulations in that behalf as the Governor may from time to time make: Provided, however, that the Governor shall have the power, if he shall so think fit, to dispense at any time with the services of any person so drawn whose labour shall be the sole support of his family.

Penalties for not serving when duly called out.

20. Any Commandant, Field-Captain, Deputy-Field-captain, or burgher who, having received due notice, as in the sixth section

provided, of his liability to serve, and having received due notice of his having been called out to serve on any occasion, shall absent himself without a lawful cause for his absence, or shall withdraw himself before permission to that effect be given by some competent authority, or shall refuse or wilfully neglect to obey any lawful command of his superior officer, shall upon conviction be liable to a fine, if a Commandant, Field-captain, or Deputy Field-captain, of not exceeding £50, and if any ordinary burgher, of not exceeding £25, which shall be recoverable by summary process in the Court of the Resident Magistrate of the district in which the offender resides, and shall be paid into the public treasury, but no conviction and fine so paid shall be deemed or taken to exempt the person convicted from liability to be again called out after such conviction to perform burgher service. And in case of non-payment of any such fine, the offender shall be liable to imprisonment with or without hard labour for a term not exceeding three months, or until such fine be paid. And any member of levies absenting himself without lawful cause when called out under this Act, shall be liable to a fine of not exceeding £5 or in default of payment, to imprisonment with or without hard labour for a term not exceeding three months, unless such fine be sooner paid; such fine to be recoverable as hereinbefore mentioned, and no such conviction or fine to exempt the person convicted from liability to be again called out, after such conviction as hereinbefore provided.

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21. Any burgher or member of levies called out for service under this Act shall be entitled to provide as his substitute any other competent person approved of by his Field-commandant, or in the case of a member of levies by his commanding officer, who shall consent to serve in the place and stead of such burgher or member of levies, and such burgher or member of levies shall thereupon be exempt from service under the said call, and the said substitute shall be in the same plight and condition as if he had been a burgher or member of levies duly called out: Provided that in case as often as the person serving as a substitute shall himself be called out before the expiration of the period for which he consented to serve as substitute shall have expired, the burgher or member of levies for whom he serves shall be bound to serve for the remainder of the said period or to provide another substitute approved of as aforesaid.

Substitutes maybe provided.

22. Every burgher, or member of levies, when called out for service, who shall be guilty of any of the following offences, that is to say,—

Offences and penalties.

1. Absenting himself without leave from any muster, inspection, or rifle practice during any part of the time provided therefor.
2. Refusing or neglecting to obey any lawful order of his superior officer while at any muster, inspection or rifle practice.

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3. Being insolent towards his superior officer while in the execution of his duty as such officer.
4. Behaving in a disorderly manner, or in a manner contrary to good discipline, while attending any muster, inspection or rifle practice.
5. Being in a state of intoxication during the period fixed for any muster, inspection or rifle practice.
6. Failing to keep in proper and serviceable order any horse, saddle, bridle, arms, accoutrements, ammunition, or equipments (if any) entrusted to him;

shall, upon conviction by the Resident Magistrate of the district within which the offence shall be committed, incur a penalty not exceeding £2 for each offence, and in default of payment shall be liable to imprisonment with or without hard labour for a term not exceeding fourteen days, unless such fine be sooner paid.

Pay during service.

23. Each Field-commandant, Field-captain, Deputy Field-captain, burgher, and member of levies when called out into active service under this Act shall, while so serving, receive rations for himself and forage for his horse, if mounted, and be paid per diem according to the following scale :

Each Field-commandant	£1	0	0
Each Field-captain or Deputy Field-captain . .	0	15	0
Each burgher who shall provide his own horse, saddle and bridle	0	4	0
Each burgher who shall not provide his own horse, saddle, and bridle	0	3	0
Each member of levies at a rate not exceeding	0	2	6

Provision for widows and families.

24. The widow or family of any burgher or member of levies who may be killed in action, and any burgher or member of levies who may receive during his service any wound or injury permanently injurious in its consequences, shall receive a pension or allowance not exceeding £70 per annum, the amount whereof shall be fixed by the Governor.

Compensation for loss of horse, arms, or accoutrements.

25. Every mounted burgher, whose own horse shall be killed or carried off by or abandoned to the enemy, or be destroyed to prevent the same falling into the enemy's hands, or who shall while on active service suffer loss by the enemy of his own saddle, gun, or accoutrements, shall be paid the value of the same, such value to be certified by the Commandant of the force to which the burgher belongs : Provided that such value shall not exceed £25 for the horse, £10 for the gun, and £5 for the saddle and accoutrements.

Power to take horses, provisions, &c., for public service.

26. When the burgher force of any division or any part thereof shall be called out for active service, the Field-commandant, or the Field-captains or Deputy Field-captains of the several wards of such division, are authorised to require from those who possess them such wagons, horses, mules, oxen, and gear, together with such provisions, forage, or other necessaries as shall be needed for the

service of such force, and every inhabitant shall be bound to render obedience to such requisition : Provided that with reference to such requisition the aforesaid officers shall conform to the instructions which they may have received from the Civil Commissioner of the division to which they belong.

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27. When any articles aforesaid shall be so obtained, the officer obtaining the same shall justly estimate the value thereof, and shall give a certificate, certifying that he has obtained from ——— the articles in question, and that the same are fairly worth £——; and the Civil Commissioner of the district within which the articles shall have been obtained shall, on presentation of such certificate, and in case the amount shall not appear to him excessive in value, pay the sum stated in such certificate by a draft on the Treasurer of the Colony in the usual form : Provided that if the value placed on such article be deemed excessive, or if the late owner shall object to the same as being inadequate, the question shall be referred to the arbitration of three persons, of whom one shall be nominated by the Government, one by the said owner, and the third by the two persons so nominated, before entering upon the said arbitration, and the decision of the said arbitrators, or of any two of them shall be final. And all articles so obtained shall be the property of the Government.

Payment to be made for articles so taken.

28. The Governor may, from time to time, take such measures as may be deemed expedient for providing, at the public expense, horses, arms, ammunition, accoutrements, and equipments for such burghers and levies as may not possess the same, of their own, and for the due preservation and custody of all public property provided for the use of the said forces.

Governor may take measures to provide, in certain cases, horses, arms, &c.

29. In order the better to enable the Civil Commissioner, Field-cornets, and other persons charged with the preparation or revision of lists under this Act to obtain the information necessary for the purposes of this Act, they are hereby authorised and empowered to ask such questions concerning names, ages, residence, calling, or race, as may be necessary for the preparation or revision of such lists as aforesaid, and every person refusing or neglecting to answer, or wilfully giving a false answer to any such question shall, for every such refusal or neglect or false answer, be liable upon conviction by the Resident Magistrate of the district, to pay a fine not exceeding £5, and in default of payment to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine be sooner paid.

Power to civil commissioner, field-cornets, and others to make enquiries.

Penalty for refusing to answer.

30. The Governor may, from time to time, make regulations and orders respecting the general government, discipline, and management of the said forces, and the constitution, assembling, and proceedings of courts of inquiry to hear, receive, and examine evidence relating to, and to report on, any matter connected with such force or any charge brought against a member thereof, and may from time to time alter and repeal any such regulations and

Governor authorised to make regulations for discipline, &c.

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orders, and may call for such returns as may from time to time seem requisite: Provided that all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, or after the commencement of the next session, if Parliament be not then sitting, as the case may be.

Costs of carrying out Act.

31. The cost and charges of carrying out this Act shall be defrayed out of such moneys as Parliament shall provide for that purpose.

Meaning of "Governor."

32. The words "the Governor" in the enacting part of this Act shall mean the Governor acting by and with the advice of the Executive Council.

Short title.

33. This Act may be cited as the "Burgher Force and Levies Act, 1878."

FORM OF ORIGINAL LIST.

Division _____

Field-cornetcy _____

No.	Name.	Age.	Residence.	Calling.	Race.	Remarks.
1	A. B.	29	Queen's Tn.	Farmer	As the case may be. <ul style="list-style-type: none"> E—(European or European extraction) K—(Kafir) F—(Fingo) H—(Hottentot) O—(Other coloured races) 	

FORM OF BURGHER LIST.

Division _____

Field-cornetcy _____

No.	Name.	Age.	Residence.	Calling.	Race.	Remarks.
1	C. D.	30	Wodehouse	Carpenter	E—European or European Extraction.	

ALIWAL NORTH DIVISIONAL COUNCIL LOAN. 1555

FORM OF LEVY LIST.

No. 11—1878.

Division _____
Field-cornetey _____

No.	Name.	Age.	Residence.	Calling.	Race.	Remarks.
2	E. F.	25	Shiloh	Agricultural Labourer	E—European Extraction K—Kafir F—Fingo H—Hottentot O—Other Coloured Race	

No. 8—1878.] [2nd August, 1878.

An Act to Amend and Add to the Provisions of the Native Locations Act of 1876.

[Repealed by Act 37, 1884.]

No. 9—1878.] [August 2, 1878.

An Act to Organise, Establish, and Regulate a Force for the better Protection of Life and Property in the Colony, to be called "The Cape Mounted Riflemen."

[Repealed by Act 32, 1892.]

No. 10—1878.] [August 2, 1878.

An Act for the Regulation of Volunteer Corps.

[Repealed by Act 10, 1882.]

No. 11—1878.] [August 2, 1878.

ACT

To Authorise the Divisional Council of Aliwal North to Borrow Money upon Security of Road Rates and Tolls for the Erection of a Bridge over the Kraai River.

WHEREAS it is desirable that a bridge should be erected over the Kraai River at the "Poort," in the division of Aliwal North: And whereas the Colonial Government has agreed to contribute the sum of five thousand pounds towards the construction of the said bridge: And whereas the Divisional Council of Aliwal North are desirous of obtaining certain powers to enable them to take up on loan the further amount required to be expended on the erection of the said bridge:

Preamble.

1556 ALIWAL NORTH DIVISIONAL COUNCIL LOAN.

No. 11—1878.

And whereas it is expedient that the said Council should be authorised to borrow money upon security of the road rates, tolls, and other revenues of the said division: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly, as follows:—

Power to borrow
£5,000.

1. It shall be lawful for the said Council from time to time to borrow and to take up at interest such sum or sums of money, not exceeding five thousand pounds in the whole, as may be required in addition to the amount to be contributed by the Colonial Government for the purpose of erecting a bridge over the Kraai River at the "Poort," in the division of Aliwal North.

Chargeable on
rates.

2. For the due payment of the money to be raised by the Divisional Council as aforesaid, and the interest thereof, the rates, tolls, and other revenues of the said Council are hereby charged and hypothecated.

Written acknow-
ledgment to lenders.

3. The Council shall grant written acknowledgments of or for such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in the form annexed to this Act, and shall be signed on behalf of the said Council by one or more of its elected members thereto duly authorised by resolution of the said Council.

Provision for pay-
ing interest and for
gradual extinction of
loans.

4. As a fund for the payment of the interest upon and gradual extinction of the loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said Council as aforesaid, an annual sum equal to the interest on the whole amount of such loans, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sum shall be annually charged upon and payable out of the revenues of the said Council, so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Separate account
of fund to be kept.

5. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section, as shall not be required for payment of the interest for the time being due upon the loans raised under the authority of this Act, shall be paid to a separate account, to be kept in a bank to be chosen for that purpose by the Council, and shall be applied in redeeming and cancelling the obligations or acknowledgments of the said Council for money borrowed under the authority of this Act, in such manner and form as shall be provided by terms and conditions whereon such obligations or acknowledgments shall respectively have been granted; and all moneys so paid into a bank for the purpose aforesaid shall be drawn out by cheques, to be signed by some member or members thereto specially authorised by resolution of the said Council.

Separate account
of moneys received
and expended.

6. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the

ALIWAL NORTH DIVISIONAL COUNCIL LOAN. 1557

Colonial Secretary half-yearly, showing all moneys received and expended up to the 30th June and 31st December preceding.

No. 11—1878.

7. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed under the provisions of the "Divisional Councils Act, 1865"; and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loan.

Accounts to be audited.

8. Every debt, liability, and obligation created by virtue of this Act, shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Debt subject to "Public Bodies Debts Act."

9. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act and carrying the provisions thereof into effect, out of the money to be raised under the provisions hereof.

Costs of Act may be paid out of borrowed money.

10. The said bridge shall be constructed either by the Colonial Government or by control, or otherwise, whenever the said Council shall signify its preparedness to raise money as aforesaid, and upon receipt of notice to that effect the Government are authorised to draw against the funds to be raised by the said Council under the provisions of this Act, from time to time *pari passu*, with such sums as the said Government may expend from time to time upon or in connection with the said bridge.

When and how bridge to be constructed.

11. The said Council shall be authorised to employ the services of an engineer to superintend the works on the said bridge, who shall at all times have access to all books, plans, papers, and estimates connected with the same, and shall report to the said Council, from time to time, on the progress and condition of the said works. The salary of such engineer shall be a charge on the money to be raised as aforesaid by the said Council.

Authority to employ engineer.

12. After the completion of the said bridge it shall be the duty of the said Council to cause the same to be kept in a fit and proper state of repair.

Municipal Council to keep bridge in repair.

13. It shall be lawful for the said Council to erect and establish a toll at the said bridge, subject to and in accordance with the provisions of the twenty-second, twenty-third, and twenty-fourth sections of the Act No. 9, 1858, in that behalf; and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the said Act shall extend and apply to the toll-bar and toll at or connected with the said bridge.

Toll to be established.

14. The provisions of the fifty-sixth and fifty-seventh sections of the aforesaid Act No. 9, 1858, shall extend and apply to the said bridge in regard to its protection against injuries, whether malicious or through carelessness.

Protection of bridge against injuries.

15. This Act may be cited for all purposes as the "Aliwal North Divisional Council Loan Act, 1878."

Short title.

No. 12—1878.

SCHEDULE, ALIWAL NORTH DIVISIONAL COUNCIL, LOAN ACT, 1878.

Acknowledgment for loan £.....

We, the undersigned, members of the Divisional Council of Aliwal North, duly authorised thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Aliwal North is indebted to.....in the sum of.....for so much money borrowed for the purposes mentioned in the "Aliwal North Divisional Council Loan Act, 1878," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say (here insert the rate of interest; times of payment, and other conditions agreed upon).

Given under our hands at Aliwal North, this..... day of....., 187...

{ Members of the Divisional Council Aliwal North.

Entered

Secretary.

No. 12—1878.] (1)

[August 2, 1878.

ACT

To Amend the Act No. 23 of 1869, intituled an Act to Repeal the Act No. 29 of 1861, for Establishing a Municipality for the City of Graham's Town, and to make other provisions in lieu thereof.

Preamble.

WHEREAS it is expedient to amend the Act No. 23 of 1869, intituled an Act to repeal the Act No. 29 of 1861, "For establishing a Municipality for the City of Graham's Town": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant portion of Act 23 of 1869 repealed.

1. So much of the said Act No. 23 of 1869 as shall be repugnant to, or inconsistent with, any of the provisions of this Act, is hereby repealed.

Who may be candidates at election of councillors.

2 No person shall be eligible as a candidate at any election, nor qualified to be elected a councillor for any ward, unless he be a registered citizen, and shall have been invited to become such candidate by a requisition, signed by at least three qualified voters of such ward, and shall have transmitted such requisition, with his acceptance thereof, to the Mayor, as is provided for in the following section.

1 See Act 14, 1894.

3. That when the seat or seats of any councillor or councillors shall become vacant, the Mayor shall, under his signature, give notice of such vacancy or vacancies in any one of the local newspapers, and shall therein appoint a day, not later than seven days from the first publication thereof, for the purpose of considering and determining upon such requisitions as shall be addressed to any candidate or candidates to fill up such vacancy or vacancies, but such requisitions and the replies thereto shall be delivered at the Town Office not later than three o'clock p.m. on the day so appointed.

No. 12—1878.

Proceedings when
seat of any councillor
becomes vacant

4. If, on the day appointed, as in the preceding section mentioned, there shall be no more requisitions delivered at the Town Office than are sufficient to fill up such vacancy or vacancies, it shall be competent for the Mayor, without any further action or proceeding, to declare the candidate or candidates who have accepted the requisition or requisitions duly elected a member or members of the council, but if the requisitions to candidates exceed the number of vacancies to be filled up, then all such requisitions shall be published by affixing the same on some conspicuous place in the Town Office; and the Mayor shall within three days thereafter publish the names of the several candidates in one of the local newspapers, and at the same time therein give fourteen days notice to the citizens, calling a meeting for the election of councillors to fill up the vacancy or vacancies, and in such notice he shall also state the date, hour, and place of such meeting.

How when requisitions are not more than sufficient to fill up vacancies; if requisitions exceed the number of vacancies, election to take place.

5. At every yearly election, which shall take place on the first Wednesday in July of each year, there shall be elected one councillor for each ward, who shall enter upon his office on the first Thursday after his election, and continue therein for three years; and every retiring councillor shall be eligible for re-election.

Yearly election provided for.
Councillors to hold office three years, and may be re-elected on retirement.

6. The council shall have power and authority to do the following acts: To make, alter, and keep in repair the roads, streets, dams, sewers, drains, culverts, and bridges within the limits of the municipality; to secure regularity in the erection of buildings; to define the width and direction of such streets as may be made over private property by the owners thereof, which streets when so defined shall thereafter upon application by the owners of said property to the said municipality become public streets; to excavate, construct, and lay water courses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes or to execute any other like works; to adopt necessary measures for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with pipes and utensils; to establish and regulate markets; to light or provide for the lighting of the streets; and to hold, occupy, or purchase any land, and to erect or purchase and to keep in repair any building for any

Power and authority of council defined.

No. 12—1878.

of the purposes required by the said council; to cause all buildings which shall be certified in writing by any three master builders to be unsafe to the public to be placed in a state of security, or, if necessary, removed at the expense of the owners of such buildings; to cause all buildings used by the public capable of containing more than three hundred persons to be provided with sufficient and proper means of egress in case of fire or other dangerous casualty; to assize weights and measures according to the standards in force by law, to grant licences or permits for any purpose to be defined by the municipal regulations of the city, such as for cabs, omnibuses, or other vehicles plying for hire, and to regulate the tariff of charges in connection therewith; and to levy tolls and dues as hereinafter provided, and generally to devise and to carry out all such measures as shall appear to the council to the advantage and convenience of the municipality:—and by municipal regulations to do any of the following acts, that is to say, to direct the method by which night soil may be disposed of with power to abolish any existing practice that may be found prejudicial to health, and to substitute others; to regulate the time and place for slaughtering cattle, and the state and condition of the slaughter-houses, and the confining or killing of dogs, pigs, goats, and fowls, and to levy a tax on all carts, carriages, and dogs kept within the limits of the municipality; to regulate the width of any footpath or pavement in the street in front of any private property, and to determine on the nature and description of the material to be used therefor, also to provide for the registration at the Town Office of all births and deaths that may occur within the municipality, and of all sales of landed property, for the maintenance of order in the streets, public places, and thoroughfares of the municipality, for the conduct of traffic therein and the conservancy of the water kloofs, reservoirs, and all property and plant connected with the municipal water supply. The council shall by municipal regulations have the further power to appoint one or more competent persons to examine meat and other provisions and drinks exposed for sale, and who, in case such meat or other provisions or drinks be found unfit for human food or drink, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances; to provide for the management of the common pasture-lands of the municipality, and for fixing the number and description of cattle which each householder shall be allowed to depasture on such lands; to establish and provide for the management of public pounds within the municipal limits, provided that no toll due, or fee, or charge for any permit, or any punishment or penalty shall be imposed by reason of anything in this section contained, unless the same shall have been imposed in accordance with the provisions of the 39th section of the said Act 23 of 1869 mentioned.

But no toll, penalty, &c., to be imposed except in accordance with section 39 of Act 23 of 1869.

7. It shall be lawful for the council to appoint out of their own body such and so many committees either of a general or special nature, and consisting of such members as the council may see fit, for the purpose of examining and reporting upon any matter or performing any act which in the judgment of the council would be more conveniently performed or examined into by means of a committee: Provided always that the proceedings of every such committee shall be regularly entered in its minute-book, and the result reported to the council. The Mayor to be *ex-officio* a member of all such committees.

No. 12—1878.

Appointment by council of general or special committees.

8. For the purpose of raising the means for making new roads, streets, market conveniences, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other water works; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines, and appurtenances; for the effecting of all other public works and improvements within the municipality; for the purpose of raising the means for effecting the repairs of such works as the council is empowered to make or to have made; for the maintaining of water-works, fire-engines, police establishment, markets, and pounds; and for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, pound fees, dog and carriage tax, as shall be deemed necessary and reasonable, and shall be authorised by any such municipal regulations aforesaid, and shall have the power, as often as shall be deemed necessary, to make and levy a rate and assessment upon all immovable property within the municipality, the value of which is to be ascertained in the manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be at least sixteen members of the said council present at the meeting at which such rate shall be imposed; and provided, also, that no rate or assessment shall be imposed upon any immovable property belonging to Her Majesty the Queen, nor on public prisons or police stations, almshouses or hospitals, nor on any buildings appropriated to public worship, nor upon any burial-grounds, nor upon buildings solely appropriated to the purposes of gratuitous education, provided the exemption last mentioned shall not be construed to extend to any separate or adjoining building or buildings upon the premises in which the teacher or teachers or his or their family or any other person or persons dwell, or which he or they occupy, but shall solely apply to such buildings as are especially appropriated for the education and use of the pupils, and that any other part of the premises and buildings not so appropriated shall be rated in like manner as other immovable property not exempted within the said municipality; provided that these exemptions shall not extend to any immovable property

For municipal purposes council may collect certain dues, taxes, &c.

And may levy rate on immovable property.

No such rate to be assessed unless 16 members be present at meeting.

What property exempted from rates.

Qualification of such exemption.

No. 12--1878.

which, although belonging to Her Majesty the Queen or to the Colonial Government, shall be possessed or occupied by any person or persons in his or their individual capacity only as lessee, or sub-lessees, or otherwise.

Levying of market dues.

On what properties water rates may and may not be levied.

9. No market dues shall be levied on any person not using the public market, nor shall any compulsion be used to induce any person to use such public market; nor shall water rates be levied on any person whose property or properties in the city cannot be supplied with the water provided by the council, but the council shall have the power to impose the current water rate on the proprietors or occupiers of all buildings, houses, shops, or stores situated in any street through which the council's main water pipes run, except where tanks are formed or supplied to hold water adequate for the premises in the estimation of the council.

Valuation roll to lie for inspection.

Notice to be given of court to hear objections to the valuations.

What proof required in proceeding for recovery of any rate.

Court to be held as announced in notice. May correct or amend valuation.

No councillor to sit when valuation of his own property is in dispute.

10. As soon as any valuation as aforesaid shall be completed, it shall lie at the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may upon all lawful days and at all reasonable times, inspect the same and take extracts therefrom, within the period of one calendar month thence following, and the council shall, by public notice, announce for general information that it will, on some day not more than a fortnight after the expiration of said month, and at some hour and place to be fixed in such notice, hold a court for the purpose of hearing and determining objections to such valuation, provided that such notice shall be published immediately after the valuation shall be ready for such inspection, and repeated every week in one of the local newspapers during the said month: Provided, also, that it shall not be necessary in any suit or proceeding for the recovery of any rate to prove anything further in the nature of due notice of any such valuation as aforesaid than the publication of the said notice during the said month in pursuance thereof, in one of the said local newspapers; and upon such day as aforesaid, and at the place and hour mentioned in such notice, the said council shall hold a court and shall hear all objections which may be urged to any valuation by any owner or occupier, or other persons on his behalf, and shall inquire into the merits of such objections, and for that purpose may, if the council think it desirable, take the oath of any person whom it shall see fit to examine (which oath the presiding member of the court is hereby authorised to administer) and shall confirm or correct any valuation objected to, provided the said court may be adjourned from time to time as the said court may deem necessary; and provided further that it shall not be competent for any councillor when any objection to the valuation of his property or of premises rented by him is raised to sit in his place, hear, and determine or vote upon such objection, and such objection shall be determined by the remaining members present forming the court.

11. If, in the opinion of the said court, any property in the city should appear to be undervalued, it shall be competent for the court to submit the value of such property to a duly qualified appraiser, other than the original valuer of the same, and should such appraiser be of opinion, after inspection of the property, that the same has been undervalued, then the owners or occupiers of such property together with the appraiser aforesaid, and the first valuer shall be cited to appear before the council on a day to be named, not being less than three days from the date of citation, and the several matters in question, together with any evidence which may be tendered and produced in support of or opposed to the valuations, shall then be heard by the council, who shall decide thereon.

No. 12-187 .
How if property has been undervalued.

12. After the valuation of the immovable property has been made in manner hereinbefore provided, should any such property be sub-divided by the proprietor or proprietors and sold by public auction to other persons, it shall be competent for the council, pending the time of taking the next valuation, to levy rates on such sub-divided lots according to the price agreed to be given at the auction by each purchaser for the same respectively, and in such case the original valuation in respect of the entire undivided lot shall be dispensed with, and each sub-division valued at the price given therefor, and the rates thereupon shall be claimable from the purchasers respectively. But should such property be sub-divided and transferred to other proprietors by private sale or by demise or otherwise, then an appraiser shall be appointed to value the said properties, and a day shall be appointed by the council, of which a week's notice shall be given in writing to the owners of the sub-divided property, on which any objection to the said valuation shall be heard in the manner provided in the 70th section of the Graham's Town Municipality Act, 1869, and the new valuations as determined on by the council shall stand in the roll of assessment in place of the original valuation.

Proceedings if property subdivided after valuation and sold publicly.

If sold or alienated privately.

13. The council shall annually, in the month of February, make an estimate of the amount of money required for the purposes aforesaid, and shall assess the rate accordingly, and public notice thereof shall be given in one or more of the local newspapers, and shall, in like manner, if any further unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof and assess a second or further rates, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rates amounting in the aggregate to more than three pence in the pound on the value of the immovable property assessed, without obtaining the consent of the majority of the citizens present, and entitled to vote at a public meeting to be called for the purpose of considering such rate or rates, of the object and time and place of holding which meeting at least seven days' notice shall be given in

Annual rate to be assessed.

Further rate if necessary.

Aggregate rates not to exceed three pence in pound, unless public meeting approve.

Regulations with regard to such meeting.

No. 12 -1878.

manner hereinbefore mentioned; and provided that it shall be lawful for any two or more duly enrolled citizens at such meeting to demand a poll of the citizens entitled to vote, which poll shall be taken on a day to be fixed by the Mayor, not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in one or more of the local papers, and which poll shall commence at ten o'clock a.m., and close at three o'clock p.m. of such day.

New valuation every five years.

14. The first valuation, to be made as aforesaid, of all immovable property for the purposes of Act 23 of 1869, and of this Act, shall subsist and be in force for five years from the date of the first assessment under this Act, at the expiration of which term, and of each successive term of five years, an appraiser shall be appointed and a fresh valuation shall be made in the same manner as is directed in the said Act No. 23 with regard to the first valuation.

How notices under this Act to be published.

15. Every notice calling a public meeting of the citizens, and every notice or other document or thing required by this Act, or by the Graham's Town Municipality Act, 1869, to be published, shall, except when otherwise provided, be so published by causing a copy thereof to be inserted in one or more of the local newspapers, and a copy of the same shall also be affixed in some conspicuous place upon or near the municipal office, provided always that the Mayor shall call a meeting upon receiving a requisition signed by not less than thirty duly qualified ratepayers, and provided further that the expenses incurred by the council through its Mayor or any of its officers in calling such meeting shall be defrayed by the persons signing the requisition, unless it shall appear to the council that such meeting was purely connected with municipal purposes, or its object of such a character as in the opinion of the council would warrant it in charging the same expenses to the municipality.

When mayor to call a meeting.

How expenses of meeting to be defrayed.

Recovery of fines and penalties.

16. All fines or penalties imposed by this Act or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council by the name of "The Council of the City of Graham's Town," and shall, when recovered, be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be grounded; and to avoid the provisions of any municipal regulations being evaded it shall be competent for any officer of the local constabulary force, personally cognizant of the contravention of any such regulation by any person, or on production or delivery to him of an affidavit duly sworn to before a Justice of the Peace by any individual containing information that any regulation has, to his knowledge, been contravened, and stating the date of such contravention, to cite such person to

Barred by lapse of three months.

As to contravention of municipal regulations.

appear before the Resident Magistrate for the purpose of having such contravention immediately thereafter heard and determined; and unless such person shall give security for his appearance not exceeding the maximum penalty imposed in and by the said regulation for the offence, such officer shall be justified in detaining him until the hearing of the charge, or he may release such offender with the sanction of the Mayor or Town Clerk on payment of the penalty provided in such regulation.

No. 13 1878.

17. This Act may for all purposes be cited as "The Graham's Town Municipality Act, 1878."

Short title.

No. 13—1878.]

[August 2, 1878.

ACT

For the Better Preservation of Peace within the Colony. (1)

WHEREAS it is expedient to make further provision for the protection of life and property, and the preservation of peace within this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble

1. It shall and may be lawful for the Governor aforesaid, by and with the advice of the Executive Council of the said Colony, from time to time to proclaim certain districts or portions of districts as areas within which it shall not be lawful for any person (except such persons as are hereinafter excepted) to bear, carry, or have in his or her possession, custody, or power, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition unless such person shall be licensed so to do as hereinafter provided: Provided, always, that any such proclamation may from time to time be revoked or repealed (either as to the whole or any part of any such proclaimed area) by the said Governor, by and with the advice aforesaid, when and as occasion may seem to justify such revocation or repeal.

Governor may by proclamation fix any district within which no arms may be possessed without a licence.

Proclamation may be at any time revoked.

2. Every such proclamation as aforesaid shall be printed and published in the *Government Gazette* of this Colony, and in such other newspaper or newspapers, if any, published within the proclaimed areas as the Governor aforesaid, with the advice aforesaid, may deem to be desirable, and printed copies of such proclamations shall be affixed to the door of the court-house of the Resident Magistrate of every such proclaimed district or portion of a district, or posted or affixed on some conspicuous place in the vicinity of such court-house, and shall also be posted or affixed on some conspicuous place in the vicinity of every field-cornet's residence, within such district or portion of a district.

Manner in which notice of such proclamation is to be given.

¹ Amended by Act 4, 1879.

No. 13—1878.

How proclamation is to be proved in courts of law.

3. The production of the *Government Gazette* containing any such proclamation shall be deemed and taken by any Court of Justice to be conclusive evidence of the facts and circumstances necessary to authorise the issue of such proclamation, and every such proclamation shall be deemed and taken in all such Courts respectively to all intents and purpose whatsoever to have been issued in conformity with this Act.

Proclamation to fix day before which persons having arms, and not authorised to have them, shall deposit them with magistrate.

4. Every such proclamation shall name a certain day on or before which every person residing or being within the district or area therein specified, and not being a Resident Magistrate, Justice of the Peace, Field-cornet, or person serving in Her Majesty's naval or military forces, or enrolled in any colonial corps, for the time being whether Burgher or Volunteer, ⁽¹⁾ or in the Frontier Armed and Mounted Police, or in any other armed police force legally constituted within this Colony, not having a licence as in this Act provided, shall deposit and leave at the office of the Resident Magistrate of such district, or at such other place as may be named in the said proclamation for the deposit thereof, all arms and weapons, or portions of arms and weapons, and all bullets, cartridges, gunpowder, and other ammunition then being in his or her possession, custody or power, and a receipt for the same shall be given by the person authorized to receive them to the person so depositing them.

Receipt to be given for arms and ammunition deposited.

Governor may authorise persons to grant licences to have arms and ammunition.

5. Notwithstanding anything in the last preceding section contained, it shall and may be lawful for the Governor aforesaid, by and with the advice aforesaid, to authorise and empower the Resident Magistrate of any proclaimed district or portion of a district, or some other person or persons to be by the said Governor, by and with the advice aforesaid, for that purpose specially named and appointed, to issue to fit and proper persons licences to have, keep, bear, and carry arms, weapons, bullets, cartridges, gunpowder, and other ammunition, within such district, or portion of a district. And such licences shall be, as nearly as may be, in the form numbered 1 in the schedule to this Act annexed.

Dealer in arms and ammunition need not deliver up his stock if he receive licence to retain them from proper official.

6. In case any dealer in arms and ammunition, or either of them, shall reside within any district, or portion of a district, proclaimed under the provisions of this Act, it shall not be necessary for such person to deliver up the arms or ammunition in his or her possession as such dealer for the purposes of sale at the time of the issuing of such proclamation, if he or she shall before the day therein named for such delivery have obtained from the Resident Magistrate of such district, or other person authorised to issue licences for such district, or portion of a district, under this Act, a licence to retain the same, which licence shall be, as nearly as may be, in the form numbered 2 in the schedule of this Act annexed.

¹ Printed as amended by Act 4, 1879, § 1.

7. In case the person to whom any of such licences shall be so issued as aforesaid shall have actually deposited under the provisions of this Act, the arms, weapons, bullets, cartridges, gunpowder, or other ammunition mentioned in such licence, he or she shall be entitled, on producing such licence as aforesaid, and on production and delivery of the receipt in this Act previously mentioned, but without any right to claim for loss by deterioration, to have such arms, weapons, bullets, cartridges, gunpowder, or other ammunition re-delivered to him or her, unless a period of six months shall have taken place between the said deposit and the issue of such licence, in which event he or she shall be obliged to accept the alternative of receiving the said arms, weapons, bullets, cartridges, gunpowder, or other ammunition, or the appraised value thereof as hereinafter provided.

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On receipt of licence in 5th section mentioned, owner of arms &c., which have been deposited, may obtain them back.

But if six months have elapsed since deposit, appraised value only may be claimed.

8. From and after the day named in any proclamation for the deposit of arms, weapons and ammunition, as in the fourth section of this Act provided, it shall not be lawful for any person, resident or being within the area in such proclamation mentioned, and not being one of the persons in the fourth section specially excepted, to bear, carry, or have in his or her possession any arms or weapons, or any portions of arms or weapons, or any bullets, cartridges, gunpowder, or other ammunition, unless such persons shall have obtained the necessary licence in that behalf in this Act mentioned; and any person guilty of contravening the provisions of this section shall, upon conviction, be sentenced to imprisonment, with or without hard labour, for a period of not more than seven years or to pay a fine of not more than five hundred pounds sterling, and to imprisonment, with or without hard labour, until such fine be paid, or if not paid, for a period not exceeding two years.

After date fixed by proclamation no person not specially excepted may have arms, &c., without licence.

Punishment on conviction.

9. Every person resident or being within any district or area proclaimed as aforesaid, not being one of those excepted in the fourth clause of this Act, who shall be found carrying or in possession of, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, after the date named in the proclamation for the deposit thereof, may be required by any Resident Magistrate, Justice of the Peace, Field-cornet, or police constable, or by any person producing his or her own licence under this Act, to produce and exhibit his or her licence for having or carrying such arms, weapons, bullets, cartridges, gunpowder, or other ammunition; and upon his or her refusal or inability so to do, such first mentioned person may be forthwith arrested without any warrant issued for that purpose, and upon being so arrested shall be taken with all reasonable speed before the Resident Magistrate of the district in which he shall be so found, or before the nearest Justice of the Peace, to be dealt with according to law.

All persons not specially excepted by 4th section found carrying or having arms may be required to produce licence.

In case of non-production may be arrested.

10. It shall and may be lawful for all Resident Magistrates, Justices of the Peace, Field-cornets, and police constables, and

Certain officials to search for arms, &c.,

No. 13—1878.
without warrant, on
reasonable suspicion.

they are hereby required so to do, upon reasonable suspicion that any person within any proclaimed district, or portion of a district, not being one of the persons hereinbefore excepted, and not being licensed under this Act, is in possession of any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, to make diligent search for the same, and to seize any such arms, weapons, bullets cartridges, gunpowder, or other ammunition, when found, without any warrant being issued or obtained for such search or seizure.

Governor may re-
voke licence.

Effect of such re-
vocation.

11. It shall and may be lawful for the said Governor, with the advice aforesaid, from time to time, and at any time, to revoke any licence granted under the provisions of this Act, and upon such revocation the holder of such licence shall be obliged, within the space of seven days from the receipt of the notice of such revocation, to deposit and leave at the office of the Resident Magistrate of the district within which he or she resides, or other place named in such notice, all arms, weapons, bullets, cartridges, gunpowder, or other ammunition, then being in his or her possession; and on his or her neglect or refusal so to do, such person shall be liable to the penalties of the 8th section of this Act, precisely as if he or she had never been licensed to have or carry arms, weapons, bullets, cartridges, gunpowder, or other ammunition.

Repugnant portion
of section 13 of Ordinance
2 of 1853 re-
pealed.

12. Everything contained in the 13th section of Ordinance No. 2 of 1853, which may be in conflict with, or repugnant to, the provisions of this Act, shall be, and the same hereby is, so far as such conflict or repugnance may exist but not otherwise, repealed.

Restrictions on the
sale, repair, or deli-
very of arms without
the production of li-
cence and permit.

No person within any district or area proclaimed as aforesaid shall sell to, or make, mend, repair, or keep for any person (not being a person under the 4th section of this Act excepted, or not being a person under the provisions of this Act licensed), any arms or weapons, or any portion of any arms or weapons, or any bullets, cartridges, or other ammunition; and no person within such district or area as aforesaid shall, under or by virtue of any sale, barter, gift, or other transaction, deliver to any person whomsoever unless a Resident Magistrate, Justice of the Peace, or Field-cornet, any arms or weapons or any portion of arms or weapons, or any bullets, cartridges, gunpowder, or other ammunition, without production of his licence under this Act, and without a written permission for that purpose first had and obtained from the Resident Magistrate of the district within which it is proposed that such delivery shall take place, or from some other person authorised to issue licences under this Act, for such district, which permission shall be, as nearly as may be, in the form numbered 3 in the schedule to this Act annexed. And any person guilty of contravening any one of the provisions in this section contained shall upon conviction, be liable to imprisonment, with or without hard labour, for any period not exceeding seven years, or to pay a fine not exceeding five hundred pounds sterling, and to imprison-

Punishment for
contravention of this
section.

ment with or without hard labour for a period not exceeding two years, unless such fine be sooner paid.

13. Any proceedings which may be taken under any section of this Act and which shall have been transmitted to the Attorney-General or Solicitor-General, may be remitted by the said Attorney-General or Solicitor-General to the Resident Magistrate of the district within which the offence shall have been committed, to be adjudicated upon by him under such jurisdiction as he may possess therein.

14. All such arms, weapons, bullets, cartridges, gunpowder, and other ammunition as shall have been deposited and left at the office of the Resident Magistrate or other place duly named for that purpose under the provisions of this Act, and which shall belong to persons who have not been licensed to have or carry the same, or whose licences have been revoked, shall, within six calendar months from the date of such deposit, be valued by some proper, impartial, and competent person or persons to be appointed for that purpose by the Resident Magistrate of the district in which they shall have been so deposited, and the value fixed by such person or persons on each of such arms, weapons, bullets, cartridges, gunpowder, or other ammunition, shall be paid to the respective owners of the same or their lawful representatives, upon production of the receipt therefor in the fourth section of this Act mentioned, and upon satisfactory proof of ownership.

15. Every person authorised to issue licences and permits under this Act shall be bound to keep a register of such licences and permits, setting forth the names, addresses, and description of the persons to whom such licences and permits shall have been issued, together with the number of arms and quantity and description of ammunition represented in such licences and permits, which register shall be open for public inspection at all reasonable times, and issuers of licences and permits as aforesaid shall further be bound to transmit to the office of the Colonial Secretary, during the first month of each year, copies certified under their hands of such registries.

16. Every person authorised to issue licences under this Act shall have the power to issue permits, in the form No. 4 in the schedule hereto annexed, to dealers in arms and ammunition, who shall require the same to enable them to transport arms and ammunition through the proclaimed district or area for which such person is authorised to issue licences as aforesaid: Provided, always, that every such permit shall state the number of days during which it shall be in force: And provided, also, that such permit shall be of no force or effect except for the purpose of transporting the said arms and ammunition from the place mentioned in the said permit to the place therein mentioned.

17. Any person enrolled as a burgher, or serving in any yeomanry or volunteer corps as aforesaid, shall be empowered

No. 13—1878.

Attorney or Solicitor-General may remit proceedings under this Act to the Resident Magistrate.

Arms deposited by unlicensed owners to be valued within six months by persons appointed for that purpose.

Appraised value to be paid to owner on production of receipt mentioned in 4th section.

Registers of licences and permits to be kept.

And certified copies annually transmitted to Colonial Office.

Persons authorised to issue licences may also issue permits of removal.

Effect of such permits

Who may require the production of licences.

CROWN LANDS.

1571

4.

No. 14—1878.

Form of Permit to Transport Arms, &c.

I, A. B., having been duly appointed in that behalf under Act No. — Permit or removal mentioned in section 16.
 of 1878, intituled "The Peace Preservation Act," do hereby authorise
 C. D., of (here insert name and place of business), to transport
 gun (or other arm or arms, or ammunition, as the case may be) from

to
 This permit to be in force for _____ days.
 Dated _____ day of _____ 187_____ A. B.

No. 14—1878.]

[August 2, 1878.

ACT

For Regulating the manner in which the Crown Lands of
 the Colony shall be disposed of. (1)

WHEREAS it is expedient to amend the law regulating the Preamble.
 manner of disposing of the Crown lands of this Colony: Be it
 enacted by the Governor of the Cape of Good Hope, with the
 advice and consent of the Legislative Council and House of
 Assembly thereof, as follows:—

1. The Act No. 2, 1860, entitled "An Act for regulating the Act 2 of 1860, Act
 manner in which Crown lands at the Cape of Good Hope shall be 19 of 1864, and Act 4
 disposed of," the Act No. 19, 1864, entitled "An Act to provide of 1867 repealed.
 for the leasing of Crown lands and for other purposes," and the
 Act No. 4, 1867, entitled "An Act to amend, in certain respects,
 the Act No. 19, 1864, "To provide for the leasing of Crown lands
 and other purposes," are hereby repealed, save and except in so
 far as the provisions of the said Acts or any of them relate to the
 lands disposed of prior to the taking effect of this Act, or to the
 disposal of lands for which proceedings have been commenced prior
 to, or are pending at, the time of the taking effect of this Act; all
 which lands shall be dealt with as if this Act had not been passed.

2. All waste and unappropriated Crown lands within this Crown lands to be
 Colony shall, except as hereinafter is excepted, be disposed of on disposed of at public
 perpetual quitrent for the highest annual rent that can be obtained auction on perpetual
 for the same by public auction. quitrent.

3. The public auction aforesaid shall, as regards the lands Aforesaid sales—
 situated in any division except the division of the Cape, be held at where to be held.
 the office of the Civil Commissioner of the division, and as regards
 lands situated in the division of the Cape, at such place in Cape
 Town as Government shall appoint.

4. A notice of every auction to be held under this Act shall be How notice of sale
 published in the *Government Gazette* and in some newspaper pub- to be given.
 lished in or near to the division in which the land is situated, for

¹ Repealed by Act 15, 1887, save as to lands disposed of prior to taking effect of latter Act.

No. 14—18 8.

Notice to specify minimum quitrent and amount of survey expenses, &c., payable by purchaser.

Land to go to highest bidder above minimum.

First year's rent to be paid in advance.

Approved sureties to be furnished for next two years.

When sureties not required.

Quitrent to be payable in advance.

Quitrent, how redeemable, wholly or in part.

Redemption not to alter nature of tenure.

Governor's consent required to any apportionment.

Expenses of survey, beacons, and title deeds—when to be paid.

In certain cases Crown lands may be leased for not more than three years.

not less than three months before the day appointed for holding such auction, and such notice shall describe the position and extent of the particular lands intended to be put up to competition, and shall state a minimum, or upset annual quitrent, below which such lands will not be disposed of, as also the amount of the expenses of survey, erection of beacons and title deeds to be paid by the purchasers as hereinafter mentioned.

5. The highest bidder who shall not have offered less than the minimum or upset quitrent shall be declared the purchaser, and every such purchaser shall be bound to pay the first year's rent under the quitrent grant, in advance, and secure the payment of the quitrent for the two next years by sureties whom the Civil Commissioner shall deem sufficient, which sureties shall bind themselves, in regard to such quitrent, as sureties in solidum and co-principal debtors, renouncing the exceptions of excussion and division: Provided that the Civil Commissioner shall, if required by the purchaser, receive two years' rent in advance, in which event the aforesaid security shall not be required. And all quitrents payable under this Act shall commence upon and be reckoned from a day to be stated in the conditions of sale, and shall be payable in advance.

6. The annual quitrent payable upon any quitrent grant, whether a grant made after the taking effect of this Act, or upon any grant made previously to which the provisions of the third section of the schedule to the Act No. 2, 1860, are, not applicable, may be redeemed at any time by the payment of a sum equal to twenty times such annual quitrent, but not by the payment of any lesser sum, and any such quitrent may at and after the same rate be redeemed in parts or portions, provided such parts or portions be either three-fourths, or one-half, or one-fourth of the original quitrent as stated in the deed of grant, and in any case in which the quitrent upon any such grant as in this section mentioned has been apportioned under the provisions of the Act No. 7, 1856, or the Act No. 10, 1875, the apportioned quitrent upon any part or share may be redeemed in manner aforesaid: Provided that the redemption of the quitrent wholly or in part shall not be deemed to alter the nature of the tenure of the land: Provided also, that as to any apportionment of quitrent on land granted under the provisions of this Act, the consent of the Governor to such apportionment be first obtained.

7. The expenses of survey, erection of beacons, and of the title deed shall be paid to the Civil Commissioner within a certain time to be fixed by the Government and made known at the time of sale.

8. In any case in which lands shall have been put up to competition under this Act, and the minimum or upset rent shall not have been obtained, or if from particular circumstances the Governor should deem it inexpedient to dispose of particular lands

upon perpetual quitrent, then such lands may be let on lease for any term not exceeding three years at the highest rent that can be obtained for them by public auction, should such rent be deemed sufficient.

9. No such lessee as is in the last preceding section mentioned shall be at liberty to cut down timber, trees, underwood, or bush-wood, except such as shall be reasonably necessary for his own use in and upon the lands leased by him.

10. All lands disposed of upon perpetual quitrent under this Act shall be subject to such special servitudes and conditions as may be forth set in the conditions of sale, and to the following general conditions, which must be stated in the title deed, viz. :

(a) The quitrent payable.

(b) All roads and thoroughfares described in the diagram shall remain free and uninterrupted, unless the same be closed or altered by competent authority.

(c) Government shall always have the right to make new roads, railways, and railway stations, aqueducts, dams and drains, or to conduct telegraphs over the land for the benefit of the public, and to establish convenient outspans for the use of travellers, on payment to the proprietor of such sum of money in compensation as three appraisers, one to be appointed by each side, and a third to be chosen by the two others, before proceeding to act, or any two of them, shall award.

(d) That the Government shall at all times have the right of resuming the whole or a portion of the land hereby granted, if required for public purposes, on payment to the proprietor of such sum of money in compensation as may be mutually agreed upon by the parties concerned, or, failing such agreement, as may be awarded by appraisers appointed in manner provided in the preceding clause (c).

(e) That the rights of the proprietor shall not extend to any deposits of gold, silver, or precious stones, which may at any time be or be discovered on the land hereby granted.

(f) No condition not expressed shall be presumed to exist.

11. No land claimed by any registered owner of adjacent land as part of his property by reason of any alleged defective title deed, or supposed land marks of the said adjacent land, or land occupied *bonâ fide* and beneficially, without title deed at the date of the extension of the colonial limits beyond it, or land conditionally occupied or claimed under any general notice or regulation of the Government, or under any promise or order of a Government officer duly authorised at the time to make such promise or give such order, shall be considered or treated as waste Crown land for the purpose of this Act, until the claim thereto in each case shall have been decided on by the Governor, who shall have the power of rejecting the claim altogether, or of satisfying such claim by

No. 14—1878.

Restrictions as to cutting wood, &c., by lessee in above cases.

Lands sold on perpetual quitrent to be subject to certain general conditions.

(a) As to rent.

(b) As to roads and thoroughfares.

(c) As to rights retained by Government.

(d) As to right of resumption.

(e) As to precious metals and stones.

(f) No unexpressed condition to be presumed.

Certain lands not to come under provisions of this Act till claims made to them have been decided on by Governor.

No. 14—1878.

Notice of such claims to be given and due diligence used in proving them.

grant of the land or compensation out of the public revenue, or otherwise as shall appear equitable: Provided always that due notice of the nature of the claim, and reasonable proof that it may be substantiated, be received at the office of the Commissioner of Crown Lands and Public Works in sufficient time to admit of the withdrawal of the land from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the officer or board to whom the question may be referred by the Governor.

Governor, with concurrence of Parliament, may grant land for public purposes.

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

Governor may, on certain conditions, authorise sale of such land.

13. No land within the limits of any municipality, or land lying outside the municipal limits, but which has been by the Governor of this Colony, by proclamation, Government notice, or other instrument or act, assigned as pasturage for any municipality, shall be considered or treated as waste Crown lands for the purposes of this Act. But the Governor shall have the power, upon the application of the commissioners of any municipality, to grant or authorise the sale of any portion or portions of such lands for public improvements for the benefit of the inhabitants resident within the limits of such municipality. The term municipality shall, in this section, embrace any corporate town, and the term commissioners any town council.

No Municipal lands or commonage to come under terms of this Act.

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

No town or village commonage to come under terms of this Act.

What other lands shall not be considered waste Crown lands for purposes of this Act.

15. No forest lands or lands known to contain valuable minerals, or situated in the neighbourhood thereof, no lands required for military stations, defence of the frontier, public outspans, fishing stations on the sea coast or the banks of tidal rivers, of such extent as the Governor shall define, or required for any other public purpose, or so much of the land on the sea coast lying above and within two hundred feet of high water mark, shall be considered waste lands of the Crown for the purpose of this Act, and no such land shall be disposed of, except in the manner set forth in section twelve in regard to the lands therein mentioned.

Reservations for roads, outspans and cattle thoroughfares.

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

Lands referred to in certain statutes not to come under this Act.

17. No such lands as are referred to in "The Agricultural Lands Act, 1870," or in the "Waschbank Lands Act, 1870," or in the

¹ See Act 3, 1883, § 5.

“Agricultural Immigrants Lands Act, 1877,” shall be deemed to be waste Crown lands for the purposes of this Act.

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18. As often as a piece or portion of Crown land shall lie contiguous to or between farms belonging to private persons, and it shall be for the common advantage of such persons and the public, owing to the situation of such Crown land, and the circumstances connected with it, that it should be attached to one or more of the contiguous farms, then any such person may apply to the Commissioner of Crown Lands and Public Works, stating the position of such Crown land, and the extent thereof so far as the same shall be known to such applicant, and requesting the Commissioner of Crown Lands and Public Works, after making all such inquiries into the facts as he shall deem necessary, to certify to the Governor that such piece or portion of Crown land should, in the opinion of the said Commissioner of Crown Lands and Public Works, be dealt with under the provisions of this section.

When it appears desirable that Crown lands should be attached to adjoining farm or farms, application may be made to Commissioner of Crown Lands for certificate to that effect.

19. As often as the Commissioner of Crown Lands and Public Works shall certify as in the last preceding section mentioned, he shall cause to be published in the *Government Gazette*, and at least twice a month in some newspaper published in or near to the division in which such land is situated, a notice, stating the name of the applicant, the situation and boundaries of the land in question, and the extent thereof if then surveyed, and if not surveyed, its supposed extent, and stating that the application of such applicant will be considered by Government upon some day to be mentioned in such notice, not being sooner than three months from the day on which such notice was first published in the *Government Gazette*, and a copy of such notice shall be posted at the office of the Resident Magistrate of the district as soon as may be after such publication in the *Gazette*, and not later than two months before the day specified in such notice, for the consideration of the application.

Procedure to be followed if certificate granted.

20. All persons having or alleging an interest in the matter of such application may, in writing, send in to the Commissioner of Crown Lands and Public Works, on or before the day specified in such notice, such statements or representations as they shall think fit, either in favour of or against the application made, and the Government shall then decide whether the application in question should be granted, wholly or in part, or whether the piece or portion of land applied for by the applicant should be divided between him and any other person or persons, or should be wholly given to or divided between some person or persons other than the applicant.

Representations may be made for or against the application.

Government to decide the question.

21. In every case in which any piece or portion of Crown land shall be allotted to any farm under the provisions of the three last preceding sections of this Act, the owner of such farm shall pay in cash the expenses of survey, erection of beacons, and title deed, and such land so allotted shall be subject to such perpetual quitrent

When application granted Governor to impose perpetual quitrent.

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as the Governor shall consider equitable and impose: Provided, however, that if any such applicant as in the eighteenth section mentioned, or any of the persons mentioned in the twentieth section, who may have sent in to the Commissioner of Crown Lands and Public Works any such statement or representation as in that section stated, shall feel aggrieved by any decision to which the Government shall have come in reference to any such piece or portion of Crown land, it shall be competent for such person or persons to require that the matter in dispute shall be referred to arbitration; whereupon the Government and the person requiring the arbitration shall each forthwith appoint an arbitrator, and these two arbitrators shall appoint a third, and the three arbitrators shall forthwith proceed to consider and decide the matter in dispute referred to them, and the decision agreed to by such arbitrators, or any two of them, shall be final.

If disputed, matter may be referred to arbitration.

Decision of majority of arbitrators to be final.

Half-yearly lists to be published of all lands allotted under four preceding sections.

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

Short title.

23. This Act may be cited for all purposes as "The Crown Lands Act, 1878."

No. 15—1878.]

[August 2, 1878

ACT

For Regulating and Providing for the South African College.

! Preamble.

WHEREAS the several proprietors of shares in the South African College, for the purpose of extending the usefulness thereon, have, by resolution, passed on the first day of June, 1877, at a public meeting held in the Town-house, after due notice, resolved to renounce all their right and title in and to the said college buildings, and it is desirable and expedient to repeal the Ordinance No. 11 of 1837, intituled "An Ordinance for establishing, regulating, and providing for the South African College," the Act No. 19, 1858, intituled "An Act to continue the Ordinance No. 11 of 1837," and the Act No. 30 of 1861, intituled "An Act to continue the Ordinance No. 11 of 1837," and to make other provision in lieu thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. From and after the commencement and taking effect of this Act the said Ordinance No. 11 of 1837, the Act No. 19 of 1858, and the Act No. 30 of 1861 shall be and the same are hereby repealed.

No. 15-- 1-78.

Previous laws repealed.

2. The general superintendence of the affairs of the said South African College and any departments or schools connected, or that may hereafter be connected, therewith or shall hereafter belong to the same, and all the funds, property, and revenue belonging thereto shall be discharged and exercised by and vested in a council, to be called the South African College Council.

Superintendence of College and management of its property vested in a council.

3. The said council shall consist of nine members, three of whom shall be nominated by the Governor, three by the council of the University of the Cape of Good Hope, and the remaining three members by a constituency of past students and life governors of the college, any three of whom shall form a quorum. The members of the first council nominated under this Act shall, at their first meeting, elect a chairman for the ensuing year, and shall thereupon proceed to ballot for the purpose of fixing upon one of the said members of the said council nominated by the Governor, one of the said members nominated by the council of the University of the Cape of Good Hope, and one of the said members nominated by the said constituency of past students and life governors, who shall vacate their seats on the thirty-first day of March, 1880; and upon one of the said members nominated by the Governor, one of the said members nominated by the Council of the University of the Cape of Good Hope, and one of the said members nominated by the said constituency of past students and life governors, who shall vacate their seats on the thirty-first day of March, 1881, and the remaining three members of the said council shall vacate their seats on the thirty-first day of March, 1882, and upon the retirement from office of such members of the said council they shall be succeeded by members who shall be nominated by the persons or bodies who nominated the members so vacating office, and such newly nominated members of the said council shall remain in office for three years, from the thirty-first day of March upon which the members of the said council whom they shall succeed, shall have retired from office, and shall in turn be succeeded by members to be nominated in like manner: Provided, however, that no professor of the South African College or teachers of any school connected therewith shall be eligible to be nominated a member of said South African College Council: Provided, also, that any member of the council so vacating office shall be eligible for re-nomination: And provided further, that in case of any failure to nominate the full number of members for the said council, such failure shall not affect the legal constitution or power of the council so long as the number nominated shall not be less than a quorum.

Composition of council.

Arrangements as to retirement of members.

Who may not be members.

Retiring members may be re-elected.

How as to failure to nominate.

4. The members of the said council to be nominated as aforesaid shall be nominated within three months after the taking effect of

Within what time members to be nominated.

No. 15—1878.

this Act, and such nominations shall be notified to the Governor by the several persons or bodies so nominating such members, and the names of such members so nominated as aforesaid, together with the names of the members nominated by the Governor, shall be notified by the Governor by proclamation in the *Government Gazette*, and the Governor shall in such proclamation fix the place, day, and hour for the first meeting of the said members of council.

Governor to publish list and to fix time and place for first meeting.

Council may frame bye-laws if not inconsistent with this Act.

5. It shall be lawful for the said council, and they are hereby authorised and empowered, from time to time, to frame and agree upon such bye-laws and rules of order and procedure as the said council may deem expedient for regulating their proceedings and for the proper management and undertaking the administration of the said college and the departments or schools in connection thereof, and of the property and funds belonging thereto: Provided they are not repugnant to or inconsistent with the true intent and meaning of the provisions of this Act.

Proceedings when members vacate office otherwise than by retirement.

6. Any member of the said council who shall absent himself from the meeting of the said council for four consecutive meetings without leave from the council having been obtained, or shall assign his estate for the benefit of his creditors, or shall become insolvent, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease shall, *ipso facto*, vacate his office, and the secretary of the council shall, without any delay, notify the fact of such vacancy having occurred to the persons or bodies who shall have nominated such member of council, and thereupon the said person or bodies that appointed the member whose seat has become vacant shall proceed forthwith to nominate his successor, and the person thus nominated shall hold office during the unexpired portion of the time of the member whose seat shall have been so vacated.

Property of College vested in council.

7. The several funds already existing and all moneys, assets, and other property, movable and immovable, of every nature and description whatever, now belonging, and which shall hereafter accrue to, or become due and payable, or be devised and vested in the said college, and any department or schools connected or that may hereafter be connected therewith shall be vested in and be administered by the said council for the purpose of the said college and departments, or schools connected therewith: Provided, however, that all existing trust, devised, or bequest money shall be administered, laid out, and applied by the said council, in terms and in conformity with the conditions on which said trust, devised, and bequest moneys have been made, bequeathed, or vested in the said college.

Existing trusts.

8. [Repealed by Act No. 12, 1879.]

Governor may enter certain number of free pupils.

9. It shall and may be lawful for the Governor of this Colony for the time being to enter in the said college such number of free pupils as he shall think proper, not, however, exceeding five in the whole, at any time when there shall be not more than fifty pupils

in the college, and not exceeding ten in the whole at any time when there shall be more than fifty pupils; and every such free pupil, having attained such degree of scholarship as shall be approved by the senate, shall, upon payment of such fee as shall be fixed by the council to be paid to the treasurer, be authorised to enter any class which shall be open at the time in the college, without payment of any fee in respect of any class belonging to the regular establishment of the college.

No. 15--1878.

10. It shall be lawful for the said council to appoint during pleasure a secretary and treasurer and such other officers as shall be deemed necessary, on such terms and with such instructions as the said council shall deem expedient

Council may appoint certain officers.

11. [Repealed by Act No. 12, 1879.]

12. The said council shall cause true and correct records to be kept of all its proceedings and true and correct accounts of all moneys received and paid on behalf and for account of the college and departments or schools connected therewith, and shall in the month of March in every year transmit to the Colonial Secretary for the information of the Government and of the Parliament, a statement of the revenue and expenditure during the preceding year, and a general report of the state and affairs of the college and departments or schools connected therewith, and shall cause a copy of the said report and of the account of revenue and expenditure to be published in the *Government Gazette*.

Council to record its proceedings and keep proper accounts.

Yearly financial statement and report to be transmitted to Government and published in *Gazette*.

13. [Repealed by Act No. 12, 1879.]

14. The term "past student" shall mean any person who has been or hereafter may have been a student of the college, and who shall hold a certificate in literature and science granted by the late board of public examiners, under Act 4, 1858, or who shall have become a graduate of any university.

"Past student" defined.

15. The term "life governor" shall mean any person who at the time of the taking effect of this Act shall in his or her own right be the proprietor of a share in the South African College, and also any person who shall be a donor of twenty pounds sterling to the said college.

"Life governor" defined.

16. Whenever it shall be necessary for the past students and life governors to nominate any members of council, a meeting of such past students and life governors shall be called by the secretary of the council, by notice to be published in the *Government Gazette* not less than thirty days before the day appointed for holding such meeting: Provided, that any past student and life governor, resident at a greater distance from Cape Town than ten miles, may vote by proxy at any such meeting: Provided also, that no such nomination of a member of council by such past students and life governors shall be considered to have taken place, unless at any meeting called as aforesaid at least twenty votes given either personally or by proxy, shall have been recorded.

As to nomination of members of council by past students and life governors.

17. All actions and other proceedings at law to be instituted by or against the council of the said college shall be so instituted and

Council to sue and be sued by secretary

No. 17—1878.

proceeded in by or against the secretary to the said council for the time being.

Act to be deemed
a public Act.

18. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges, Magistrates and others, without being specially pleaded.

Short title.

19. This Act may be cited for all purposes as the "South African College Act, 1878."

No. 16—1878.]

[August 2, 1878.

An Act to Provide Pensions, in certain cases, for Members of the Colonial Volunteer and Colonial Yeomanry Forces, and the Widows and Families of such Members.

[Repealed by Act 32, 1892.]

No. 17—1878.]

[August 2, 1878.

ACT

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

Preamble.

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

Harbour Board
empowered to raise
further loan not ex-
ceeding £67,000.

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

Purposes to which
loan is to be applied.

(1) For the construction of a new wrought iron jetty, to replace the present wooden one, which has fallen into decay, a sum not exceeding £27,000.

¹ See Act 3, 1881.

(2) For the repayment of the balance of the advances made by the Colonial Government for the prosecution of the works of the said board under the authority of Act No. 14 of 1867, a sum not exceeding £40,000 sterling.

No. 21—1878.

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

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

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

Short title.

No. 18—1878.]

[August 2, 1878.

An Act to Alter in some respects the Customs Duties payable in this Colony.

[Superseded by Act 13, 1884.]

No. 19—1878.]

[August 2, 1878.

An Act to promote Telegraphic Communication between the Cape Colony and England.

[Repealed by Act 2, 1879.]

No. 20—1878.]

[August 2, 1878.

An Act to Impose certain Duties on Houses.

[Repealed by Act 4, 1889.]

No. 21—1878.]

[August 2, 1878.

ACT

To Facilitate the Raising of Loans through the Crown Agents for the Colony. (¹)

WHEREAS it is expedient to prevent certain delays arising from the formalities at present observed in the issue of debentures and other securities for loans for the purposes of the government of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. Whenever the Governor shall, by any Act of Parliament, be authorised to raise any loans in the United Kingdom of Great Britain and Ireland, for the purposes of the government of this Colony, it shall be lawful for the said Governor, acting by and with the advice of the Executive Council, to empower and appoint

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

¹ See Acts 16, 1881; 18, 1883; 17, 1888; 3, 1892.

No. 22—1878

the Crown Agents for the Colonies, or other duly accredited agent or agents of this Colony, to sign debentures, bonds, or certificates, to be issued by them to persons taking up such loan, or any part thereof, until the debentures, bonds, or other securities, which are intended to be finally issued in regard to such loan, shall have been actually issued, whereupon the said debentures, bonds, and certificates, signed as aforesaid, shall be withdrawn, and such debentures, bonds, or other securities, shall be substituted for and instead of them; but, until such lastmentioned issue and substitution, the debentures signed as aforesaid shall be as fully and effectually charged on the revenues of this Colony as if the same had been signed by all or any of the executive officers of the Government for the time being by command of the Governor acting as aforesaid.

Debentures may be pledged pending their sale.

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

Short title.

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

No. 22—1878.]

[August 2, 1878.]

ACT

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

Preamble.

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

¹ See Acts No. 3, 1881, and 18, 1893, § 25.

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

No. 24—1878.
Governor may raise further loan of £100,000.
Purposes of this loan.

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

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

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

Paragraph 4 of Schedule 1 of Act of 1871 repealed.

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

Short title.

No. 23—1878.]

[August 2, 1878.

An Act to Indemnify certain Persons in regard to acts done in carrying out recent Military Operations against Enemies and Rebels.

[Spent.]

No. 24—1878.]

[August 2, 1878.

ACT

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

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

Preamble.

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

What sum Governor may expend.

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

Governor empowered to raise this sum.

3. In so far as the said borrowing shall be upon debentures the following provisions shall be observed: Such debentures shall be issued in this Colony or in England, or partly in this Colony and partly in England, for sums not less than £100, and for any multiple of £100, upon the best and most favourable terms that

Provisions with regard to loans raised upon debentures.

No. 25—1878.

can be obtained, and the interest to accrue thereon shall be charged upon and payable out of the general revenue of this Colony.

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

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

Short title.

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

No. 25—1878.]

[August 2, 1878.]

ACT

To Dispense with the Governor's Signature in certain Cases. ⁽¹⁾

Preamble.

WHEREAS it is expedient that the Governor should be relieved from the necessity of affixing his signature to several of the documents which, by the existing law, require the same for their validity: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may depute persons to sign documents for him.

1. Whenever by any existing law or custom of this Colony the signature of the Governor is required to be affixed to any warrant, licence, commission, letters patent, or other official document (save as hereinafter in the 3rd section of this Act excepted), it shall be lawful for the Governor from time to time to depute and authorise some other person or persons to sign such documents, and the documents so signed shall be to all intents and purposes as valid and effectual as if they had been signed by the Governor: Provided that the names of the persons so deputed and authorised, and a description of the nature of the documents to be signed by such persons, shall first be notified in the *Government Gazette* of this Colony: and provided also that a copy of every such notice shall forthwith be laid before both Houses of Parliament, should the same be then in session, or at the earliest sitting of such Houses, if they shall not be in session.

Names of such persons and nature of documents they may sign to be notified in *Gazette* and laid before Parliament.

Notice to have effect of law after having been before Parliament for 14 days.

Meanwhile to have provisional effect.

What documents may not be brought under the provisions of this Act.

2. Whenever any such notice shall have been laid before both Houses of Parliament for the space of fourteen days, and no action shall have been taken in either of the said Houses in regard thereto, such notice shall to all intents and purposes be binding and take effect as law: Provided, however, that until so laid before both Houses of Parliament, and until any action shall have been taken in either of such Houses in regard thereto, such notice shall take provisional effect as law.

3. Nothing in this Act contained shall exempt the Governor from the necessity of signing any warrant for execution or any pardon, or commutation of sentence of condemned criminals, or any

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

deed of grant, or from signing the commissions of any military, naval, or civil officers, serving Her Majesty the Queen in her Colonial Government, in any case in which such commissions are now required to be signed by him.

No. 26—1878.

4. This Act may be cited as the "Governor's Signature Act, 1878."

No. 26—1878.]

[August 2, 1878.

ACT

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

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

Preamble.

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

Governor authorised to expend £1,865,658.

1. For the completion of the line from Worcester to Beaufort West, the sum of £222,792 sterling, in addition to the sum of £1,390,000, provided for such line by Act No. 19 of 1874.

Worcester to Beaufort West.

2. For the completion of the line from Bushman's River to Cradock, the sum of £521,242 sterling, in addition to the sum of £842,000 provided for such line by Act No. 19 of 1874.

Bushman's River to Cradock.

3. For the completion of the line from Bushman's River to Graham's Town, the sum of £226,924 sterling in addition to the sum of £255,200 provided for such line by Act No. 5 of 1876.

Bushman's River to Graham's Town.

4. For the completion of the line from Zwartkops to Graaff-Reinet the sum of £176,200 sterling in addition to the sum of £940,000 provided for such line by Act No. 19 of 1874.

Zwartkops to Graaff-Reinet.

5. For the completion of the line from East London to Queen's Town, the sum of £384,500 sterling, in addition to the sums provided for such line by Acts No. 19 of 1874 and No. 7 of 1877, amounting in the aggregate to £1,219,000.

East London to Queen's Town.

- No. 26—1878.
- Additional works recommended by Railway Commission
- Interest.
- Governor authorised to raise the above sum.
- Certain sections of Act 19 of 1874 to apply to these loans.
- Short title.
- Schedule.
6. For certain additional works recommended by the Report of the Railway Commission, bearing date the 18th day of February, 1878, a sum of £166,000 sterling, according to the specification of such works, and the costs of the sums respectively set forth and enumerated in the schedule to this Act annexed.
 7. For the charges in respect of interest during construction, and cost of raising loan, £168,000.
 2. For the purposes aforesaid it shall be lawful for the Governor to raise the said sum of one million eight hundred and sixty-five thousand six hundred and fifty-eight pounds sterling from time to time, as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock.
 3. The sections of Act No. 19 of 1874, numbered respectively 8, 9 (with the sub-section thereto), 10, 11, 12, and 14 shall *mutatis mutandis*, be deemed and taken to apply to the borrowing authorised under this Act.
 4. This Act may be cited as the "Railway Loan Act, 1878."

SCHEDULE.

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

No. 27—1878.]

[August 2, 1878.

An Act for authorising certain Expenditure not provided for by Parliament in the Year ended 30th June, 1878.

[Spent.]

No. 28—1878.]

[August 2, 1878.

An Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1879.

[Spent.]

No. 1—1879.]

[July 15, 1879.

No. 2—1879.

An Act to apply a Sum not exceeding Three Hundred Thousand Pounds towards the service of the year ending 30th day of June, 1880.

[Spent.]

No. 2—1879.]

[Sept. 8, 1879.

ACT

To Provide for Telegraphic Communication between the Cape Colony and England.

WHEREAS it is desirable that telegraphic communication should be established between this Colony and England: Be it, therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble

1. The Act No. 19 of 1878 is hereby repealed.

2. The Governor is hereby authorised and empowered to pay from and out of the public revenue of this Colony, for a term not exceeding twenty years or to any joint-stock company or companies, co-partnership or co-partnerships, individual or individuals, who shall enter into a contract with the Colonial Government to construct and maintain, and who shall construct and maintain, a line of telegraph which shall secure for this Colony telegraphic communication with England, an annual sum not exceeding £15,000.

Act 19 of 1878 repealed.
Telegraph to England to be contracted for.

3. The contract under or by virtue of which the said sum not exceeding £15,000 shall be payable as aforesaid for a term not exceeding twenty years, shall provide for the fulfilment of the following conditions, stipulations, and provisions, together with any others which the said Government shall deem desirable and shall agree upon with the other contracting party, that is to say:—

Conditions of contract.

1. The terminus of the line shall be fixed by the contract, and shall be such a spot in this Colony or in the colony of Natal as the Government shall approve of as convenient.
2. The party contracting for the construction of the said line shall be bound to maintain it in good working order, and to work the same efficiently for such number of years as may be agreed upon in such contract, not being less than the number of years during which the annual sum in the second section mentioned shall be payable.
3. The contract shall provide for a cessation of the annual payments authorised by the second section of this Act if the said line shall not be in working order for any space of time exceeding six months, and the said annual payments shall recommence when the said line shall again be in working order.

No. 3—1879.

4. The contract shall fix a time within which the line shall be completed, and shall (if such shall appear desirable to the Government) specify some sum to be deducted from the annual payment as aforesaid for or in respect of every month beyond the time stipulated during which the line shall remain incomplete.
5. No payment shall be made to the party contracting with the Government until the line, or any portion thereof, agreed upon in the said contract, shall have been completed and be in operation, from which time shall be reckoned the term during which the said annual sum authorised by the second section of this Act shall be payable.
6. The contract shall provide for the maximum rate to be paid for messages which shall be sent by the said telegraph line to or from London: Provided, however, that the cost of a message to or from London shall not in any case exceed the sum of ten shillings per word.

Short title.

4. This Act may be cited as "The Anglo-African Telegraph Act, 1879."

No. 3—1879.]

[Sept. 8, 1879.]

ACT

To make better Provision for the Disposal of certain Derelict Lands. (1)

Preamble.

WHEREAS the existing process by which the Government is able to resume possession of derelict land is both expensive and tedious, and it is desirable to substitute a simpler process for dealing with such land: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

When land left derelict for five years, Governor may resume possession.

1. Whenever any land rent due to the Colonial Government in respect of any place or property held from the Crown shall remain unpaid for the space of (2) five years, and such place or property shall be abandoned, deserted, and left derelict, and neither the grantee (1) registered owner or lessee, as the case may be, of such place or property, nor his lawful representatives in regard to the same can be found, it shall be lawful for the Governor to advertise such place or property as derelict in the *Government Gazette*, and any other newspaper he may think fit, not less than once in each of three consecutive calendar months, and if within three months from the date of such last-mentioned advertisement, neither the grantee or lessee as the case may be, of such place or property, nor his lawful representatives shall establish his

¹ See Act 15, 1895. Extended by Proclamation No. 7 of 1886 to Griqualand East.

² Printed as amended by Act 24, 1887. See Act 28, 1881.

or their claim to the same, and pay the land rent so overdue, the Governor shall at the expiration of such last-mentioned period of three months, resume possession of the said place or property, and deal with the same under the provisions of any law in that behalf for the time being in force in this Colony: Provided always, that if the place or property, with regard to which the proceedings in this Act mentioned shall be taken, shall be under mortgage, the provisions of the eighth, ninth, and tenth sections of Ordinance 9 of 1844, with reference to the sale of such place or property, and the application of the funds thereof, shall apply to the same.

No. 4—1879.

2. The provisions of the preceding section shall apply as well to any place or property for which the land rent has already been unpaid for five (1) years, and which has already been left derelict as to any place or property upon which such land rent shall hereafter be unpaid for five years, and shall hereafter be left derelict.

To apply to lands already left derelict for five years.

3. Nothing in this Act contained shall be taken to deprive the Colonial Government of any powers vested in it by the provisions of Ordinance No. 9 of 1844 and Ordinance No. 7 of 1846, or by any other law for the time being in force in this Colony; it being the express object and intention of this Act that the Colonial Government shall have the option of dealing with derelict (2) lands, either under the provisions hereinbefore contained, or under any statutory enactment, or any other law which may now or hereafter be in force in this Colony and be applicable to such cases.

Powers of Government under previous statutes not affected

4. This Act may be cited as the "Derelict Lands Act, 1879."

Short title.

No. 4—1879.]

[Sept. 8, 1879.

ACT

To remove Doubts as to the meaning of a certain Section in Act No. 13 of 1878.

WHEREAS an error in punctuation has been made in printing the 4th section of Act No. 13 of 1878, and it is desirable to remove any doubts which may exist as to the true intent and meaning of that section, and to render it clear that persons enrolled as levies under the provisions of Act No. 7 of 1878, are not excepted from liability to deposit all arms and weapons, or portions of arms and weapons, and all bullets, cartridges, gunpowder, and other ammunition in their possession, custody, or power, as in the said 4th section of Act No. 13 of 1878 is provided, unless such levies shall be licensed to retain the same: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The following words contained in section 4 of Act No. 13 of 1878, namely, "or enrolled in any colonial, burgher, or volunteer

Error in Act 13, 1878, corrected.

¹ Printed as amended by Act 24, 1887. See Act 28, 1881.

² Printed as amended by Act 15, 1895.

No. 5—1879.

corps for the time being," shall be read and construed as if the same had been written "or enrolled in any colonial corps, for the time being, whether burgher or volunteer."

Short title.

2. This Act may be cited as the "Peace Preservation Amendment Act, 1879."

No. 5—1879.]

[Sept. 8, 1879.

ACT (1)

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

Preamble.

WHEREAS it has been found expedient to add to the number of judges constituting the Court of the Eastern Districts, and to make provision for appeals from the said Court and from the Circuit Courts, and to establish a Court of Criminal Appeal for the Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant statutes.

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

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

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

Eastern Districts Court to consist of three judges.

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

Judges assigned to Eastern Districts Court.

4. Every judge who shall be assigned and appointed to the office of Judge President of the Eastern Districts Court shall be

¹ The Court of Appeal established by this Act was abolished by Act 17, 1886.

² Eight, see Act 40, 1882.

entitled to hold the said office so long as he shall continue to be a judge of the Supreme Court.

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

When case heard by two judges who differ.

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

Court of appeal established.

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

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

Appeal from Eastern Districts Court and Circuit Courts.

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

Repeal of repugnant enactments.

13. In every civil suit heard or tried before the Supreme Court, Eastern Districts Court, ⁽³⁾ or any Circuit Court, the presiding judge shall cause the evidence, if oral, to be fully and clearly taken down in writing, and the evidence so taken shall be entered upon the proceedings of the said Courts, and be of record. In every case in which notice of appeal shall be given to the Registrar of the Eastern Districts Court, or of any Circuit Court, as the case may be, such Registrar shall forthwith transmit a copy of the record, certified by him as authentic, to the Registrar of the Court of Appeal. Such record shall include all oral evidence taken down in writing,

Mode of hearing cases.

Registrar to transmit records if appealed against.

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

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

³ High Court. See § 3, Act 12, 1880.

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in manner aforesaid, and all other evidence, whether taken by commission or by affidavit, and all documents and papers which shall have been produced and given in evidence. Copies of any documents and papers which shall have been produced and tendered in evidence and rejected, shall, if required by the party producing the same, be authenticated and marked by the Registrar as rejected.

How judgments
appealed against to
be dealt with pend-
ing appeal.

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

Security.

Security may be
dispensed with.

Judgments by con-
sent or questions of
costs not to be ap-
pealed against ex-
cept by leave.

Enforcement of
judgments of appeal
court.

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

16. For all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment, decree, or order pronounced or made on any such appeal, and for the purpose of every other authority given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority and jurisdiction vested in the Supreme Court of the Colony at the time of the passing of this Act.

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

Appeal to the
Queen.

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

from the said Court of Appeal, precisely as if such Court of Appeal were the Supreme Court in the said Charter mentioned.

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21. [Temporary.]

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

Appeal in criminal cases.

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

When appeal in criminal cases to be applied for.

Special entry.

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

Leave to be applied for.

Notice to registrar.

25. ⁽⁴⁾ If any question of law shall arise on the trial of any person for any indictable crime or offence in the Supreme Court, Eastern Districts Court, or any Circuit Court, it shall be lawful for such Court to reserve such question, for the consideration of the Court of Appeal in criminal cases. If the Court shall determine to reserve any such question, and the defendant shall be convicted, the Court shall state the question or questions reserved, and shall direct such case to be specially entered in the record, and a copy thereof to be transmitted to the Court of Appeal in criminal cases.

Questions of law reserved.

¹ See § 1, Act 17, 1886.

² See also § 5 *ibid.*

³ "Hereinbefore" substituted for "hereinafter" by § 4, Act 12, 1880.

⁴ See also § 16, Act 40, 1882.

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Cases in which execution of sentence may be suspended.

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

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

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

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

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

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

How order of appeal court to be certified.

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

REFORMATORY INSTITUTIONS.

1595

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

No. 7—1879.
When Act to take effect.

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

Short title.

No. 6—1879.]

[Sept. 8, 1879.

ACT

To make Provision for the better Payment of the Expenses of certain Members of the Legislative Council and the House of Assembly of the Colony of the Cape of Good Hope.

WHEREAS it is expedient to make provision for the better payment of the expenses of certain members of the Legislative Council and the House of Assembly of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. In lieu and instead of the words “fifty days,” mentioned in the first proviso of the ninetieth section of the Constitution Ordinance, the words “ninety days” shall be substituted, and payment shall be made in accordance therewith for the present and subsequent sessions.

Members of Parliament may be paid for ninety days attendance.

2. This Act may be cited as the “Payment of Members’ Expenses Act, 1879.”

Short title.

No. 7—1879.]

[January 27, 1882.

ACT

To Provide for the Establishment and Management of Reformatory Institutions for Youthful Criminals. (2)

WHEREAS it is desirable to establish reformatory institutions for youthful criminals in this Colony, and to provide for the management and maintenance of the same: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. (3) It shall be lawful for the Governor to establish, for the purposes of this Act, reformatory institutions for the reception and custody of youthful criminals, and in every such institution the males shall be kept separate and apart from the females.

Reformatory institutions to be established.

¹ Proc. in *Gazette* 27th January, 1880.

² Amended by Act 4, 1892. See also Act 38, 1895. Extended by § 12 of Act 24, 1886, to all Native Territories.

³ Porter Reformatory established by Proclamation No. 11, 1882, in *Gazette*, 27th January, 1882.

No. 7—1879.

Who may be sent to them.

Until what age.

Convicted child may be sentenced to detention in institution in addition to imprisonment.

Or may be sent to institution in lieu of imprisonment.

Children now in prison, how to be dealt with.

Warrant to detain child.

To whom warrant to be forwarded.

Warrant sufficient defence to action.

2. Convicted children only shall be sent to or detained at any reformatory institution.

3. No convicted child shall be detained at any reformatory institution after he or she shall have attained the age of sixteen years.

4. Whenever any child shall hereafter be convicted of any offence,⁽¹⁾ either upon indictment or on summary conviction punishable by imprisonment, it shall be lawful for the Judge or other competent Court by which such child shall be convicted, in addition to the sentence which may then and there be passed as a punishment for the said offence, to direct such child to be sent, at the expiration of such sentence, to any reformatory institution established under this Act, to be there detained until he or she reaches the age of sixteen years; or for such shorter period as such Judge or other competent Court may think fit; or such Judge or other competent Court may, if such Judge or Court deem fit, send such child to any reformatory institution in lieu and instead of sentencing such child to imprisonment, or may, at the expiration of any sentence, or instead of sentencing such child to imprisonment, order that such child shall be bound to some useful calling or occupation for such period as such Judge or Court shall think fit, but not longer, however, than until such child shall attain the age of sixteen years.

5. If any child shall, at the time of the taking effect of this Act, be in any prison of this Colony under sentence for an offence punishable by imprisonment, the keeper of the gaol, in which such child shall be imprisoned, shall take such child before the Resident Magistrate of the district, and such Resident Magistrate, if he think fit, shall direct such child to be sent to and detained in any reformatory institution, pursuant to this Act: Provided always, that no such child, as last aforesaid, shall be sent to or detained in any reformatory institution for any longer period than such unexpired term.

6. Whenever any child shall be directed to be detained in any institution established under this Act, the Judge or any other competent Court shall issue a warrant for that purpose, setting forth the crime of which such child shall have been convicted, and the period for which such child shall be detained in the reformatory institution to which such child shall be sent.

7. The warrant in the last preceding section mentioned, or a duplicate thereof, shall be forwarded to the superintendent or matron of the reformatory institution with the child, and shall be a sufficient warrant for the conveyance of the child thither, and its detention therein.

8. In every action for anything done in obedience to any such warrant as aforesaid, it shall be sufficient for the defendant to justify under such warrant alone, without setting forth the

¹ See § 1 Act 8, 1889, and § 2 Act 38, 1895.

previous proceedings, and the production of such warrant shall be sufficient evidence in support of such a plea.

No. 7—1879.

9. Every warrant issued under this Act shall be executed and obeyed by the person to whom the same is directed and delivered, and the production thereof, with a statement annexed thereto, signed by the superintendent or matron of any reformatory institution, that the child named in such warrant was duly received into, and is, at the signing thereof, detained in such reformatory institution, shall in all proceedings whatever be sufficient evidence of the facts by this Act required to be stated in such warrant, and of the subsequent detention and identity of the child named therein.

How warrant to be obeyed, &c.

Production of it in evidence.

10. The Governor may, at any time during the detention of any inmate in a reformatory institution, remove any such inmate to any other reformatory institution established under this Act, and may also order the release of any such inmate from the reformatory institution in which he or she may be detained, and he or she shall upon the production of such order (which shall be under the hand of the Colonial or Under Colonial Secretary) be discharged accordingly.

Power of removal from one institution to another.

11. At any time before the expiration of the warrant authorising the detention of any inmate in a reformatory institution, the Resident Magistrate of the district in which such institution is situate, or of the district in which such child shall then be detained, may bind any such inmate as apprentice to any useful calling or occupation as he may think fit, in the same manner in which destitute children are now authorised to be bound by the law of this Colony; and such binding shall be as effectual as if such child were of full age and had bound himself: Provided that, if such child should have one or more parents or guardians alive, no such apprenticeship shall take place without the consent of such parents or guardians.

Power to bind inmate as apprentice.

12. The Resident Magistrate may, in any articles of apprenticeship under this Act, provide that such portion of the wages to become due to such apprentice as he may think fit, shall be deposited, at such times and in such manner as he shall determine, in any savings or other bank of this Colony on account of such apprentice, and every such deposit shall be deemed and allowed as a payment to such apprentice, but no portion thereof shall be withdrawn by such apprentice, without the consent in writing of such Resident Magistrate, until the expiration of the apprenticeship.

Provisions of articles of apprenticeship.

13. All members of the Executive Council, all members of the Legislature, all Judges of the Supreme Court, and all Resident Magistrates and Justices of the Peace, shall be entitled to visit every reformatory institution, and shall have admission to the same accordingly, and all such visitors, as aforesaid, shall also be entitled to have access, at convenient times, to every child apprenticed or bound under this Act.

Who may visit institutions.

No. 17—1879.
Visitors' book
Entries therein.

14. Every person who, by virtue of the last preceding section, shall visit any such reformatory institution may inscribe in a book (to be for that purpose provided and kept by the superintendent or matron of such reformatory institution) any remarks or observations, signed by such visitor, which he may think fit to make touching or concerning such reformatory institution, and the superintendent, matron, teachers, officers, servants, or inmates thereof, or any of them, and every such book shall be carefully preserved by every such superintendent or matron, and any superintendent or matron obliterating or destroying any such books of any such remarks or observations or any signature thereto, shall, on conviction before the Resident Magistrate of the district, be liable to a penalty not exceeding ten pounds, and in default of payment shall be liable to imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

Penalty for allowing escapes.

15. If the superintendent or matron of any reformatory institution, or any teacher, officer, or servant thereof, shall voluntarily or negligently allow any inmate thereof to escape therefrom, every such offender shall on conviction thereof before the Resident Magistrate of the district forfeit and pay any sum not exceeding twenty pounds, and in default of payment shall be liable to imprisonment, with or without hard labour, for any period not exceeding six months, unless such fine be sooner paid.

16. [Repealed by § 13, Act 4, 1892.]

Order to be in writing.

17. Every order made by any Resident Magistrate under the provisions of the last preceding section shall be in writing, and shall be in accordance with the provisions of such section.

In cases of whipping.

18. In case any whipping shall be ordered under the provisions of the 16th section of this Act, the order, sentence, or conviction, ordering such sentence, shall specify the number of cuts to be inflicted; and in the case of an offender under the age of fourteen years, such number shall not exceed twelve, and in no case shall exceed twenty; and in all cases the instrument used shall be a cane; and on the occasion of every such whipping, there shall be present the superintendent or matron of the reformatory institution, and one or more of the teachers and officers thereof, who shall sign in the record-book the minute recording the particulars of such whipping.

Absconding or escaping. Penalties.

19. If any inmate of any reformatory institution shall abscond therefrom, or wilfully damage or destroy any property belonging to such institution, such inmate, if a male, shall upon conviction thereof before the Resident Magistrate of the district, be liable, at the discretion of such Magistrate, to be whipped in manner hereinbefore provided or, whether male or female, to be fed on spare diet as hereinbefore provided: And such inmate, if he or she has absconded, may be ordered by such Magistrate to be sent back to the institution, and to be there detained till he or she attains the

age of sixteen years or for such shorter period as such Resident Magistrate shall think fit.

No. 7—1879.

20. If an child apprenticed or bound under the provisions of this Act shall desert or abscond from the service of his master, it shall be lawful for any court before whom such apprentice shall be brought, upon proof to the satisfaction of such court, in addition to any punishment which may be inflicted, either to order the child to return to the service of such master, or that such child shall be detained in any reformatory institution until such child shall attain the age of sixteen years, or for any shorter period.

Apprentices ab-
sconding. Penalties.

21. Any person who shall directly or indirectly counsel or induce, by letter or otherwise, any inmate of any reformatory institution to abscond or escape therefrom, or break his apprenticeship and abscond from his master, before such inmate shall have been regularly discharged or before the expiration of such apprenticeship, or who shall aid or abet any such inmate in absconding or escaping, or who knowing such inmate to have absconded or escaped, shall harbour or conceal, or assist in harbouring or concealing, such inmate, or prevent him or her from returning to such reformatory institution, or to his master, shall, on conviction thereof, forfeit and pay any sum not exceeding twenty pounds, or at the discretion of the court before which such conviction shall be had, be imprisoned for any term not exceeding six months, and with or without hard labour.

Accessories to es-
cape or absconding.

22. [Repealed by § 11, Act 4, 1892.]

23. Production of the *Government Gazette* containing any proclamation of any place as a reformatory institution under this Act, or notifying the appointment of any person as any officer under this Act, shall be conclusive evidence of the facts stated therein in any action, suit, or proceeding in any of the courts of this Colony.

Appointment of
officer under this
Act—how proved.

24. If any action or suit be brought against any person for anything done in pursuance of this Act, the same shall be commenced within six calendar months next after the act complained of; and notice in writing of such action and the cause thereof shall be given to the defendant one calendar month at least before such action; and the defendant in any such action or suit may, at his election, plead the general issue and give this Act and the special matter in evidence at any trial to be had thereon: And if a judgment for the defendant or an absolution from the instance be pronounced, or if the plaintiff discontinue his action or suit after the defendant shall have appeared, or if upon exception judgment shall be given against the plaintiff, then the defendant shall recover costs as between party and party, and have such remedy for recovering the same as any defendant has or may have in ordinary cases.

Limitation of ac-
tions against officers.

25. The provisions of the forty-seventh, forty-eighth, and forty-ninth sections of Act No. 20 of 1856, shall *mutatis mutandis*, extend and apply to cases in which any offender shall be directed

Sections 47, 48, and
49 of Act 20 of 1856
to apply.

No. 8—1879.

to be detained in any reformatory institution, or apprenticed or bound as aforesaid, or sentenced to be whipped, whatever may be the number of cuts to which the offender shall have been sentenced.

26. [Repealed by § 13, Act 4, 1892.]

Short title.

27. This Act may be cited as the "Reformatory Institutions Act, 1879."

No. 8—1879.]

[Sept. 11, 1879.

ACT

To Alter and Amend, in many respects, the General Law of the Colony. ⁽¹⁾

Preamble.

WHEREAS the existing general law of the Colony is in several instances unsuited to the advancing trade and the altered circumstances of the country: And whereas, also, many portions of such law are uncertain, and partly, if not entirely, obsolete: And whereas it is desirable to alter and amend such laws as are in conflict or inconsistent with modern principles of legislation: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

PART I.—MARITIME AND MERCANTILE LAW.

In maritime cases English law to prevail.

1. In all questions relating to maritime and shipping law in respect of which the Supreme Court has concurrent jurisdiction with the Vice Admiralty Court, the law of this Colony shall hereafter be the same as the law of England, so far as the law of England shall not be repugnant to or inconsistent with any Ordinance, Act of Parliament, or other statute having the force of law in this Colony.

Also in cases of assurance, stoppage in transitu, and bills of lading.

2. In every suit, action, and cause having reference to questions of fire, life, and marine assurance, stoppage in transitu, and bills of lading, which shall henceforth be brought in the Supreme Court, or in any other competent court of this Colony, the law administered by the High Court of Justice in England for the time being, so far as the same shall not be repugnant to, or in conflict with, any Ordinance, Act of Parliament, or other statute having the force of law in this Colony, shall be the law to be administered by the said Supreme Court or other competent court.

English statutes passed after this Act not to apply.

3. Nothing in the two preceding sections of this Act contained shall have the effect of giving force in this Colony to any statutory enactment made and passed by the Imperial Parliament after the taking effect of this Act, unless the same shall be re-enacted here.

Form of pleading, procedure, taking evidence, &c., not altered.

4. Nothing in the first and second sections of this Act contained shall have the effect of altering the rules and forms of pleading and procedure, the mode of taking evidence, or the manner of

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

hearing and trying civil suits at present in force or in use in this Colony, or the notarial practice of this Colony, whether in regard to the suits, actions, and causes in the first and second sections mentioned and referred to, or otherwise, or in any way of modifying, altering, or interfering with the character or extent of the jurisdiction now exercised by the several courts of this Colony, or of imposing any duty imposed or to be imposed in England for the purposes of the revenue.

No. 8—1879.

5. The several duties assigned by the admiralty branch of the Supreme Court of Justice in England to the marshal of the said Court shall, in the case of shipping or maritime suits in the Supreme Court, or the Court of the Eastern Districts, or any Circuit Court of this Colony be executed by the Sheriff of this Colony or his lawful deputy, or in case any such suit or action shall be brought in the court of any Resident Magistrate, then by the messenger or other duly authorised officer of such court.

Duties of marshal in admiralty court to be performed by sheriff in other courts.

PART II.—EXECUTION OF PROCESS.

6. No writ of civil imprisonment for non-payment or non-satisfaction of any judgment or decree shall be granted or issued by the Supreme or any other court of this Colony in cases in which the defendant, or other party against whom such writ of civil imprisonment is sought to be issued, shall prove to the satisfaction of the court to which such application is made, that such defendant or other party as aforesaid has not property or means sufficient to satisfy in whole or in part the said judgment or decree.

Proof that defendant has property must be given before civil imprisonment decreed.

PART III.—THE LAW OF CONTRACTS.

7. In the absence of any special stipulations to the contrary contained in any contract of lease, no lease of land shall become void or voidable, nor shall the rent accruing under such lease be incapable of being recovered on the ground that the property leased has, through inundation, tempest, or such like unavoidable misfortune, produced nothing, or on the ground that the lessor himself has absolute need of the land or other property leased.

Leases not void through injury to property by inundation, tempest, &c.

8. No contract shall be void or voidable by reason merely of *laesio enormis*, sustained by either of the parties to such contract.

Law of *laesio enormis* repealed.

9. This Act may be cited as the "General Law Amendment Act, 1879."

Short title.

No. 9—1879.]

[Sept. 11, 1879.

ACT

To Amend in certain respects the Act No. 7 of 1865 entitled the "Lands Beacons Consolidation Act."

Preamble.

WHEREAS the Land Beacons Consolidation Act does not provide for the issue of amended titles in all cases where diagrams do not represent the boundaries actually in existence, and where the correctness of the said boundaries is not disputed or questioned by any of the persons concerned: and whereas it is necessary to amend the said Act in this respect: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Portion of Act 7 of 1865 repealed.

1. So much of the Act aforesaid, No. 7 of 1865, as may be repugnant to or inconsistent with any of the provisions of this Act is hereby repealed.

Proceedings in cases where diagram found to be incorrect.

2. As often as it shall be found upon resurvey that the diagram of any piece of land enregistered in the land registers of this Colony, does not truly and correctly represent the boundaries of the said land, it shall be lawful for the owner thereof to require from the Surveyor-General the issue of an amended title and diagram, provided the following conditions shall have been fulfilled:—

Arrangement between all owners of land affected.

(a) An agreement or agreements in writing, which shall be in the form set forth in the schedule hereunto annexed (or shall, so far as the circumstances of the case permit conform thereto), signed in the presence of two competent witnesses (one of whom may be the surveyor making the survey), by all the owners of land adjacent to the land resurveyed, or their duly-accredited agents, shall be lodged with the Surveyor-General, which agreement or agreements shall set forth that the said owners do consent to and accept the boundaries adopted in the said resurvey as the true and correct boundaries of the said land: Provided that it shall not be necessary to lodge such agreement or agreements in writing with regard to any beacon or beacons which shall have become admittedly true and correct, by virtue of any proceedings under any one of the following Acts, namely, Act No. 10 of 1859, Act No. 6 of 1862, Act No. 7 of 1865, and Act No. 8 of 1866-67.

Surveyor to lodge with Surveyor-General certificate of agreement being duly executed.

(b) The surveyor aforesaid shall lodge with the Surveyor-General a certificate stating that the said agreement or agreements are signed by all the owners of the lands adjacent to and abutting upon the land resurveyed, except as hereafter provided, and that to the best of his knowledge and belief, the boundaries of the land

resurveyed have not been changed by mutual arrangement, so as to cause a transfer of land otherwise than according to the laws in force for the transfer of fixed property.

No. 9-1879.

- (c) The Surveyor-General shall be empowered to withhold the issue of an amended title, if he shall have reason to believe that Crown land or other unregistered land is encroached upon or included within the boundaries of the land resurveyed, or that payment of transfer duty has been sought to be evaded by any change of boundary as referred to in the last clause (b): Provided that the owner of the land resurveyed may, if he sees fit, petition the Supreme or Circuit Court, which Court may order the Surveyor-General to issue an amended title, on proof to the satisfaction of the Court that no such change of boundary for the aforesaid purpose has been made.

How Surveyor-General to act.

3. As often as any land shall be owned by two or more owners, without partition or subdivision, it shall be lawful and sufficient for the purposes of clause 2 of this Act, for the person or persons owning in the aggregate three-fourths of the registered contents or area of the land so held in common to require from the Surveyor-General the issue of an amended title and diagram, as provided for in the said clause, and such issue shall also be binding upon all the owners of the remaining one-fourth of the registered contents or area of the land aforesaid, who shall, moreover, be chargeable with their *pro rata* shares in the expenses connected with the re-survey and issue of the amended title and diagram of the land aforesaid, and which *pro rata* shares of expenses shall be recoverable against them, in any competent Court, at the instance of the other owners who shall have paid the same.

In case of joint owners, the owner or owners of three-fourths may require amended title and diagram.

4. As often as any land adjacent to the land resurveyed shall be owned by two or more owners, without partition or subdivision, it shall not be necessary for all such persons to agree in the manner set forth in section (a) of clause II, but the signature or signatures to such agreement of the person or persons owning in the aggregate three-fourths of the registered contents or area of the land so held in common shall be taken to be sufficient and the said agreement shall be as valid and effectual as if it had been signed by all the owners of the said land: Provided that as to any such owner or owners refusing or failing to give his or their consent, notice in writing be given to such owner or owners, or his or their duly authorised agent or agents that, unless within thirty days after service thereof, an objection be lodged with the Divisional Council of the division in which the land is situated, in terms of the 93rd section of the "Land Beacons Consolidation Act, 1865," such owner or owners will be deemed and taken to have consented: And, provided further, that within the said period no such objections shall have been lodged by such owner or

Signature of agreement by owner or owners of three-fourths binding on rest.

Notice to dissenting owners.

No. 9—1879.

owners or his or their duly authorised agent or agents with the Divisional Council aforesaid.

When dispute settled, owner may apply for amended title.

5. As often as the boundaries of any land, which shall have been in dispute between the owners, shall be or have been finally determined by the judgment of any competent court, or by the award of arbitrators duly made a rule of a competent court, it shall be lawful for the owner of such land to apply to the Surveyor-General for the issue of an amended title, based upon a diagram correctly representing the boundaries of such land as fixed and determined by such judgment or award: Provided that, as to the boundaries of such land other than the boundaries so fixed and determined as aforesaid, the provisions of the second section of this Act shall apply.

Duties of land-surveyor under this Act.

6. It shall be the duty of every land-surveyor who shall be employed upon any such resurvey to frame an accurate plan of the land resurveyed, and in doing so to conform to such instructions of the Surveyor-General, upon technical points, as may from time to time be issued for the guidance of surveyors in such cases. The surveyor shall forward the said plan to the Surveyor-General, with the new diagrams, and the title deeds or transfer deeds of the land resurveyed, together with a report containing any information which the said surveyor may deem useful, and amongst other things the degree or particulars in which the said plan differs from the existing diagram or title deed; and with his certificate that the beacons thereof have been erected in a substantial and durable manner, and of materials clearly and easily distinguishable from other objects in the vicinity of such beacons. The surveyor shall likewise forward to the Surveyor-General such proofs of the accuracy of the resurvey as the said Surveyor-General may deem it fitting to require.

Notice by Surveyor-General of intention to issue new title.

7. It shall be the duty of the Surveyor-General to give notice in the *Government Gazette* of every intended issue of an amended title under this Act, and to name in such notice a day for such issue: Provided always that the day so named shall not be earlier than sixty clear days from the date of such publication.

Sixty days.

On issue of amended title, &c., former documents void.

8. Upon the issue of such amended title, all existing title deeds or transfer deeds of the land resurveyed shall become void, cancelled, and of no effect: Provided that as often as any hypothecation, conventional or tacit, of or over such land shall be in existence at the date of such issue, such hypothecation shall attach to and upon the same precisely as it existed upon the said land under its former title deed or transfer deed, and all usual or proper entries and endorsements as may be necessary to record any such hypothecation shall be made in the Deeds Registry of the Colony before such amended title shall be delivered from and out of the office of the Surveyor-General to the person or persons entitled thereto.

How if diagram found correct.

9. If in any case application for amended title shall be made under the provisions of this Act, and the existing diagram shall be

found to be correct by the Surveyor-General, so that no amended title of the said land shall be necessary, then the Surveyor-General shall endorse a certificate of such correctness upon such title deed and diagram.

No. 9—1879.

10. In the interpretation of this Act the term "owner" shall mean the person or persons, or corporate body, or association, in whose favour enregistration in the land registers in the offices of the Surveyor-General or Registrar of Deeds has been made, or in whom any land may have been vested by legal enactment. The term "unregistered land" shall mean land not enregistered in the aforesaid land registers as the lawful property of any person, corporate body, or association of persons, and shall include the following:—

Interpretation of terms.

- (a) Land belonging to the Crown, and not previously granted.
- (b) Land described in any proclamation of municipal regulations, or which has been by proclamation, Government notice, or other instrument or act, assigned as pasturage for any town or village.
- (c) Land occupied without title, by virtue of a certificate of reservation or ticket of occupation, issued by authority of any Governor of the Colony.
- (d) Land set apart for public purposes, such as outspan places or other reserves for the public convenience.

11. This Act may be cited for all purposes as the "Land Beacons Amendment and Extension Act, 1879."

Short title.

SCHEDULE.

FORM OF AGREEMENT HEREINBEFORE MENTIONED.

We, the undersigned, _____, owners of the farm _____ [here describe the owners of any common beacons], and _____ owner or owners of the farm _____ [here describe the owner or owners of the property for which a new title is desired], certify that we have on the _____ day of _____, inspected the beacon [or beacons] common to our said properties in the presence of Mr. Surveyor _____. And we declare that we agree and consent to the position of the beacon [or beacons] then pointed out, and consent to a new diagram being framed in accordance therewith.

As witnesses:

E. F.
G. H.

(Signed) A. B.
C. D.

No. 10—1879.]

[Sept. 11, 1879.

ACT

To Amend the Law relative to the Execution and Attestation of Powers of Attorney. ⁽¹⁾

Preamble.

WHEREAS the existing law relating to the execution of powers of attorney is inconvenient in practice: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repeal of third section of Ordinance 15 of 1845.

1. The provisions of the third section of Ordinance No. 15 of 1845, so far as the same relate to powers of attorney, are hereby repealed.

Signature alone to make power of attorney valid.

2. It shall be sufficient for the validity of any power of attorney made after the passing of this Act that the same shall be signed at the foot or end thereof by the person making the same with his signature or mark: Provided, that it shall be lawful for the Registrar of Deeds, Master of the Supreme Court, or any other person, before paying out any money, or doing any other act, or authorising any act to be done by virtue of any power of attorney, to require that the signature or mark of the person making the same shall be attested:

Attestation may be required.

- (a) By the signature of two witnesses who shall be above the age of fourteen years, and competent to give evidence in a court of justice, and who shall affix their signatures as near as conveniently may be to the signature or mark of the person making the power of attorney; or
- (b) By the declaration of one such witness as aforesaid, who shall declare that he was present and saw the person making such power sign the same, or affix his mark thereto, or that such person acknowledged his signature or mark thereto in the presence or hearing of the witness; or
- (c) By the certificate of a Justice of the Peace or Notary Public.

What shall be sufficient attestation.

Form of declaration.

3. Every declaration made under the last preceding section shall be in the form provided for by Ordinance No. 6 of 1845, ⁽²⁾ and subject to the provisions of the said Ordinance.

Stamp duty not affected.

4. Nothing in this Act contained shall alter or affect any stamp duty which may now or hereafter be imposed upon powers of attorney.

Short title.

5. This Act may be cited as the "Powers of Attorney Act, 1879."

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

² Repealed by Act 18, 1891, which provides form.

No. 11—1879.]

[Sept. 11, 1879.

No. 12—1879.

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

[Repealed by Act 25, 1892.]

No. 12—1879.]

[Sept. 11, 1879.

ACT

To Amend the "South African College Act, 1878."

WHEREAS it is expedient to amend "The South African College Act, No. 15 of 1878," and to make better provision for the management of the schools connected with the said college: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The eighth, eleventh, and thirteenth sections, and so much of the said Act No. 15 of 1878, and so much of the Act No. 13 of 1865, and of the school regulations contained in the schedule to, or made in pursuance of, the said last-mentioned Act, as are repugnant to, or inconsistent with, the provisions of this Act, shall be, and the same are hereby, repealed.

Repeal of certain sections of Act 13 of 1865.

2. The South African College Council may from time to time, if it shall see fit, appoint from amongst the professors, or otherwise, a principal of the said college, and shall appoint such professors, assistant professors, lecturers, and teachers, as may be required for the college and for any department or school connected therewith, on such terms and at such salaries as the said council shall find expedient, and shall regulate and fix the fees to be paid by the students and scholars, and the appropriation thereof.

Collegecouncil may appoint a principal, and shall appoint professors and teachers.

3. The superintendence and regulation of the discipline and instruction of the several departments and classes of the South African College shall be vested in a senate, to be constituted as hereinafter in this Act is provided, subject to such regulations and by-laws as have been, or may hereafter from time to time, be framed by the South African College Council under the provisions of the fifth section of the "South African College Act, 1878."

Superintendence and regulation of discipline, &c., vested in senate.

4. The senate shall consist of the principal of the college (should a principal be appointed), the professors, and two members of the South African College Council; any three of whom shall form a quorum for the transaction of business.

Constitution of senate.

5. The two members appointed by the said council to be members of senate shall hold office until the 31st day of March, 1880. The said council shall at some duly convened meeting, to be held not later than the 30th day of April in every year, choose, by a majority of votes, from amongst their number, two to be

Term of office of two members appointed by council.

- No. 12—1879. members of senate, who shall, unless they become disqualified, hold office until the appointment of their successors.
- Member ceasing to be member of council. 6. Any elected member of senate who shall cease to be a member of the council, shall thereupon vacate his seat.
- In case of death, resignation, &c. 7. Upon the death, resignation, or disqualification of any elected member of senate, the council shall, in manner hereinbefore provided, elect a member to supply such vacancy, and to hold office during the unexpired portion of the time of the member so vacating office.
- Acts of senate meanwhile. 8. Any act done by a quorum of the senate during any vacancy, shall be as valid and effectual as if no vacancy existed.
- Election of chairman of senate. 9. The senate shall annually, in the month of May, elect one of their number to be chairman, who shall hold office for one year, and, in the event of a vacancy, shall elect another to hold office during the remainder of the year. The chairman shall, when present, preside at all meetings, and when absent from any meeting the senate shall elect a member to be chairman thereof. The chairman presiding at any meeting, at which the votes of members are equal, shall have a casting vote in addition to his original vote.
- Senate to frame and amend its rules. 10. The senate may from time to time frame, or alter or amend, rules for regulating the holding and proceedings of its meetings, and for the due discharge of the duties appertaining to the senate.
- College council may establish an undenominational school. 11. The South African College Council may establish in Cape Town an undenominational public school of the first class, or separate boys' and girls' schools, and shall be the managers of any schools which they shall so establish.
- School to be under same regulations as other aided school. 12. Every such school shall, so long as aid shall be received from the public revenue, under the provisions of the Act No. 13 of 1865, be subject to all the regulations applicable to other public schools so aided.
- Short title. 13. This Act may be cited for all purposes as the "South African College Amendment Act, 1879."

No. 13—1879.]

[Sept. 11, 1879.

An Act for Authorising certain Expenditure incurred for the Construction and Equipment of Railways, in addition to the Provision already made in that behalf by Parliament.

[Spent.]

LOAN TO BUILD HOUSES OF PARLIAMENT. 1609

No. 14—1879.]

[Sept. 11, 1879.

ACT

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

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

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

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

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

No. 15—1879.]

[Sept. 11, 1879.

ACT

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

WHEREAS the present accommodation afforded to the Legislative Council and the House of Assembly respectively, is wholly inadequate, inconvenient, and unsuitable, and it is desirable to make better provision for such accommodation: Be it therefore

¹ See Act 3, 1881.

No. 17—1879.

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

£120,000 to be raised for building Houses of Parliament.

1. It shall be lawful for the Governor to raise and take up upon debentures or stock, or partly upon debentures and partly on stock any sum or sums of money not exceeding in the whole the sum of £120,000 sterling (¹) for the purpose of erecting a building or buildings which shall contain the accommodation necessary for and suitable to the Legislative Council and the House of Assembly of this Colony, together with the various offices required for the transaction of the business connected with the said Legislative Council and House of Assembly respectively.

Borrowing powers.

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

Accounts to be rendered.

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

Short title.

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

No. 16—1879.]

[Sept. 11, 1879.

An Act for Authorising certain Expenditure not provided for by Parliament in the year 1875.

[Spent.]

No. 17—1879.]

[Sept. 11, 1879.

ACT

To Authorise the Commissioners of the Municipality of the Paarl to borrow a further Sum of Money for Increasing the Water Supply of that Municipality.

Preamble.

WHEREAS by "The Town of the Paarl Water Act (No. 8) of 1869," provision was made for enabling the commissioners of the town of the Paarl to borrow a sum not exceeding fifteen hundred pounds sterling, for the purpose of increasing the supply of water for the town of the Paarl: And whereas it is expedient to

¹ Further sums raised by Acts 21 of 1883 and 17 of 1884.

CAPE TOWN AND GREEN POINT TRAMWAY. 1611

authorise the said commissioners to borrow a further sum of money, not exceeding three thousand five hundred pounds sterling, for the purpose of further increasing the water supply of the said municipality: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 19—1879.

1. It shall be lawful for the commissioners of the municipality of the Paarl to borrow and take up such sum or sums of money, not exceeding in the whole the sum of three thousand five hundred pounds sterling, in addition to the sum previously borrowed for the same purpose, as shall be required for further increasing the water supply of the said municipality.

Municipality of Paarl authorised to borrow £3,500.

2. The provisions of the first section of the said Act No. 8, 1869, as to the assessment of rates for providing for the payment of principal as well as interest, and the provisions of the third, fourth, fifth, and sixth sections thereof, shall apply to the money borrowed under this Act, precisely as if the same were, *mutatis mutandis*, herein repeated.

Certain provisions of Act 8 of 1869 to apply.

3. This Act may be cited for all purposes as the “Town of Paarl Water Act, 1879.”

Short title.

No. 18—1879.]

[Sept. 11, 1879.

An Act to Provide for the better Repression and Punishment of Thefts of Stock.

[Repealed by Act 35, 1893.]

No. 19—1879.]

[Sept. 11, 1879.

ACT

To Extend the Term of Incorporation of the Cape Town and Green Point Tramway Company, and to confer Additional Powers on such Corporation. (1)

WHEREAS by the 39th clause of Act No. 33 of 1861, the term of incorporation of the Cape Town and Green Point Tramway Company is limited to the 1st day of July, 1882, and it is desirable to extend the said term for a further period of twenty-one years: Be it therefore enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding anything in the 39th section of Act No. 33 of 1861 contained, such Act shall continue and be in force until the first day of July, 1903, (2) and the several provisions of the said Act shall apply to the Cape Town and Green Point Tramway Company, thereby incorporated, until such last mentioned date, as if the same had been hereby re-enacted.

Extension of duration of Green Point Tramway Company.

1 See Act 23, 1895.

2 1920. See Act 23, 1895.

No. 21—1879.

And whereas the said company has hitherto used horse-power alone for the traction of its carriages, and it is desirable to empower the said company to make use, if it should so think fit, of steam, or other mechanical power, for such traction: Be it therefore further enacted as follows:

Steam may be used under approval of Colonial Railway or other engineer.

2. It shall be lawful for the Cape Town and Green Point Tramway Company to make use (if it think fit to do so) of steam, or other mechanical power, for the traction of the carriages on the said company's tramway: Provided that the use of any steam motor for the purposes of such traction shall be subject to the approval of the Colonial Railway Engineer, or of such Engineer as the Government may appoint for the purposes of such inspection; And, provided further, that no steam motor shall be used on such tramway until the Engineer aforesaid shall first have certified that the permanent way is fit and sufficient for such steam motor thereon to be used.

Speed not to exceed eight miles an hour.

3. In the event of the said tramway or any part thereof being worked by steam-power, it shall not be lawful for the carriage thereon to proceed at a greater rate of speed than eight miles an hour.

Short title.

4. This Act may be cited as the "Cape Town and Green Point Tramway Company's Extension Act, 1879."

No. 20—1879.]

[Sept. 11, 1879.]

An Act to Provide for the Safe Custody of Persons Dangerously Insane, and for the Care and Custody of Persons of Unsound Mind.

[Repealed by Act 35, 1891.]

No. 21—1879.]

[Sept. 11, 1879.]

ACT

To Authorise the Detention in the Gaols of this Colony of certain Persons sentenced to Imprisonment under Martial Law.

Preamble.

WHEREAS, in consequence of the engagement in rebellion and other acts of aggression against Her Majesty the Queen, of certain evil-disposed persons, the Governor did issue a proclamation, under his hand and under the public seal of this Colony, dated the 31st day of December, 1877, proclaiming and directing, amongst other things, that from and after the promulgation of such proclamation, martial law should be in force within the districts of Stutterheim and Komgha:

And whereas, in pursuance of the objects of the said proclamation, the Governor did issue a Government notice, bearing date the

1st day of January, 1878, and numbered 73, 1878, whereby, after reciting the objects of the operations then being carried on in the said divisions of Stutterheim and Komgha, and after reciting that special Commissioners would be permanently appointed at the principal stations in the location and its neighbourhood, and that one would be nominated to accompany every column which might have to act in the districts proclaimed: His Excellency was pleased to appoint certain persons in such notice named to administer justice in the districts proclaimed: And whereas it was expedient to issue, and the said Governor did issue, to the persons in the aforesaid notice appointed, a letter of instructions whereby, amongst other things, such persons were informed and instructed that they were vested with all the powers of a Circuit Court, subject to the confirmation by Government of all sentences exceeding one year's imprisonment, and that all prisoners were to be sent to East London; and that all offenders against the law would be tried by the persons appointed as aforesaid, but more especially those Natives either taken with arms in their hands or who had in any way aided or abetted in the then prevailing disorder; and enumerating the several classes of offenders who might be brought for trial before the persons so appointed as aforesaid, and directing the different degrees of punishment to which such offenders might be sentenced, and stating and declaring the necessity of securing all the essentials of a fair trial of all offenders brought before such persons, and the means of securing such essentials: And whereas several persons engaged in acts of hostility and aggression against Her Majesty the Queen in the said proclaimed districts, were afterwards, from time to time, tried and sentenced by the persons so appointed as aforesaid, and are now imprisoned by virtue of such sentences in various of the gaols of this Colony: And whereas it is expedient that such sentences should be confirmed by the Legislature of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The several sentences pronounced by the persons, or any of them, specially appointed by the Government notice, dated 1st January, 1878, and numbered 73, 1878, upon persons tried by them for acts of rebellion, hostility, or aggression, under such authority, are hereby confirmed: And all persons now confined in any of the gaols of this Colony, under or by virtue of such sentences, shall continue liable to be so confined until the expiration of the sentences respectively passed upon them under the authority aforesaid.

Sentences under martial law confirmed.

2. This Act may be cited as the "Martial Law Prisoners Detention Act, 1879."

Short title.

No. 23—1879.

No. 22—1879.]

[Sept. 11, 1879.]

Act to Provide for the Payment of Pensions to Widows of Officers on the Fixed Establishment of the Public Service of this Colony.

[Repealed by Act 32, 1895.]

No. 23—1879.]

[Sept. 11, 1879.]

ACT

For the Prevention of Vagrancy and Squatting.⁽¹⁾

Preamble.

WHEREAS it is expedient, as far as possible, to suppress idleness and vagrancy, and whereas serious losses of stock by thefts are experienced by the farmers of this Colony, and there is reason to believe that the same are in a great measure traceable to the facilities afforded to unemployed persons, and persons without sufficient means of support, of residing upon Crown and other lands, and of roaming about without proper control, and it is expedient that such facilities as aforesaid should be restricted: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of section 11 of Act 22 of 1867.

1. The eleventh section of the Act No. 22 of 1867, and so much of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Who shall be deemed to be vagrants.

2. Any person found wandering abroad and having no visible lawful means, or insufficient lawful means of support, who, being thereunto required by any Resident Magistrate, Justice of the Peace, field-cornet, police officer, police constable, Inspector of Native Locations, or owner or occupier of land, or who having been duly summoned for such purpose, or brought before a Resident Magistrate or Special Justice of the Peace in pursuance of this Act, shall not give a good and satisfactory account of himself,

Punishment of vagrants.

shall be deemed and taken to be an idle and disorderly person, and on conviction thereof before any Special Justice of the Peace shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days, or upon conviction before any Court of Resident Magistrate shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding three months.

Penalties for harbouring disorderly persons.

3. Every person who shall wilfully or knowingly harbour, or suffer or permit to reside on land or premises owned or occupied by him, any idle and disorderly person as aforesaid, shall, on

¹ Amended by Act 27, 1889. See also Acts 20, 1891, and 34, 1895. Extended by Proclamation No. 347 of 1894 to Griqualand East.

conviction before the Court of Resident Magistrate or Special Justice of the Peace for his district, be liable, in case of conviction before a Court of Resident Magistrate, to a penalty of not exceeding five pounds for every such offence, and in default of payment of such penalty, to be imprisoned, with or without hard labour, for any period not exceeding two months, unless such fine be sooner paid; and in case of conviction before a Special Justice of the Peace as aforesaid, to a penalty of not exceeding twenty shillings, and in default of payment of such penalty to be imprisoned, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid.

4. Every person found ⁽¹⁾ without the permission of the owner (the proof of which permission shall lie on such person) wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, outhouse, garden, vineyard, kraal, or other enclosed place, shall be deemed and taken to be an idle and disorderly person; and, upon conviction thereof before any Special Justice of the Peace, shall be liable ⁽²⁾ to a fine not exceeding one pound, with the alternative of imprisonment with or without hard labour for a period not exceeding fourteen days unless such fine be sooner paid or to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days; or upon conviction before a Court of Resident Magistrate shall be liable ⁽²⁾ to a fine not exceeding two pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding one month, unless such fine be sooner paid or to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding three months in the case of the first conviction, and ⁽²⁾ to a fine not exceeding five pounds, with the alternative of imprisonment with or without hard labour, for a period not exceeding three months unless such fine be sooner paid or to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding six months, in the case of any subsequent conviction for the same offence. ⁽³⁾

5. ⁽⁴⁾ Every person hereinbefore declared to be idle and disorderly as aforesaid may be apprehended with or without warrant by any Resident Magistrate, Justice of the Peace, field-cornet, police officer, or police constable, or by the owner or occupier of the land or premises on which such idle or disorderly person may be, or by anybody acting under the orders of such Resident Magistrate, Justice of the Peace, field-cornet, or owner or occupier, and upon

No. 23—1879.

Persons loitering
and wandering
about.

Penalties.

Apprehension of
idle and disorderly
persons.¹ Printed as amended by § 2, Act 27, 1889.² Printed as amended by § 3, Act 27, 1889.³ See § 7, Act 30, 1894, and Act 34, 1895.⁴ See § 5, Act 27, 1889.

No. 21—1879.

Not to be apprehended on private property without owner's consent.

apprehension, may be conveyed before the Resident Magistrate or Special Justice of the Peace of the district in which he was apprehended, or the nearest Resident Magistrate or Special Justice of the Peace, to be dealt with according to law : Provided that no such person shall be apprehended without warrant upon the land or premises of any private person without the consent of such private person, except by such private person or somebody acting by his orders, or by some Resident Magistrate, Justice of the Peace, or the field-cornet of the ward, or by somebody acting under the orders of such Resident Magistrate, Justice of the Peace, or the field-cornet.

Warrant to search for idle and disorderly persons on private property.

6. In case it shall be made to appear to the satisfaction of the Resident Magistrate of the district, or some Justice of the Peace therein, by information in writing upon oath that there is reason to believe that any idle and disorderly person as aforesaid is upon the land or premises of any private person, such Resident Magistrate or Justice of the Peace shall grant a general warrant authorising some person or persons named therein for the purpose, to enter upon the land or premises of such private person, in order to ascertain whether any idle and disorderly person as aforesaid is upon such land or premises ; and in case any idle and disorderly person as aforesaid shall, upon the execution of such warrant, be found upon such land or premises, he may be forthwith apprehended by the person or persons so named in the said warrant as aforesaid, and conveyed before the Resident Magistrate or Special Justice of the Peace of the district in which he was apprehended, or the nearest Resident Magistrate or Special Justice of the Peace, to be dealt with according to law.

Persons driving stock may be interrogated, and, not giving satisfactory account, may be arrested and detained in custody.

7. It shall be lawful for any Resident Magistrate, Justice of the Peace, field-cornet, police officer, police constable, Inspector of Native Locations, or the owner or occupier of the land or premises whereon or wherein any person as hereafter mentioned may be, to stop any person whom he shall find driving any live-stock, and to interrogate such person ; and if he shall not account satisfactorily for the possession of the live-stock so being driven by him, or if there shall be reasonable grounds for suspecting that such live-stock have been criminally procured, then it shall be further lawful for such Resident Magistrate, Justice of the Peace, field-cornet, police officer, police constable, Inspector of Native Locations, or owner or occupier, to conduct or cause to be conducted, the said live-stock, and the person so driving the same, to the nearest public prison or police station, so that such person so driving the said live-stock may be detained in custody until the then next sitting of the Resident Magistrate or a Special Justice of the Peace of the district in which such prison or police station is situated, who shall inquire into the circumstances, and make such determination in conformity with law as shall to him seem fit and proper.

Penalties for resisting persons authorised to arrest, &c.

8. Every one who shall assault or resist any person authorised as aforesaid to make an arrest, or to enter upon any land or premises

while in the execution of such authority, or who shall aid or incite any person so to assault or resist, shall, for every such offence, be liable, upon conviction before any Court of Resident Magistrate, to a penalty of not exceeding ten pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for not exceeding three months, unless such penalty be sooner paid, or to such imprisonment, without the option of paying a penalty; or in case of conviction before a Special Justice of the Peace, to a penalty not exceeding twenty shillings, and in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days, unless such penalty be sooner paid, or to such imprisonment without the option of paying a penalty.

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9. All squatters trespassing upon waste Crown land, or upon land occupied by any missionary institution, or upon land set apart as a Native Location may be summarily directed to remove therefrom by order in writing, signed by the Resident Magistrate of the district in which such land is situated, such trespassers having been first summoned before the Court of such Resident Magistrate to show cause why they should not remove from such land, and no sufficient cause to the contrary having been proved to the satisfaction of such Court: Provided that no person shall be deemed to be a trespasser within the meaning of this section unless he shall originally have entered upon, and shall be upon, such land, without lawful authority; and any person who may be ordered to remove as aforesaid, who shall disobey such order, shall be liable to be dealt with as an idle and disorderly person as aforesaid, and shall be subject to the penalties provided by the second section of this Act.

Squatters how to be dealt with.

10. Every person found wandering or being in any street or road ordinarily used by the public, or in any place of public resort, or in view thereof respectively, without sufficient clothing for the purposes of decency, shall be deemed and taken to be a disorderly person, and to be guilty of an offence against the true intent and meaning of this Act, and may be arrested without warrant and conveyed before the nearest Resident Magistrate or Special Justice of the Peace to be dealt with according to law, and upon conviction, as in the second section of this Act is provided, shall be liable to the penalties imposed by that section.

Persons insufficiently clothed.

11. It shall be lawful for any Resident Magistrate or Special Justice of the Peace, to adjudge any person convicted under the second and fourth sections of this Act, to a term of service on the public works of the Colony, or to employment under any Divisional Council, or municipality, or private person, other than the said Resident Magistrate or Special Justice by whom such person shall have been convicted, or the person at whose instance such prosecution shall have taken place, who may be willing to employ such person, for any term not exceeding that for which he is liable to imprisonment under this Act on that behalf provided, and at

Power to make convicted persons work.

No. 23 - 1879.

such rate of wages as shall, in the judgment of the Resident Magistrate or Justice of the Peace be sufficient for his maintenance; Provided always, that if any person so adjudged to service shall escape, or attempt to escape, or otherwise be guilty of any offence under the Masters and Servants Act, he shall be liable to imprisonment, with or without hard labour, for a period not exceeding six months.

Special justices of the peace to transmit record of their proceedings under this Act to Registrar of Supreme Court.

12. When and as often as any Special Justice of the Peace shall convict any person of any offence under the provisions of this Act, such Justice of the Peace shall forthwith transmit to the Registrar of the Supreme Court, or in case the said conviction shall have been had within the jurisdiction of the Court of the Eastern Districts, to the Registrar of the said Court of the Eastern Districts, the record of the proceedings in the case, together with such remarks, if any, as he may desire to append, and thereupon all and singular the provisions of the forty-seventh, forty-eighth and forty-ninth sections of the Act No. 20 of 1856, shall, *mutatis mutandis*, and as far as the same are applicable, extend and apply to such record, the Justice of the Peace being considered as substituted in the said section for the convicting Resident Magistrate, and all matters required to be done in the said section by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Penalties for wrongfully putting in force the provisions of this Act.

13. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding five pounds sterling, and to pay to the arrested person such amount, not exceeding the sum of five pounds sterling, as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid. And, if such arrested person is brought to trial before some Special Justice of the Peace, such Justice of the Peace may impose upon any person who may wrongfully and maliciously, or without probable cause, act as aforesaid, the payment of such fine or damages or both as he may think proper: Provided that such fine and damages shall not exceed the sum of twenty shillings respectively, and in default of payment of such fine, the person upon whom such fine has been imposed shall be liable to be imprisoned, with or without hard labour for any period not exceeding fourteen days, unless such fine shall be sooner paid: Provided, further, that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Short title.

14. This Act may be cited for all purposes as the "Vagrancy Act, 1879."

No. 24—1879.]

[Sept. 11, 1879.

No. 27—1879.

An Act for Authorising certain Expenditure not provided for by Parliament in the Year 1875.

[Spent.]

No. 25—1879.]

[Sept. 11, 1879.

An Act to Alter certain Rates of Postage payable in this Colony.

[Repealed by Act 4, 1882.]

No. 26—1879.]

[Sept. 11, 1879.

An Act for Authorising certain Expenditure not provided for by Parliament in the Year ending 30th June, 1878.

[Spent.]

No. 27—1879.]

[Sept. 11, 1879.

ACT

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

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

Preamble.

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

Authority to raise £50,000.

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

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

Moneys raised to be entrusted to harbour commissioners.

8. An account showing the amount of all stock and debentures issued from time to time under authority of this Act, and of the moneys realized by the issue and sale thereof, and of the expenditure of all such moneys, or of so much thereof as shall for the time being have been expended ; and of all other moneys which have been expended upon the said graving dock out of the general revenue of the Colony, or otherwise, and an account of the amount

Accounts to be laid before Parliament.

No. 28—1879.

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

Short title.

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

No. 28—1879.]

[Sept. 11, 1879.

ACT

To Assist Municipalities to carry out Irrigation Works. (1)

Preamble.

WHEREAS it is desirable to assist such municipalities as may be desirous of carrying out irrigation works within their respective limits, and to devise better means than at present exist for rendering such assistance: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the consent of the Legislative Council and the House of Assembly thereof, as follows:—

Power to Govern-
ment to advance
money to municipali-
ties for irrigation
works.

1. Nothing in Act No. 8 of 1877 shall be taken to debar the Government from making advances of money by way of loan to any municipality, for the purpose of enabling any such body under the provisions of the said Act to carry out works of irrigation or artificial storage of water, upon the credit and security of any rates which may be assessed or levied by such municipality, with or without such other good and sufficient security as may be in the power of such municipality to offer; and it shall be lawful for any such municipality to which money for the purpose aforesaid shall be advanced by the Government, to mortgage such rates, or any part thereof, or to give such other security as may be approved of by the said Government, for the purpose of securing the repayment of the money so advanced, with the interest thereon, and such mortgage shall constitute and be a first charge upon such rates: Provided that no such loan as aforesaid shall be effected unless the Government shall be satisfied that the previous consent of a majority of the ratepayers of the said municipality, present at a meeting to be convened by the commissioners of the said municipality, under a resolution to that effect passed by the said commissioners, has been obtained, of which said meeting of ratepayers fourteen clear days' notice shall be given by publication in one or more newspapers, if any, published within the said municipality, and by posting or affixing a copy of such notice in some conspicuous place within the said municipality.

¹ See Act 10, 1893.

2. It shall be lawful for any municipality which shall have obtained from the Government any such loan as in the preceding section mentioned, to impose, levy and collect a special water rate for the purpose of meeting and defraying the annual rent charge payable to the Government under the said Act No. 8 of 1877, and in the event of such water rate not being sufficient for the purpose aforesaid, then to impose, levy, and collect a special annual rate not exceeding twopence in the pound upon the value of the immovable property within its limits liable to be rated, for the purpose of meeting the aforesaid rent charge.

No. 29—1879.
Municipalities to impose water rate to defray annual charge.

Or a special rate.

3. All applications made under this Act to the Government for any advance of money by way of loan, as hereinbefore provided, shall be subject to the several provisions of the said Act No. 8 of 1877, relating to applications for loans by private owners of land, and all and singular the provisions of the said Act No. 8 of 1877, relating to proceedings consequent upon application for loans by, and to loans made to, and securities given by, such private owners and to the construction and maintenance of works, and to the rights of liabilities generally under the said Act No. 8 of 1877, of the Government and such private owners respectively, shall in all respects, save as to the nature of the security to be given as authorised by this Act, apply *mutatis mutandis* to applications made, loans granted, and securities given under this Act, and to works constructed by municipalities under this Act.

Provisions of Act No. 8, 1877, to apply.

4. The term "municipality" in this Act shall be deemed to designate any board of municipal commissioners or town council established under or by virtue of any Ordinance or Act of Parliament.

Definition.

5. This Act may be cited as the "Municipalities Irrigation Works Loan Act, 1879."

Short title.

No. 29—1879.]

[Sept. 11, 1879.

ACT

To Amend the Law relating to the sale of Firearms and Gunpowder.

WHEREAS it is expedient to give authority in certain instances, to persons other than Resident Magistrates, to grant permission authorising the issue of gunpowder from private magazines, and certificates authorising the purchase of firearms and gunpowder: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor, subject to such limitations and conditions as to the said Governor may seem fit, to authorise and empower any clerk to a Resident Magistrate, or any other person whom the Governor may specially appoint for that

Governor may specially appoint persons to issue permits under Ordinance No. 2, 1853.

No. 30—1879.

purpose, to grant and issue under the provisions of the eighth section of the Ordinance No. 2 of 1853, in districts where circumstances may render it necessary, the permission to issue gunpowder from any private magazine therein mentioned in the form and manner, and under the restrictions, contained in such section; and also to authorise and empower in such districts, and subject to such limitations and conditions as aforesaid, any such persons as aforesaid to grant and issue, under the provisions of the thirteenth section of the said Ordinance, certificates authorising the purchase of firearms, gunpowder, or percussion caps, and of lead, in districts where such certificate is by any existing law required for the purchase thereof, and the permissions and certificates which shall be so granted and issued shall be of the same force and effect as if they had been granted and issued by a Resident Magistrate, and shall be subject to the provisions of any existing law which shall be applicable to such last mentioned permissions and certificates.

May revoke or cancel such appointment.

2. Any authority under this Act to grant or issue permissions or certificates as aforesaid may at any time be revoked and cancelled by the said Governor, and thereupon such authority shall cease and determine.

Register to be kept of permits granted.

3. Every Resident Magistrate and Justice of the Peace now authorised to grant or issue permissions or certificates as aforesaid, under any law in that behalf in force, and every person authorised under the provisions of this Act to grant or issue such permissions or certificates, shall be bound to keep a register of the permissions and certificates granted by him, setting forth the names, addresses, and descriptions of the persons to whom such permissions or certificates were granted or issued, and the dates of such permissions or certificates, together with the number and description of firearms, and the quantity of gunpowder, percussion caps, or lead represented in every such permission or certificate, and every person granting or issuing permissions or certificates as aforesaid, shall further be bound to transmit to the office of the Colonial Secretary, during the months of January and July in each year, copies of such registries, certified under his hand.

Short title.

4. This Act may be cited as the "Firearms and Gunpowder Amendment Act, 1879."

No. 30—1879.]

[Sept. 11, 1879.]

ACT

To Incorporate the Port Elizabeth Tramway Company (Limited).⁽¹⁾

Preamble.

WHEREAS it is desirable and expedient that a company should be formed and incorporated for the purpose of constructing, maintaining, and working a line or lines of tramway in Port Elizabeth, the first line to be laid down from Market-square, through Main-

¹ See Act 25, 1895 § 3.

street, Queen-street, Prince's-street, and Adderley-street, to the north-end of Adderley-street: And whereas it is deemed desirable that the liability of shareholders in the proposed company should be limited to the amount of their respective shares: Be it therefore enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 30—1879.

1. The several persons who are, or shall become shareholders in the said company, their respective executors, administrators, successors, and assigns, shall be, and are hereby constituted, a body corporate under the name and title of "The Port Elizabeth Tramway Company (Limited)," for the purpose of constructing and working a tramway, with all necessary sidings and appurtenances, from Market-square, Port Elizabeth, through Main-street, Queen-street, and Prince's street, and through Adderley-street, to the northern extremity thereof, and the company hereby incorporated shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued, implead and be impleaded, answer and be answered unto, in any competent Court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, possessions, and also all other property, chattels, and effects whatsoever; and such lands, whether freehold or leasehold, and other property subject to any engagements affecting the same shall be vested in the company in its corporate name without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants, leases, or conveyances thereof.

Constitution of
Port Elizabeth
Tramway Company
(Limited).

2. The capital of the company shall be fifteen thousand pounds, in three thousand shares of five pounds each, and such shares shall be numbered in arithmetical progression, beginning with number one, and each share shall be distinguished by its appropriate number.

Capital.

3 Subscription lists for shares in the said company shall be opened and headed as follows:

Subscription Lists
for shares.

"We, whose names are hereunder written, hereby agree with each other to become shareholders in the 'Port Elizabeth Tramway Company (Limited),' incorporated by Act of Parliament, and to take each of us the number of shares set opposite to our respective names."

And every such list shall be signed by each of the shareholders therein mentioned, personally or by his lawfully authorised attorney, and all such lists and the powers of attorney, if any, authorising the signatures thereto, shall be preserved by the directors of the said company; and the shareholders signing such lists shall, from that time, be bound to each other for the due fulfilment of the several obligations by this Act imposed upon the shareholders of the said company as fully and effectually as if every shareholder had executed a trust deed containing all and singular the provisions and stipulations of this Act: Provided always, that no person

No. 30-1879.

shall, by reason merely of his signing any such list, be entitled to the number of shares, therein subscribed for, or to any number of shares, unless the same shall have been allotted to him by the provisional committee of the said company, consisting of James Brister, Andrew Gloag, Alexander Wilmot, John Alfred Holland, Benjamin D'Urban Godlonton, George Duncan, James Kemsley, and Robert Thompson, and unless he shall have paid the deposit on subscription hereinafter mentioned.

Shares limited to £5 each.

4. No more than five pounds in all shall be due or payable in respect of any share in the said company, and the liability of each shareholder shall be, and is hereby, limited to the payment of that amount, in instalments as hereinafter mentioned.

Mode of paying instalments.

5. The amount of the shares in the said company shall be paid in manner following, namely: a deposit of one pound per share in cash on allotment; a second instalment of one pound per share three months thereafter; a third instalment of one pound per share six months after allotment; and the remaining two pounds in instalments not exceeding one pound per share, and at intervals of not less than three months, which instalments it shall be lawful for the directors to call up upon giving a notice to that effect of not less than three months, in the *Government Gazette*, and one or more of the local newspapers.

Calls with interest at 6 per cent. may be sued for.

6. If at the time appointed for the payment of the deposit or any instalment, or call, as aforesaid, any shareholder shall fail to pay such deposit, instalment or call, it shall be lawful for the company to sue such shareholder for the amount thereof in any Court having competent jurisdiction, and to recover the same, with interest at the rate of six per cent. per annum from the day on which the same shall have become due and payable.

How shares forfeited.

7. If any shareholder shall fail to pay any instalment or call, payable as aforesaid, within one month from the time appointed for the payment thereof, the directors may, at a meeting duly convened, by a resolution in writing, signed by not less than three of their number, declare the share or shares in respect of which such default shall have been committed, forfeited, whether the company shall have sued for the amount of such instalment or call or not. And the directors may forthwith dispose of such share or shares to any other person or persons, and, if needful, issue fresh certificates of shares to the person or persons purchasing such forfeited shares.

Directors.

8. The general management of the affairs of the company shall be vested in a board of not more than seven and not less than five directors: Provided that no person shall be competent to be a director who shall not possess in his own right fifty shares or more in the capital stock of the said company.

Names of first directors.

9. The following persons, to wit, Andrew Gloag, James Brister, George Duncan, Robert Thompson, Benjamin D'Urban Godlonton, Alexander Wilmot, and William Wilson, shall be the first directors

of the said company, and shall so continue until other directors are appointed in their place, or they or any of them shall die, resign, be removed, or become incapacitated as hereinafter mentioned.

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10. Two of the directors shall go out of office annually in the following rotation, namely: The two directors whose names stand lowest on the above list shall go out of office at the annual general meeting, to be held in July, 1880, and two directors shall be elected at the said meeting, whose names shall be placed at the head of the list; and in like manner at each succeeding annual general meeting the two directors whose names then stand at the bottom of the list shall retire, and two directors shall be elected in their place, whose names shall be placed at the head of the list: Provided always, that the retiring directors shall, unless otherwise disqualified, be eligible for re-election: Provided also, that if from any cause whatever no election should take place at the time appointed, the outgoing directors shall remain in office until such time as other directors shall be elected and shall consent to act.

Directors to go out by rotation.

11. Any director becoming insolvent, or being absent from Port Elizabeth for six months, or ceasing to be the holder in his own right of fifty shares shall become disqualified and his seat declared vacant.

Disqualifications.

12. In case the conduct of any director shall at any time be such that his continuance in office would, in the opinion of at least twenty shareholders, holding in the aggregate not less than two hundred shares, be prejudicial to the interests of the company, and notice thereof in writing, signed by such shareholders, shall have been given to the directors, the directors shall forthwith call a general meeting of shareholders in manner hereinafter described, and it shall thereupon be lawful for the shareholders voting at such meeting by a majority of votes to remove such director from his office.

How if conduct of a director prejudicial to interests of company.

13. Upon any vacancy in the board of directors occurring by any such means as above mentioned six months or more before the annual general meeting, the remaining directors shall forthwith call a special general meeting of shareholders, in manner hereinafter provided, to elect a director or directors to fill such vacancy.

How vacancies to be filled up.

14. The directors shall appoint from amongst themselves a chairman of the board, who shall preside at all meetings of the directors; and in case of his absence from any meetings, the directors present shall elect from among themselves a chairman for the meeting. And in all matters brought forward at every meeting of directors the chairman shall, in case of an equality of votes, have a casting vote, in addition to his deliberative vote. Three directors shall form a quorum, and shall be competent to perform all acts which the directors are empowered to do and perform, and all acts done by such quorum shall be valid, notwithstanding the existence of any vacancy or vacancies in the board.

Chairman.

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15. A full and complete register of the shareholders in the company shall be kept, and shall be open for the inspection of the public at all reasonable times on payment of a fee of one shilling for each inspection.

Register of shareholders.

16. Each shareholder shall be entitled to receive from the secretary of the company for the time being a certificate of the shares held by such shareholder, which certificates shall at all times be deemed sufficient evidence of the interest held in the company by the persons therein named, and the certificates so to be granted shall be signed by any two of the directors of the company, and shall be in the following form, to wit:

Certificate of shares.

Certificate of Share in the "Port Elizabeth Tramway Company (Limited)."

This is to certify that A.B., of _____, is proprietor of _____ shares, numbered _____, in the "Port Elizabeth Tramway Company (Limited)," incorporated by Act of Parliament, subject to the provisions and regulations of the Act of Incorporation of the said company.

Given under the common seal of the said company, and under the hand of two of the directors thereof, at Port Elizabeth, this _____ day of _____, 18—.

} Directors.

How shares may be transferred.

17. Any shareholder may transfer his share or shares by endorsement upon the certificate, and by letter to the directors, or other writing signed by the shareholder or his agent, specifying the person or persons to whom the share or shares are to be transferred; but no such transfer shall have any force or effect as regards the affairs of the company until a registration of the same shall have been made in the books of the company and three directors shall have certified their consent in writing to such transfer, and until the assignee or transferee shall, either in person or by attorney, have acknowledged his proprietorship in writing, in substance as follows:

I, C.D., of _____, do hereby acknowledge to have received by transfer from A.B. _____ shares, Nos. _____, in the "Port Elizabeth Tramway Company (Limited)," subject to the conditions, regulations, and provisions of the Act of Incorporation of the said company.

Port Elizabeth, _____, 18—.

C. D.

Release from liability after transfer of shares.

18. Any shareholder transferring his share or shares as aforesaid shall, from the date of the registration of the transfer thereof, be wholly released and discharged from all liability in respect of such share or shares, and the person to whom the same is or are transferred shall be subject to all and singular the same liabilities in respect thereof as if such person had been the original shareholder.

19. The annual general meeting of shareholders of the said company shall be held at Port Elizabeth on the last Wednesday of the month of July in each year, and the directors shall submit to every such annual general meeting a report setting forth the position and prospects of the company, together with an account of receipts and expenditure during the year ending on the 30th of June preceding.

No. 30 - 1879.
Annual general meeting.

20. In addition to the annual general meetings, general meetings of the shareholders may be held for special purposes whenever the directors shall consider it necessary or desirable. And the directors shall be bound to convene such special general meetings whenever called upon so to do by requisition in writing setting forth the purpose or object of such meeting signed by not less than twenty shareholders, holding collectively not less than one hundred shares, and sent in to the chairman of directors: Provided that no business shall be transacted at any special general meeting except that described in the notice of the meeting, to be given as hereinafter provided.

Special meetings.

21. All meetings of shareholders, whether the annual general meeting or any special general meetings, to be convened as hereinbefore mentioned, shall be called by advertisement addressed to the shareholders of the said company, to be published twice at least in any two of the local papers, not less than fourteen days before the day appointed for such meeting; and such notice shall, in every case, fully and clearly set forth the object or purpose for which the meeting is called.

How to call meetings.

22. At all meetings of the company the shareholders present, in person or by proxy, shall have the right of voting according to the following scale, namely:

Rights of voting.

Each shareholder possessed of five shares or more, but less than twenty, shall have one vote only.

Each shareholder possessed of twenty shares or more, but less than fifty, shall have two votes.

And each shareholder possessed of fifty shares or more, shall have three votes, and no more:

Provided that no shareholder shall be entitled to vote in respect of any share or shares until he shall have been registered as the proprietor thereof for a period of at least three months previous to such meeting.

Who may not vote by proxy.

23. No shareholder residing within ten miles of Port Elizabeth, unless he shall be absent from his residence beyond that distance, except females holding shares in their own right, and persons unable, from sickness, to attend any meeting, shall be allowed to vote by proxy; and the proxy of such females or shareholders suffering from sickness or resident beyond ten miles from Port Elizabeth, shall be in the form or to the effect following:

I, A. B., of ———, one of the shareholders of the "Port Elizabeth Tramway Company (Limited)," do hereby

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authorise and appoint C. D., of _____, also a shareholder in the said company, to be my proxy at all meetings of the shareholders of the said company (or at a meeting of the shareholders of the said company, to be held on the _____), and to vote for me thereat upon all matters and things proposed relative to the concerns of the company, unless I shall be personally present.

Witness my hand this _____ day of _____, 18--.

A.B.

Chairman of meeting.

24. At all meetings of shareholders they shall make choice of a chairman from among their number, who shall preside; and all resolutions of shareholders at such meetings shall be determined by a show of hands, as declared by the chairman, but any shareholder feeling dissatisfied with such decision may demand a ballot, which ballot shall forthwith be proceeded with, the votes being given in writing duly signed and reckoned according to the rule in that behalf hereinbefore provided; and in the event of the votes being equally divided, the chairman of the meeting shall decide the question by his casting vote.

Rules for election of directors.

25. In all elections of directors, whether at the annual general meeting, or at any special general meeting, to fill a vacancy or vacancies, the following rules shall be observed:

- (a) No person shall be eligible as a director unless he shall have been nominated for that purpose by written notice, signed by two shareholders, as proposer and seconder respectively, and left with the directors at least fourteen days before the day appointed for the election.
- (b) If the person or persons duly nominated as candidates shall not exceed in number the vacancies in the direction requiring to be filled up, such person or persons shall, at the meeting, be declared by the chairman duly elected.
- (c) If there shall be more candidates for the election than required to fill the vacancy or vacancies, the election shall take place by ballot, for which purpose a poll shall commence at the close of the other business, if any, before the meeting, and shall be kept open for at least two hours, and the result of such poll as declared by scrutineers appointed by the meeting shall be deemed to be a resolution of the company in the general meeting.

Books to be kept.

26. The directors shall cause proper books of account to be provided and kept under their superintendence, and shall cause full and sufficient entries to be made in such books of all payments and receipts by or on account of the company, and all other the transactions thereof, and shall, prior to each annual general meeting, cause the books of the company to be balanced, and a full and fair balance-sheet to be made up therefrom up to the thirtieth day of June immediately preceding such meeting, to be laid before

the meeting as provided by section 19 of this Act. And the said balance-sheet and the said books shall be open to the inspection of any of the shareholders for three days before every annual general meeting and during such meeting.

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27. The accounts of the company shall be audited annually by two auditors, to be annually elected, not being directors, such auditors to be nominated and elected in like manner as the directors provided for in the twenty-fifth section of this Act: Provided, however, that no person shall be eligible to act as auditor unless he shall be the proprietor of at least ten shares in the capital stock of the company.

Annual audit.

28. The directors of the said company are hereby authorised to construct and lay a single or double line of tramway from Market-square, Port Elizabeth, along the whole length of Main-street, Queen-street, Prince's-street and Adderley-street, with such sidings and stations as may from time to time be agreed upon by the said company and the council of the municipality of Port Elizabeth: Provided that in constructing and laying down the said line of tramway, or any extension thereof, as aftermentioned, the said company shall be bound to ballast between the rails with good ironstone gravel, and where necessary to pave with stone, and shall also be bound to pave a space of eighteen inches wide on each outer side of the tramway; all which works shall be done and thereafter kept in good repair by the said company, at their own exclusive cost and charges, to the satisfaction of the said council or some person duly appointed to act on their behalf. Provided that the said company pay the annual rent of ten pounds agreed upon between the said company and the said council, and comply with all regulations of the said municipality with regard to licences for their drivers or servants, to the number and safety of passengers carried, or concerning any other matter or thing whatsoever having reference in that behalf to the provisions of this Act: And provided further, that it shall be lawful for the said company, upon the consent of the said council being first properly had and obtained, to extend, deviate from, and vary the said line, and to carry the said tramway along any other streets or roads within the said municipality.

Particulars of the line of tramway to be constructed.

29. The said company shall, whenever thereto required by the council of the municipality of Port Elizabeth construct and lay down any extension or extensions of the said tramway over any other street or streets within the said municipality in like manner as to construction, and upon the same conditions, as are contained in the last preceding section: Provided that if the said company, on such request being made to them, shall refuse or decline to comply therewith, which they are hereby declared entitled to do, it shall be lawful for the said council to apply to any other company or individual to construct and lay down such extension or extensions, and for that purpose the said council shall have the

Extension to be made if required by the municipality.

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right, and they are hereby authorised, to concede and grant to such other company or individual running powers over the tramway of the said company upon payment, by way of compensation, of such a sum as shall be agreed upon between the said company and such other company or individual, or, in case of difference of opinion between them, of such sum as shall be decided by arbitrators, to be chosen in manner hereinafter provided, and provided further, that in case the said line of tramway, or any extension thereof, or any portion or portions of the same, shall not be used for a period of six consecutive months, the company or individual whose line of tramway or extension shall not have been so used, shall be bound to remove the rails and to restore the street or road to the same order and condition in which it was prior to the laying down of the said rails, upon a written notice to that effect of six months being given to them or him by the council of the municipality of Port Elizabeth: And in the event of the said company or individual failing so to do after receipt of such notice, the said council shall be empowered, and are hereby authorised, to cause the same to be done for account, and at the cost of, the said company or individual, and the money so expended by the said council shall be immediately claimable and recoverable from the said company or individual as a first charge upon the plant and stock of the said company or individual: And provided also, that in case the said line of tramway, or any extension thereof, or any portion of the same shall not be completed within three years after the commencement thereof, the concession hereby given to the said company or individual for laying down the said line of tramway shall be null and void in respect to the said line, or any extension thereof, or any incomplete part of the same, and the street or road which shall have been used by the said company or individual shall be restored to its original state and condition at the cost of the said company or individual.

Company to have exclusive use of tramway with flange wheels.

30. Until the council of the municipality of Port Elizabeth shall have given running powers over the said line of tramway, under the powers conferred upon them in section 29, the said company shall have the exclusive use of the said tramway for carriages with flange wheels, or other wheels suitable only to run on the prescribed rail: Provided, however, that the public shall have the right of passing along or across any part of a road in which a tramway is laid, whether on or off the tramway, with carriages not having flange wheels.

Tramway to be laid down to the satisfaction of the municipality.

31. The said tramway, and any extension thereof, shall be laid down and executed to the satisfaction and subject to the approval of the said council of the municipality of Port Elizabeth, and subject also to the existing contract between the gas company and the said municipality, and the roadway between the rails of the said tramway shall be maintained in good and efficient repair at the costs and charges of the said tramway company or individual,

and all damage done to the said streets, or to any of the streets, roads, bridges, drains, and other property of the said municipality by reason of any work or works performed and executed by the said company or individual shall, in like manner, immediately, or as soon as practicable, be made good at the sole costs and charges of the said company or individual: Provided always, that the council of the municipality of Port Elizabeth shall have the right at all times, at the costs and charges of the said company, to take up any part of the said tramway or extension thereof which it shall be found necessary to take up for the purpose of constructing, repairing, or cleaning drains or sewers, or laying down or replacing water pipes, or for any other municipal or public purpose; and all such part or parts of the said tramway or extension thereof, so taken up as aforesaid, shall be again properly relaid as speedily as possible at the cost and expense of the said company or individual: And provided also, that if, at any time, the said line of tramway or any extension, or any part thereof, shall be found to be injurious to the said municipality by prejudicially interfering with the public, the company or individual shall, upon twelve months' notice having been given by the council of the said municipality, take up the line of tramway, or such portion thereof as may be objected to.

32. Every person who shall wilfully do, or cause to be done, anything in such manner as to improperly obstruct any car or conveyance, using the said tramway, or the horses drawing the same, or to endanger the safety of persons conveyed in and upon the same, or who shall aid and assist therein, shall, on being convicted thereof, be liable to pay a fine of not more than five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not exceeding one month, unless such fine shall be sooner paid.

Penalties for obstructing use of tramway.

33. If any person or persons shall drive or lead any wagon, cart, carriage, or other vehicle, or any horse or other animal, upon the line of the said tramway in such manner as to improperly obstruct or hinder any car or conveyance belonging to the said company, or shall refuse to remove such obstruction, it shall be lawful for any officer of the said company, or any person whom he may call to his assistance, to remove such obstruction.

Power to tramway officers to remove obstructions.

34. Nothing in this Act contained shall authorise the said company, in any manner, to obstruct or hinder the safe passage or crossing of the ordinary traffic on the now existing roads and streets, but in all cases a sufficient space shall be left on both sides of the said roads or streets to allow all carriages, cattle, and passengers to pass the cars on the said tramway in a safe and convenient manner.

Ordinary street traffic not to be hindered.

35. The board of directors of the said company is hereby empowered to enter into contracts for the supply of work or materials necessary for constructing, maintaining, and working the

Power of directors to make contracts.

No. 80-1879.

said tramway, and may also appoint and employ engineers, overseers, masons, carpenters, navvies, and such other workmen as it may deem necessary for carrying out the provisions in that behalf of this Act, and also a secretary or manager, car-drivers, conductors, grooms, and other servants, and may remove or dismiss any such persons and employ others in their stead; and shall be authorised to fix the duties and salaries of such persons, and generally to do all matters and things necessary for the due and effective management of the affairs of the company.

When money may be borrowed on security of plant.

36. So soon as the whole of the capital of the company shall have been subscribed, and not less than one-third thereof shall have been paid up and expended, it shall be lawful for the directors from time to time (when duly authorised thereto by the shareholders by a special meeting convened for that purpose) to borrow money on the security of the tramway and plant, and the future calls on the shareholders, and of the expected earnings of the line; the interest on such loan to be a first charge on the net profits of the working of the tramway.

Tariff of charges to be made.

37. So soon as the line of tramway is in a fit condition for traffic, the directors for the time being shall frame a tariff of charges for the conveyance of passengers and goods, and such tariff shall be published in two of the local newspapers for general information: Provided always that the rates so chargeable may from time to time be altered by the directors; and the directors shall be entitled to recover, by legal process, all such charges as shall be in force for the time being from passengers and from the owners of goods, articles, or things conveyed by the company on the said line, and shall, moreover, have the right of retaining such goods, articles, and things until the charges thereon shall have been duly paid.

Property to vest in two trustees.

38. The right to and property in all and singular the earth works, bridges, culverts, materials, rolling stock, horses, and everything appertaining to the said tramway to be constructed under this Act, as also all immovable or landed property which may be acquired by the company, shall be vested in two trustees, to be chosen by the directors for the time being from among their number.

How company to sue or be sued.

39. In any action or other proceeding at law which may be brought by or against the said company, it shall and may be lawful for the company to sue and be sued by the corporate name of "The Port Elizabeth Tramway Company (Limited)," and all process of law which shall require to be served on the company in any such action or other proceeding may be served at the office of the company.

How contracts, &c. to be signed.

40. All contracts, agreements, powers of attorney, warrants to sue or to defend, bonds, debentures, and other documents which shall require to be signed by the directors on behalf of the company shall be deemed to be duly and sufficiently executed if signed by two of the said directors.

41. The chairman and directors and auditors for the time being may receive out of the clear profits of the said company such sum or sums of money, by way of remuneration for their trouble, as the majority of the shareholders shall determine at the annual general meeting. No. 30—1879.
Remuneration of directors and auditors.
42. The amount of dividends to be paid to the shareholders in the said company shall be determined by the directors for the time being, subject to the approval of the shareholders present at the annual general meeting: Provided, at least one-tenth of the clear profits in each year shall be set aside to form a protecting fund to meet wear and tear, and depreciation of stock, and that such funds shall be applied to no other purpose but the purchase of new stock. Dividends.
43. It shall be lawful for the said company at any time hereafter, by a resolution duly passed by a majority of two-thirds of the votes of the shareholders present at a special general meeting properly convened, after notice given in manner as hereinbefore provided, of the purpose of such meeting, to increase the capital of the said company to such further sum as may be required for the purpose of extending the said tramway in such manner as the said meeting shall decide. Power to increase the capital.
44. Such additional capital shall be raised either by creating and issuing additional shares of five pounds each, or by increasing the value of the original shares, as the shareholders present at such meeting as last aforesaid shall decide. How additional capital to be raised.
45. No more than five pounds in all shall be due by way of additional capital in respect of any additional share or any increase of the value of the original shares; and the future liability of any shareholder arising out of any extension of the said tramway shall be and is hereby limited, in case of such extension, to the payment of a sum not exceeding five pounds per additional share, or the amount of the increased value of the original shares, as the case may be: Provided, however, that the issue of any additional shares may be made subject to such terms, as to bonus or premium thereon, as the shareholders may determine. Limitation of shares and of shareholders' liability.
46. The amount of the additional shares, or of the increased value of the original shares, shall be paid in manner as provided in the fifth section of this Act, and may be recovered in manner as provided in the sixth and seventh sections of this Act. Additional shares to be paid for as in section 5.
47. In the construction of this Act, the words "the company" shall be held to mean the company hereby incorporated; "directors" and "shareholders" to mean respectively the directors and shareholders for the time being of the said company; "local newspapers" to mean any of the public newspapers from time to time published in Port Elizabeth. Definition of terms.
48. If at any time the company shall meet with such losses, or if the business thereof shall be so unsuccessful as to exhaust, by such losses or by the expenses of the business, the reserve fund, and also one-fourth of the paid-up capital, then the directors shall Provisions for winding up company.

No. 30—1879.

forthwith call a special general meeting in manner hereinbefore provided, and shall submit to such meeting a full and complete statement of the affairs and concerns of the company, and thereupon the company shall be dissolved, unless a majority in votes of two-thirds of the shareholders present personally or by proxy shall resolve to continue and carry on the company, and shall undertake in writing to indemnify the dissentient shareholders against all the existing and future debts and engagements of the company, and to purchase the shares of such dissentient shareholders at such amount or price per share as shall be determined by the arbitrators to be chosen as in manner hereinafter provided.

Arbitration pro-
vided for.

49. In case it should be necessary to submit to arbitration any of the matters referred to in the twenty-ninth and forty-eighth sections of this Act, the question in dispute shall be submitted to the arbitrament and award of three impartial persons one to be appointed by the company or the majority of the shareholders, and the other by the council or other parties interested, or the dissentient shareholders, and the said two arbitrators shall, before proceeding in the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said company or majority of shareholders, shall cause a deed of submission to be prepared, which shall be signed by both parties interested, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators, or a majority of them, shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought before a Court of the matter referred to arbitration.

Power to extend
duration of company

50. At the annual general meeting of shareholders, which shall be holden in the year 1899, it shall be lawful for the shareholders at such meeting, by resolution passed by a majority of votes, to extend the continuation of the company for a further period not exceeding twenty-one years, and it shall in like manner be lawful for the shareholders afterwards, from time to time, to extend the continuance of the company for a period or periods not exceeding twenty-one years.

Act to be in force
till 1st August, 1900.

51. This Act shall continue in force until the 1st August, 1900, and may be cited for all purposes as the "Port Elizabeth Tramway Company Act, 1879."

No. 31—1879.]

[Sept. 11, 1879.

An Act to amend the "House Duty Act, 1878."
[Repealed by Act 29, 1882.]

No. 32—1879.]

[Sept. 11, 1879.

ACT

To alter in certain respects the Act No. 1 of 1872, known as the "Constitution Ordinance Amendment Act, 1872."

WHEREAS it is expedient that Act No. 1 of 1872, known as the "Constitution Ordinance Amendment Act, 1872," should be amended, by increasing the amount of the annual salaries heretofore paid thereunder to the officers mentioned in the seventh section of that Act: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The seventh section of Act No. 1, 1872, is hereby repealed.

Section 7 of Act 1 of 1872 repealed. Additional salaries to ministers.

2. (1) There shall be paid for, and during the year ending on the thirtieth day of June, one thousand eight hundred and eighty, and for and during every subsequent year until Parliament shall otherwise determine, the following salaries, in lieu and instead of the salaries by the said seventh section of Act No. 1 of 1872 provided: that is to say, to the Colonial Secretary, the Treasurer, (2) the Attorney-General, the Commissioner of Public Works, and the Secretary for Agriculture, each the sum of one thousand five hundred pounds sterling.

3. There shall also be paid to such of the said officers as shall be the Prime Minister of the Colony for the time being, an additional sum of two hundred and fifty pounds per annum, for the period during which such officer shall be Prime Minister as aforesaid.

Prime minister to receive £250 a year more than the other ministers.

No. 33—1879.]

[Sept. 11, 1879.

An Act to make Increased Provision for the Disposal of Crown Land in this Colony to Agricultural Immigrants.

[Repealed by Act 37, 1882.]

No. 34—1879.]

[Sept. 11, 1879.

ACT

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

WHEREAS it is expedient that certain additions shall be made to the existing railway station accommodation at Port Elizabeth: And whereas it is also necessary to provide house accommodation for tradesmen and others employed in maintaining and working the line of railway from East London to Queen's Town: And whereas it is necessary to provide the money required for carrying out both the above purposes: Be it therefore enacted by the

Preamble.

¹ Revived by Act 28, 1887.

² Printed as amended by Act 14, 1893.

No. 35-1879.

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

Power to raise
£140,000.

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

Borrowing powers.

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

Accounts to be laid
before Parliament.

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

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

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

Short title.

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

No. 35—1879.]

[Sept 11, 1879.]

ACT

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

Preamble.

WHEREAS it is expedient to introduce into this Colony from Europe or elsewhere, various classes of immigrants for the purpose of developing and adding to its resources: And whereas it is necessary to provide the moneys required for carrying out such introduction: Be it therefore enacted by the Governor of the Cape

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

No. 35—1879.

1. It shall be lawful for the Governor to raise from time to time, on debentures or on stock, or partly on debentures and partly on stock, such sums of money not exceeding in the whole the sum of one hundred thousand pounds, for the purpose of bringing from Europe, and introducing into this Colony, the several classes of immigrants mentioned in the schedule to this Act annexed.

Power to raise £100,000.

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

Borrowing powers.

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

Accounts to be laid before Parliament.

4. The immigration under this Act shall be conducted upon such terms and under such limitations and conditions as the Governor may from time to time see fit to determine.

Governor to issue regulation for conducting immigration

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

Short title.

SCHEDULE.

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

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

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

No. 36—1879.]

[Sept. 11, 1879.

ACT

For Constituting certain Districts of this Colony Divisions.

Preamble.

WHEREAS it is expedient that several of the districts of this Colony should be constituted divisions for fiscal purposes: And whereas it is expedient to enable the said districts whenever the Governor may deem it necessary to have and possess its own Divisional Council: And whereas it is at the same time expedient that the several Electoral Divisions of the Colony, as they are at present constituted and by law exist, should not be altered or affected by this Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. So much of the Ordinance for constituting a Parliament in this Colony, and commonly called the "Constitution Ordinance," and so much of any other Ordinance, Act of Parliament, or other statutory enactment as may be repugnant to or inconsistent with this Act, are hereby repealed.

Districts named in Schedule may be proclaimed divisions.

2. Each of the several districts named in the schedule to this Act shall, from and after the date of any proclamation to be issued for that purpose by the Governor and published in the *Government Gazette*, become and be a division for fiscal purposes.

Boundaries to be defined.

3. Every proclamation in the last preceding section provided for, shall define the several boundaries of the division or divisions thereby constituted, and the boundaries so proclaimed shall be boundaries of such division or divisions respectively.

Divisional councils of divisions affected by any such proclamation.

4. (1) From and after the date of any proclamation issued by the Governor in that behalf and published in the *Government Gazette*, the Divisional Council for the time being of every division to which any of the said districts so constituted divisions for fiscal purposes only and named in such proclamation belonged, shall stand dissolved, and the provisions of Act 4 of 1865, entitled "An Act to consolidate and amend the several Acts relating to Divisional Councils," and of every other Act relating to Divisional Councils, shall apply to such district, bounded as aforesaid and to the divisions to which such district, by any such proclamation constituted divisions or any part of such district previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for any such divisions had ever been elected: Provided that the registered voters for any and every Electoral Division, which down to and next before the issuing of any such proclamation comprised any such division as aforesaid, or any part of any such new division, and which voters shall be resident within such new division, shall be entitled to vote

¹ The provisions of this Section are repealed in so far as they relate to the district of Glen Grey. See § 37 Act 25, 1894.

at any election of members of the Divisional Council of such new division. No. 38—1879.

5. The several provisions of the Act No. 24 of 1858, entitled "An Act to regulate the respective rights of certain divisions in regard to certain Road Rates," shall *mutatis mutandis*, as soon as the proclamation in the fourth section mentioned shall have been issued, apply to the new division or divisions named in such proclamation and to the several divisions to which such newly constituted division or divisions, before the issuing of any such proclamation, belonged. Provisions of Act 24 of 1858 to apply to new divisions.

6. Notwithstanding the creation of such new divisions by virtue of any such proclamation as in this Act provided for fiscal and other purposes, every such new division and every part thereof shall continue, for electoral purposes, to belong to and form part of whatever Electoral Division such new division or any part thereof belonged to, precisely as if this Act had not been passed and no such proclamation had been issued. No change of electoral divisions.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1879." Short title.

SCHEDULE.

- | | | |
|--|--|---|
| <ol style="list-style-type: none"> 1. Barkly 2. Carnarvon 3. Cathcart 4. Glen Grey ⁽¹⁾ 5. Hanover 6. Herschel 7. Jansenville 8. Ladysmith | \| | <ol style="list-style-type: none"> 9. Komgha 10. Simon's Town⁽²⁾ 11. Stutterheim 12. Uniondale 13. Willowmore 14. Aberdeen 15. Tarka 16. Port Nolloth. |
|--|--|---|

No. 37—1879.] [Sept. 11, 1879.]

An Act to add to the Efficiency of Act No. 11 of 1877.
[Repealed by Act 40, 1889.]

No. 38—1879.] [Sept. 11, 1879.]

ACT

To Empower the Governor to Raise a Sum not exceeding £60,000, for the purpose of Constructing certain Lines of Telegraph. ⁽³⁾

WHEREAS it is desirable to construct certain lines of telegraph not heretofore provided for: And whereas it is desirable that a sum not exceeding £60,000 sterling should be raised for the purpose of the said construction: Be it therefore enacted by the Governor Preamble.

¹ See note to § 4.

² The fiscal division of Simon's Town is abolished by Act 33 of 1886.

³ See Act No. 3, 1881.

No. 38—1879. of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

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

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

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

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

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

SCHEDULE.

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

¹ Printed as amended by Act No. 9, 1880.

No. 39—1879.]

[Sept. 11, 1879.

ACT

For the Incorporation of the Municipality of Queen's
Town (1)

WHEREAS it is expedient that the Municipality of Queen's Town shall be incorporated and shall have perpetual succession, and possess, exercise, and enjoy all the rights and privileges which municipal corporations can or may possess, exercise, or enjoy in this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, No. 5 of 1852, and the Act No. 13 of 1864, in so far as the same are applicable to the municipality of Queen's Town, shall continue to be of legal force and operative as heretofore, until after the first election of councillors, as provided for in and by this Act; and immediately upon and after the names of the councillors shall have been published, as hereinafter provided, the said Ordinances and Act, in so far as the same apply as aforesaid, and also so much of the Act No. 8 of 1877, or any other law, as is inconsistent with this Act, shall be, and the same are hereby repealed: Provided that the municipal regulations in force at the time of taking effect of this Act shall continue to be in force and operation until such time as the same shall be altered or new ones published under this Act; And provided also, that the commissioners and officers of the municipality who may be in office at the time of the taking effect of this Act shall, until after the first election of councillors under this Act, remain in office, and exercise all such powers and authorities as previous to the taking effect of this Act were vested in them; And provided also, that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act, and the assessment roll in use at the time of the taking effect of this Act shall continue to be used until a new one shall be completed under this Act.

Repeal of repugnant laws.

2. The area of the municipality of Queen's Town shall comprise all lands within the limits bounded by the following farms, namely, Providence, Long Vale, Cathcart Place, Queen's Park, Roydon, Rathwick, Maidenhead, and Weltevreden. The town or municipality proper of Queen's Town shall comprehend the lands situate within the beacons 1—10, both inclusive, as shown on the plan signed by the chairman of the committees of the Legislative Council and House of Assembly, counterparts of which plan are also deposited in the office of the Registrar of Deeds in this Colony at Cape Town, of the Civil Commissioner for the division of

Area of municipality defined.

¹ Printed as amended by Act 19 of 1885.

No. 39—1879.

Queen's Town, and of the Town Clerk of Queen's Town: And all ungranted lands within the municipal boundaries aforesaid beyond the limits of the town or municipality proper shall be the common pasturage lands of the town or municipality.

Municipality created.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "the Mayor, Councillors, and Townsmen of Queen's Town," and by that name shall have perpetual succession, and sue and be sued, and shall have a common seal; and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such may do and have.

Council to consist of twelve members.

4. The council of the said municipality shall consist of twelve members, one of whom shall be the Mayor.

Wards—their boundaries defined.

5. The said municipality proper shall consist of four wards, as follows:

Ward No. 1—or north-east ward—bounded south by Ebden-street, west by Robinson-road and Shepstone-street; north by town boundary; east by town boundary.

Ward No. 2—or south-east ward—bounded north by Ebden-street; west by Robinson-road and Bowker-street; south by town boundary; west by town boundary.

Ward No. 3—or south-west ward—bounded east by Robinson-road and Bowker-street; north by Cathcart-road; south by town boundary; east by town boundary.

Ward No. 4—or north-west ward—bounded east by Robinson-road and Shepstone-street; south by Cathcart-road; west by town boundary; north by town boundary.

Power to alter boundaries of wards.

6. The said council may, from time to time, if they think fit, alter the boundaries of all, or any, or either, of the said wards, and extend the limits of the town or municipality proper, and may for that purpose purchase and hold adjoining properties for the purpose of extending the common pasturage lands, provided that the council shall, before making any such alteration, increase, extension, or purchase, give in one or more of the newspapers published in Queen's Town, public notice of the alteration, increase, extension, or purchase intended to be made; which notice shall be published for not less than thirty-one days before any such alteration, increase, extension, or purchase shall be made; and a copy of the same shall also be posted in some conspicuous place upon or near the municipal office or market-place: And in case six townsmen, or more, or any other person who may consider that his rights will be interfered with by the proposed purchase, shall, within the time aforesaid, object to the same in writing, or to the objects, terms, and conditions thereof, the notice and the objections shall be forwarded to the Governor for his consideration and decision; and in case such decision shall be in favour of the council, but not otherwise, the council may complete the proposed purchase aforesaid.

7. Three councillors shall be elected for each ward in manner hereinafter mentioned.

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8. Every male person of full age not disqualified as by the eleventh section of this Act mentioned, who for six months at least immediately preceding the day of election of councillors or a councillor for any ward, has resided within the limits of the said municipality, and been the owner of any immovable property therein of the assessed value of not less than £300, in regard to which property no municipal rate shall at the time of such election be due and in arrear, and no other person shall be eligible to be elected a councillor for any ward; provided that different properties owned as aforesaid, in immediate succession, shall satisfy this section as fully and effectually as if they had been one and the same property: Provided, further, that no person shall be eligible to be a candidate or qualified to be elected a councillor for any ward unless he shall have been invited to become such candidate by a requisition, signed by at least five qualified voters of such a ward, and shall have transmitted such requisition, with his acceptance thereof, to the Town Clerk, at his office, between the hours of ten a.m. and three p.m. on some day at least fourteen days before such election is appointed to take place.

Three councillors
for each ward.
Who eligible to be
elected councillors.

9. Every male person of full age, not disqualified as in the said eleventh section mentioned, who is the owner or occupier of any immovable property in any ward, valued on the assessment roll of the municipal commissioners in force at the time of the taking effect of this Act at the sum of £150, or upwards, in regard to which property no municipal rate shall be due and in arrear, shall be qualified and entitled to vote at the first election of councillors for such ward to be held under this Act, and at every public municipal meeting to be held either for the municipality or such ward until lists as hereinafter mentioned shall have been settled under this Act. After such last-mentioned lists shall have been settled, every male person of full age, not disqualified as in the said eleventh section mentioned, whose name shall appear as the person liable to pay rates in respect of immovable property of the value of £150 and upwards in the lists of the ward which shall have been settled next immediately preceding the then election or meeting as aforesaid, and in respect of which property no municipal rate shall be due and in arrear, and no other person shall be qualified and entitled to vote at the election of a councillor or councillors for such ward, or at any such meeting as aforesaid.

Who entitled to
vote at election.

10. When any property as aforesaid is occupied by more persons than one, each of such co-occupiers may claim to have his name enrolled in the list of the ward in which such property is situated and subject to the provisions in the preceding section mentioned, shall be entitled to vote in respect of such property, provided the value of such property, when divided by the number of such co-occupiers, shall be equal to the sum of £150 for each such co-occupier.

Joint occupiers.

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- Persons disqualified.
- Lists of voters to be made.
- Publication of such lists.
- Court to be held to hear objections to lists.
- "The Townsman's Roll of Queen's Town."
- Roll to be published in manner provided in Section 62.
- When elections to take place.
- Twenty-eight days' notice of elections.
11. The following persons shall be disqualified from voting or being elected as councillors at any election under this Act: Persons who have been convicted of treason, murder, rape, theft, receiving stolen goods knowing them to have been stolen, fraud, perjury, forgery, or any attempt to commit any of such offences, and who shall not have received a free pardon.
12. On or before the first Monday in November next after the passing of this Act, and afterwards on or before the first Monday in November, but not earlier than the fifteenth October, in every year, the Town Clerk shall cause a list to be made in alphabetical order, for each ward, of all male persons qualified to vote at the election of councillors for each ward, setting forth the christian and surname of each at full length, the place of his abode, and the nature of his qualification.
13. The chairman of the commissioners for the municipality of Queen's Town, until the appointment of a Mayor, and afterwards the Mayor, shall forthwith cause such lists to be published by affixing the same to some conspicuous place upon or near the municipal office or market-place; and to every list so published shall be subjoined a notice, signed by such chairman or Mayor, that all objections thereto and claims to be inserted therein will be heard and determined at some time or place to be named in such notice and to be fixed by the said chairman or Mayor.
14. On the day named in the notice in the last preceding section mentioned, the said chairman of the commissioners for the municipality of Queen's Town, and two commissioners, until the appointment of a Mayor and council under this Act, and afterwards the Mayor and two councillors, to be selected for that purpose by the commissioners or councillors, as the case may be, shall have the power, after hearing objections and claims in open court, to strike out of any list the names of persons not entitled to be therein, and also to insert in any list the names of all persons entitled to be, but not appearing in, such list.
15. The list so settled shall be called "The Townsman's Roll of Queen's Town," and shall be brought into use on the first day of January in each year, and shall continue to be used until the next succeeding list shall be brought into use.
16. The said chairman of the commissioners, and afterwards the Mayor, shall immediately, after the settlement of such roll, publish the same, in accordance with the sixty-second section of this Act.
17. On the last Monday in February next, after the passing of this Act, an election shall be held for twelve councillors, being three for each ward, and thenceforth on the last Monday in February in each succeeding year an election shall take place for four councillors, being one for each ward. All occasional vacancies shall be filled up as after mentioned.
18. The said chairman of the commissioners, until the appointment of a Mayor under this Act, and thereafter the Mayor, shall,

at least twenty-eight days before the day appointed for the election of a councillor or councillors, by notice to be published as hereinafter provided, notify the times and places at which, and the ward or wards for which the election or elections will be held, and shall by such notice, require that all requisitions and acceptances thereof under the eighth section of this Act be sent in to him fourteen days at least before the day appointed for such election.

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19. The said chairman of the commissioners, until the appointment of a Mayor under this Act, and thereafter the Mayor, shall, at least ten days before the day appointed for any election, cause the names of the candidates and the names of the persons who have signed the requisitions to them, as aforesaid, to be published in one or more of the local newspapers, and by affixing the same on some conspicuous place upon or near the municipal office or market-place.

Ten days' publication of names of candidates.

20. Every meeting for the election of a councillor or councillors shall be presided over by a polling officer, to be appointed for that purpose by the Mayor, or, before the appointment of a Mayor under this Act, by the said chairman of the commissioners. The poll shall commence at eight o'clock in the forenoon, and close at three o'clock in the afternoon of the same day.

Polling officer to be appointed.

21. At every election of a councillor or councillors, every person whose name appears on the Townsmen's Roll for any ward then in use (a copy of which shall be furnished to each polling officer for his guidance at such election), shall be entitled to vote in such ward in person for any candidates not being more than the number to be elected for such ward, but not elsewhere or otherwise.

Each elector may vote for the number of councillors required in his ward.

22. The votes shall be taken by ballot in manner following: that is to say, every voter shall, in the polling booth, in the presence of the polling officer, set his name on a paper provided by the returning officer, against the name of the candidate or candidates for whom he intends to vote, and hand the same to the polling officer, who shall forthwith deposit such paper in a locked up box to be provided for the reception of such papers, and such box shall not be opened until after the close of the poll, and then only by the said chairman of the commissioners, or Mayor, as the case may be, in the presence of the polling officer only. No voter shall be allowed to give more than one vote to one candidate.

Voting by ballot.

23. No inquiry shall, at any election, be permitted to be made as to the right of any person to vote, except as follows, that is to say, the polling officer may, of himself, or at the request of any qualified voter, put to any voter the following questions, or either of them, and no others:

The only enquiries to be made of person tendering his vote.

- 1st. Are you the person whose name appears as A.B. on the Townsmen's Roll of Queen's Town, and on the voting paper now handed in by you?
- 2nd. Have all municipal rates assessed upon the immovable property now occupied by you been paid?

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And in case it shall be proved to the satisfaction of the polling officer, before accepting the voting paper, or of the chairman or Mayor, as the case may be, before declaring the poll, that the person has made a false answer to either of such questions, the polling officer shall reject, and the Mayor expunge the vote of such person.

Penalty for false answers.

24. If any person shall wilfully make a false answer to either of the above questions, he shall, in addition to the disqualifications before mentioned, be liable to a penalty not exceeding £10, to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for a period not exceeding one month.

Candidates may be present.

25. All candidates shall be entitled to be present, either personally, or by one proxy for each candidate, in the polling booth (but not at the polling table, which shall be properly isolated), during the time the polling is going on, but shall not interfere in any manner in the election. Any person interfering in the election, or holding intercourse in the polling booth with any voter previous to such voter recording his vote, may be forthwith removed from the polling booth, and prohibited from entering the same during the hours of election; and any person so interfering and refusing to obey the orders of the polling officer to leave the booth, or re-entering the same during the hours aforesaid, shall for each act of interference be liable to a penalty of not more than five pounds, to be recovered in the Court of the Resident Magistrate.

When number of candidates only equal to number of vacancies.

26. In the event of the number of duly qualified candidates invited to stand as councillors for any particular ward, and accepting the requisition mentioned in section eight, being the number required to fill the vacancies in the representation of such ward, the Mayor, or, before the appointment of a Mayor, the said chairman of the commissioners, shall forthwith declare such candidate or candidates duly elected.

In case of equality of votes, result to be determined by lot.

27. On the opening of the ballot box, as hereinbefore mentioned, the person or persons having the greatest number of votes duly recorded shall be taken to be duly elected; but if at any election the ballot shall, by reason of an equality of votes, be rendered indecisive, the returning officer shall thereupon publicly determine by lot which of the persons for whom an equality of votes has been given shall be elected.

Names of successful candidates to be published.

28. When the said chairman of the commissioners, or the Mayor, as the case may be, has ascertained the names of the persons so elected, he shall forthwith cause a list thereof, with the names of the wards for which they are respectively elected, to be published in one or more of the local newspapers.

How seats to be vacated in rotation.

29. Of the persons so elected as before-mentioned, the councillor for each ward respectively who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the first day of March next, after the passing of this Act; and the councillor who shall have been elected by the

next smallest number of votes shall vacate his seat at the end of two years from the said first day of March; and the councillor who shall have been elected by the greatest number of votes shall vacate his seat at the expiration of three years from the said first day of March; and upon the retirement of such councillors respectively, they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every subsequent yearly election there shall be elected one councillor for each ward, who shall enter on his office on the 1st day of March in each year, and continue therein for three years thereafter; and every retiring councillor shall be eligible for re-election;— provided that in case, by reason of any two or more councillors in any ward having been elected by an equal number of votes, or in the event of the election having been an uncontested one, it shall be uncertain in what rotation they shall vacate their seats, the Mayor shall at the first meeting of councillors, decide by lot the rotation in which such persons shall retire.

30. On the day following the first general election of councillors under this Act, the councillors shall choose by ballot from among themselves, by a majority of votes of the councillors present, the Mayor of the town who shall hold office for one year; and thereafter at the first ordinary meeting of the council annually, in the month of March, the councillors for the time being shall in like manner choose from among themselves the Mayor of the town for the ensuing year, and such Mayor shall forthwith enter upon his office, and shall continue therein for the year next ensuing, or subject to the provisions of the thirty-second section, until such time as his successor in office has been appointed, provided that the chair at any meeting of the council for the election of Mayor shall be taken by some member of the council chosen by a majority of votes of the councillors present, and in case of equality of votes, by lot, who is not a candidate for the office of Mayor: And provided also, that any person who may have filled, or may hold, the office of Mayor, may be re-elected to such office. In case of an equality of votes at any election of Mayor, the question between the candidates having such an equal number of votes shall be determined by the presiding councillor by lot.

Choice of mayor.

31. At the second ordinary meeting after the annual election of councillors, the council shall appoint from amongst the townsmen two persons to be auditors of the accounts of the council, who shall continue in office until the same day in the following year, subject to the provisions of section thirty-three of this Act: Provided that no person shall be eligible to be an auditor who shall be a Councillor, Treasurer, Clerk, or other officer of the municipality; and in case of an equality of votes at any election of auditors, the Mayor shall determine by his casting vote which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot both be elected.

Appointment of auditors.

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In case of death, resignation, &c., of councillors.

32. If the Mayor or any councillor shall die, resign, become insolvent, assign his estate for the benefit of his creditors, or be absent from the ordinary meetings of the council for a period of one calendar month without the leave of the council (such leave in no case to be for more than three months during the year of office), his office shall be declared vacant, and another Mayor or councillor, as the case may be, shall be chosen or elected in his place in manner aforesaid, and shall hold office for the remainder of the term for which the Mayor or councillor, who has vacated office, would otherwise have remained in office: And provided that the Mayor shall in no case resign his office without giving one month's notice to the council.

The like of auditors.

33. If any auditor shall die, resign, assign his estate, become insolvent or incompetent, or in any way disqualified, his office shall at once become and be declared vacant, and the council shall, at the first ordinary meeting thereafter, appoint another auditor to fill the vacancy.

No councillor to be a contractor with the municipality except as shareholder in a public company.

34. No member of the council, or person holding any office in the gift or disposal thereof, shall, directly or indirectly, have any share or interest in any contract with or employment by the council otherwise than as a shareholder in any bank or fire insurance company, with which such council may transact business, or shall receive any fee, reward, or compensation for any vote given, or act performed, in his capacity as councillor or officer. Any such councillor or officer who shall contravene the provisions of this section shall thenceforward cease to be a member of the council, or to hold such office as aforesaid, and in case of an officer, shall not be entitled to any pension or compensation for loss of office, and shall further be liable to a penalty not exceeding fifty pounds: Provided that nothing herein contained shall apply to the case of a lease *bonâ fide* entered into between the council and a councillor or officer, as landlord and tenant, or to the case of an officer of the council receiving the ordinary salary or remuneration for the performance of the duties of his office.

Powers and authorities of the Council.

35. The council shall have power and authority to do the following acts:

To make, construct, alter, keep clean and in repair, the roads, streets, dams, furrows, sewers, drains, culverts, and bridges, within the limits of the municipality.

To excavate, construct, and lay down within the limits of the municipality, watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, wells, and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons, to lay down pipes or to execute any other like works.

To make provision for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-

- engines, with hose, pipes, and all necessary utensils, and to establish and to maintain a fire brigade.
- To establish, alter, regulate, and maintain markets and fairs, and to set apart places for that purpose.
- To light or provide for the lighting of the streets.
- To hold, occupy, lease, or purchase any land, and to erect, lease, or purchase, maintain and keep in repair, any building or buildings for any municipal requirement or purpose.
- To lease, purchase, or erect and maintain such school buildings and manage such schools as the council shall, from time to time, think proper, and the exigencies of the times may render necessary and advisable; and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such schools should be required under any Act which may now be or may hereafter be in force for this purpose: Provided always that the ordinary revenue of the town be not used in the erection of any school buildings.
- To cause all buildings, which shall be certified in writing by any three master builders to be unsafe to the public, to be placed in a state of security, and, if necessary, removed at the expense of the owners of such buildings: Provided that notice in writing shall have been first given by the council to the owner or owners of such buildings that such buildings are in a state of insecurity, and that the same must be removed or placed in a state of security within a reasonable time.
- To cause all buildings used by the public capable of containing more than four hundred persons to be provided with sufficient and proper means of egress in cases of fire or panic.
- To erect and maintain proper weighing machines for ascertaining the weight of wagons and other carriages and their loads.
- To grant permits or licences for any purposes to be defined by the municipal regulations, and to make such charges for the same as may be so defined.
- To levy tolls and dues, as hereinafter provided.
- To make such provisions for the isolation of cases of dangerous contagious diseases affecting persons or animals within the municipality, and for the suppression and prevention of the same as shall be necessary from time to time and according to law.
- To define the width and direction of such streets as may be made on private property by the owners thereof; which streets, when so defined, shall thereupon, upon application by the owners of the property, become public streets.

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To make provision for the removal and disposal of all night soil, stable litter, excrement, filth, slops, and refuse, from public and private premises and from the streets, and to construct and maintain cemeteries, and generally to devise and carry out all such measures as shall appear to the council to the advantage and convenience of the townsmen.

To establish and provide for the management of public pounds within the said municipal limits.

To assize weights and measures according to the standard in force.

Provisions of Act 15 of 1857 to apply.

36. The provisions of Act No. 15 of 1857, entitled "An Act for enabling Municipalities to obtain Additional Police by contributing towards the expense thereof," shall, *mutatis mutandis*, continue applicable to the Municipality of Queen's Town hereby constituted; the words "Town Council" being read in place of the words "municipal commissioners" or "commissioners."

How bye-laws and regulations to be framed.

37. It shall be lawful for the council at any meeting at which not less than nine of the members shall be present, by resolution agreed to by a majority of not less than two-thirds of those so present, to frame bye-laws, rules, and regulations as to the registration of births and deaths within the municipality,—the inspection of public and private wells, tanks, cisterns, and reservoirs, and the temporary or permanent closing of any such in which the water is so polluted as to be injurious to public health,—the inspection, construction, and cleaning of ashpits, privies, cesspools, and middens, and of stables, kraals, and enclosures wherein horses, horned cattle, sheep, goats, pigs, or other live stock may be stabled, kraaled, or kept,—the times and places for slaughtering cattle, sheep, or goats, within the municipality, and the state and condition of slaughter-houses or enclosures, skin stores, tanneries, and wool-washeries within the municipality,—the confining or killing of dogs, pigs, goats and fowls,—the appointment of one or more competent persons to examine meat and other provisions, milk, spirituous, and other drinks offered for sale, and who, in case such meat, provisions, or drinks, be found unfit for human food or drink, shall be empowered to cause the same to be destroyed,—the prevention, abatement, and removal of nuisances, and the recovery of the expenses thereby incurred from the person or persons committing or permitting such nuisances,—the undue obstruction of the public streets and footpaths by carriages or otherwise, and securing that the footpaths shall be for the use and enjoyment of foot passengers,—as to the registration, rates of charges, and conduct of coolies,—to make all such sanitary and other regulations for the preservation of the health of the inhabitants of the town, and of natives and others residing or staying within the Native Location, as may be deemed advisable,—as to the management of the common pasturage lands of the municipality,—as to

the portion or portions of the commonage upon which carriers and others frequenting or passing through the municipality, or attending the markets thereof, may depasture their stock,—as to the establishment, continuance, management and regulation of public pounds within the municipality,—the erection of toll bars and the imposition of tolls for the maintenance and repairs of the public streets and roads within the municipality,—as to the user or non-user of the streets and public places within the municipality for holding of public auctions, and the imposition of reasonable tolls and dues to be paid to the council in respect of such use,—the granting of licences or permits for digging or getting brick-clay or gravel, or quarrying stone, or cutting firewood on the commonage,—as to the duties of any servant, any police or other officer of the council, or any officer or member of any fire brigade when there shall occur any fire by which any house, building or property shall be in danger of being destroyed or injured,—as to determining the amount of all occupation rents, fees for residence, permits, water taxes, health board rates, or special taxes for any sanitary purpose that shall be due and payable from time to time by the inhabitants of the Native Location, and for the recovery of the same by the council or its agents,—as to the procedure which may be adopted by the council in the case of any inhabitant of the Native Location who shall make default in respect of the payment of any house duty, hut or other tax made and levied by the Colonial Government,—as to the recovery of all rates lawfully made and levied on rateable property,—as to the amount of any water or other tax which may from time to time be lawfully demanded by the council from inhabitants within the municipality or within any particular area of the municipality and for the collection and recovery of the same by the council or its agents,—as to the fees for grazing licences which shall be payable to the council by butchers and by other inhabitants and by travellers depasturing any animals on the common pasturage lands and for the impounding of any animals that may be depastured on the same the owners of which have not obtained such licence,—as to the inspection, approval, and registration of all plans for buildings within the municipality or within any area of the municipality, and for preventing persons proceeding with the erection of any building the plans of which have not been so inspected, approved and registered,—as to the measure which may lawfully be taken in respect of buildings certified by competent authority and in the opinion of the council believed to be dangerous to the safety of the public,—as to the duties of owners or persons in charge of any cattle or other animals affected with any contagious disease, or of any animal that may be found in a dying state, or of any carcase of any animal that may be found dead on any public place or near any public watercourse. or on the common pasturage lands,—and generally as may

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seem meet for the good rule and government of the municipality, and as may be expedient for the proper working of the powers thereby given, and as may appear necessary for the purpose of carrying out all such measures as shall appear to the council to be for the benefit, convenience, or improvement of the municipality, and of the health and comfort of the inhabitants thereof, with power, from time to time, to alter, vary, or rescind all or any of such bye-laws, rules and regulations, and to frame such others as may, from time to time, appear expedient: Provided that no such bye-law, rule, or regulation, nor any alteration, variation, or rescindment thereof, shall be of force until the same has been published, as is in the sixty-second section of this Act provided, for twenty-eight days (together with a notice calling upon all townsmen who may have any objections to the same, to lodge such objections in writing within the period aforesaid), and thereafter shall have been submitted by the council to the Governor (together with the objections, if any, that may have been so lodged), and shall have been approved of by him with the advice of the Executive Council, and published in the *Government Gazette*.

Not necessary to prove quorum present at framing bye-laws.

38. After any municipal bye-law, rule, or regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it to prove that the required number of members of the council was present at the meeting at which such bye-law, rule, or regulation was framed.

Provisions for punishment of contravention of bye-laws.

39. It shall be competent for the council by any such bye-law, rule, or regulation, as aforesaid, to provide for punishing the contravention thereof by a fine in certain cases of not exceeding five pounds, and in default of payment of such fine by imprisonment for any period prescribed by such regulation, not exceeding three months, unless such fine be sooner paid: Provided the bye-laws, rules, and regulations, the breach of any one of which shall render the persons so contravening liable to a penalty, shall be specially enumerated, stating the penalty attaching to the breach of such bye-law, rule, or regulation.

Power as to establishing tolls and dues.

40. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such toll or dues as may be reasonable on all persons making use of any road, street, bridge, or market-place within the municipality, which the council is hereby empowered to make or maintain, and in case of non-payment thereof, to recover the same by legal process, or in such other manner as may by any municipal regulation be in that behalf provided; but no toll shall be payable by any officer or private of Her Majesty's forces, or any colonial police, volunteer or other force, or by any judicial or civil officer, mail carrier, or other Government servant, while travelling on public duty; and no more than one toll shall be payable in any one day, to be computed from twelve o'clock in one night to twelve o'clock the next succeeding night, for or in respect of the same vehicle or animal.

41. From and after the passing of this Act, and by virtue thereof, the benefit of the servitudes in favour of the municipal commissioners of Queen's Town in times of drought and scarcity of water in the river Komani at Queen's Town contained in the original grants of the following farms abutting on the river Komani, namely: Clifton Vale, Prospect, Rockwood, Groenfontein, Everton, Aloe Grove, Long Vale, Cathcart Place, and Queen's Park, shall be vested in the said commissioners.

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Water servitudes to be vested in municipality.

42. All property and servitudes heretofore or by this Act vested in the said commissioners, or chairman of the commissioners, and all unsold erven within the municipality's limits, and all municipal pasturage lands shall, after the taking effect of this Act, and by virtue thereof, are hereby and shall be transferred to and vested in the corporation hereby created, or to and in the Mayor respectively, upon the like trusts and purposes for which the same were originally granted or transferred, and, as to such erven and pasturage lands, subject to the provisions for the sale, leasing, or other disposition thereof hereinafter contained; and in like manner all liabilities or debts lawfully incurred, and contracts lawfully entered into by the aforesaid commissioners, acting for and on behalf of the said municipality, shall become the liabilities, debts, contracts, and engagements of the said corporation, and all expenses, incurred in the passing of this Act shall also in like manner be charged to the corporation herein created.

All other servitudes of late municipality transferred to the one now created.

Also debts and liabilities.

43. It shall be lawful for the council, by virtue of a resolution to that effect passed at any ordinary meeting, at which at least nine members are present, by resolution assented to by a majority of not less than two-thirds, and with the consent of the Governor, to be duly certified by writing under the hand of some proper officer, to raise by public sale or by mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be necessary to carry on any important public work or other municipal purpose which the council shall deem desirable, and the Governor shall approve of: Provided that the said council shall, before applying to the Governor for his consent, give continuous public notice of at least one month of their intention to apply for such consent, in which notice shall be given a full and clear statement of the situation, nature and extent of the land or property proposed to be sold or mortgaged, or charged by these debentures or other securities, and of the object or purpose for which the money to arise from such sale, mortgage, or issue of debentures or other securities is required; and which notice shall further call for objections to such sale, mortgage, or issue of debentures, or to such object or purpose to be lodged with the council in writing; which objections, *mutatis mutandis*, shall be dealt with in manner provided for objections according to section six of this Act.

Power to raise money on mortgage or debentures with Governor's authority.

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How mortgages
and debentures to be
granted and issued.

44. As often as the said council shall raise money by the issue of debentures to be charged upon any land or property as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in the mortgage. Every mortgage aforesaid, or power of attorney for authorising the execution of a mortgage of any land or property under this Act, and every debenture issued under this Act, shall be under the common seal of the said corporation, and shall be executed by the Mayor and countersigned by the Town Clerk. The debentures herein mentioned shall be as near as is material to Form No. 1 annexed to this Act; and all transfers of such debentures shall be registered in the books of the corporation herein created.

In cases of mort-
gages and debent-
tures becoming pay-
able.

45. As often as any mortgage granted or debenture issued under the two last preceding sections of this Act shall be called up or become payable, it shall be lawful for the said council to raise by fresh mortgage of the same land or property mortgaged, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off, and the council may raise upon debentures moneys to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land and property which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security, provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

Powers of leasing
pasture lands.

46. The council, by virtue of a resolution of not less than nine members present at any ordinary meeting and agreeing thereto, may from time to time lease any portions of the municipal pasturage lands for agricultural, garden, building or trading purposes, for any period not exceeding fourteen years; provided that continuous public notice shall have been given of not less than twenty-one days previous to the intended leasing, setting forth the objects, terms and conditions of the proposed lease, and requiring any person objecting to the proposed leasing to lodge with the council within fourteen days after the first publication of such notice his objection thereto in writing; and in case six townsmen or more, or any other person who may consider that his rights will be interfered with by the proposed leasing shall, within the time aforesaid, object to the same, or to the objects, terms and conditions thereof, the notice and objections shall be forwarded to the Governor for his consideration and decision; and in case

such decision shall be in favour of the council, but not otherwise, the council may enter into such lease notwithstanding such objections.

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47. The council may, by public tender, after public notice of not less than twenty-one days, grant from time to time privileges of working any quarries belonging to the council, or beneath the municipal pasturage lands, for any term not exceeding five years, upon such terms as to the council may seem fit.

Tenders for working quarries.

48. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market, or public building, or to dig out or to carry away any materials belonging to any person within the municipality, then in that case it shall be lawful for the said council, by virtue of a resolution of ten members present at any ordinary meeting and agreeing thereto, and it is hereby authorised and empowered, to treat and agree with every such person for the purchase or hire, as the case may be, of any such land, buildings, materials, as aforesaid, or for the payment of consequential damages, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings or materials, upon such terms and conditions as may be mutually agreed upon between the council and the said proprietors, and in case any such person and the said council shall not agree upon the purchase money, hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council may cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state, in writing, to the said council, or to some person by it appointed, within fourteen days of the said notice, whether he is willing to accept the sum therein mentioned or not; and in case the person shall neglect or refuse to accept the sum offered, or shall neglect to reply to the said notice, the said council, shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said council, and for that purpose to transmit to the said council, within a certain reasonable time, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said municipality by the Town Clerk for the time being, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, previous to entering upon the reference, to appoint an umpire, and the decision of the arbitrators, or in case of difference, the decision of

Powers of acquiring property of private persons resident in Queen's Town for the public purposes of the municipality.

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the umpire shall be final ; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony, or of the Court of the Eastern Districts, or of any Circuit Court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the same subject matter ; provided, however, that unless the amount so settled by the arbitrators or umpire as the value of any property so required by the council, or such hire or other recompense shall not be less than three-fourths of the amount demanded by the owner of such property or materials, the council shall be bound to pay the amount of such owner's demand in full, together with the whole costs of and incidental to the reference; And provided further, that all expenses incurred by such arbitration, fees of arbitrators, and legal assistance of whatever kind shall, except in the case above provided, be considered costs in the case, and shall be paid by the parties, or one or other of them, in such manner as the arbitrators or umpire shall direct ; and in case such person as aforesaid claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, it shall be lawful for the said council, and it is hereby authorised, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid, on its first notice in this section mentioned, for and on account of, and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property, and the said council, upon so lodging the said sum, shall be authorised and entitled to take or use the said land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire, under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of, or property in, the land, buildings, or materials aforesaid, had been duly done and performed.

Powers of acquiring property of persons absent from the colony for the same purposes.

49. In case the said council shall, for any purpose in the last preceding section, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials in the last preceding section mentioned, the owner of which shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government Gazette*, and in one or more newspapers published in the town of Queen's Town, once in each week for twelve successive months, describing as accurately as may be, the materials, land, or buildings which are required to be taken or used, and calling by name on the owner of the said land, buildings, or materials, if known or, if not known, upon the owner, whoever he may be, to take notice that

the said council is ready and willing to treat with the owner or any persons duly authorised by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner to apply, within twelve months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner shall so apply within the said period, the like proceeding in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner had from the first been in actual occupation, and in case such owner shall not apply to the said council within the said period, it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such person shall make oath before some Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value, and thereupon it shall and may be lawful for the said council to pay whatever sum the said land, building, and materials shall have been valued at by such person, into the Guardian's Fund, to the credit of the person or persons entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105 of 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council, upon so paying the said sum, shall be authorised and entitled to take or use the land, buildings, or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in, the land, buildings, or materials aforesaid, had been duly done and performed.

50. All acts, matters, and things hereby authorised or required to be done by the council, and all questions that may come before it shall be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-seventh, forty-third, forty-fifth, forty-sixth, forty-eighth, and fifty-eighth sections of this Act.

Majority of meeting to decide on what shall be done.

Quorum.

51. The ordinary meeting of councillors following the first general election of councillors under this Act shall be held on the first Monday following such election, and all subsequent, ordinary, and special or extraordinary meeting of the council shall be held as directed by the municipal regulations, and all meetings of the council shall be open to the public.

Date of holding ordinary meetings.

52. At every meeting of council subject to the exception provided for in the thirty-second section of the said Act, the Mayor, if

Mayor to preside. chairman to be elected in his absence.

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present, shall preside, and, in case of his absence, the councillors present shall elect a chairman from among themselves, who shall thereupon and during such absence have authority to sign all documents and do all such acts as herein is provided shall be done by the Mayor. In all cases of equality of votes the Mayor or chairman, as the case may be, shall have a second or casting vote.

Minutes to be kept.

53. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and signed by the person presiding thereat, and shall be read and confirmed at the next succeeding meeting. All such minutes shall be deemed and taken to be original minutes, and such books shall and may be produced and read as *prima facie* evidence of all the proceedings therein recorded in any proceeding, civil or criminal, in any Court.

Committees to be appointed.

54. It shall be lawful for the Council from time to time to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which in the judgment of the council would be better managed by means of a committee: Provided always, that the proceedings of every such committee shall be regularly entered in a minute book and submitted to the council for its approval, and the Mayor shall *ex-officio*, be a member of all such committees.

Appointment of officers.

55. It shall be lawful for the council from time to time to appoint fit persons (not members of the council) to be Town Clerk and Treasurer; and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable, and to demand of all such officers such security as the council may deem sufficient; and unless it shall otherwise be stipulated in the contract of service, to remove all such officers upon notice of not less than three months, or, in case of misconduct, without any notice.

Appointment of streetkeepers, policemen, and constables.

56. The said council are hereby empowered, from time to time, to appoint and employ such number of street-keepers, policemen, and special constables as shall be required for the protection of the inhabitants and property, streets, and public places within the municipality by day and by night; and to provide all such street-keepers, policemen, and special constables with such clothing, arms, ammunition, and weapons, and appoint to them such duties and hours or time of duty, and shall make such rules, orders and regulations, relative to such street-keepers, policemen, and special constables, and their duties, as shall be deemed fit. All such street-keepers and policemen shall act as constables within the municipality while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers, authorities, privileges, and immunities, and shall be

subjected to such and the like penalties and forfeitures, as ordinary constables are invested with, or shall or may have, or enjoy, or are or may be subject or liable to by law.

57. For the purpose of raising the means for making new roads, streets, market-places, and conveniences, bridges, drains, sewers, watercourses, reservoirs, aqueducts and other waterworks; for the purchase of such lands or the erection of such buildings, as may be required in or about the execution of the powers hereby given to the council; for the purchase of water pipes, fire-engines, and appurtenances; for the effecting of all other public works and improvements within the municipality; for lighting the streets and public places in the municipality, and for providing proper and necessary plant for the same; for the purpose of raising the means for effecting the repairs of such works as the council is empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; and for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, dog and carriage tax, and other fees and licence moneys as shall be deemed necessary and reasonable, and shall be authorised by any such municipal regulations as aforesaid; and shall also have the power, as often as shall be deemed necessary, to make and levy a rate upon all immovable property within the municipality, the value of such property to be ascertained as hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be at least nine members of the council present at the meeting at which such rate shall be imposed and consenting thereto by a majority: And provided also, that no rate shall be imposed upon any almshouses or hospitals; nor on any buildings solely appropriated to public worship; nor upon any burial-grounds; nor upon any building solely appropriated to the purposes of gratuitous education, provided the exemption last mentioned shall not be construed to extend to any separate or adjoining building or buildings in which the teacher or teachers, or his or their family, or any other person or persons, dwell, or which he or they occupy, but shall solely apply to such buildings as are especially appropriated for the education and use of the pupils; and all persons owning or occupying property within the limits of the municipality, except such property exempted, shall be liable to be rated on account of such property to any municipal rate in such manner and to such extent as is in this Act provided; but nothing in this Act contained shall be taken to authorise the assessment of a rate both upon the owner and the occupier of any one property in respect of such property.

58. [Repealed by § 6 Act 19, 1885, and §§ 125 and 126 of Act 45, 1882, substituted.]

59. The mode of valuing the immovable property within the municipality for rating purposes; of objecting to the valuation; of

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Power to levy rates, and for what purposes.

Mode of valuation of property to be settled by regulations.

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conducting and hearing of appeals against the valuation; the time during which any valuation shall be in force and how often the same shall be renewed, and the effect of the valuation shall be as directed by municipal regulations to be from time to time made in conformity with the powers hereinbefore contained.

60. [Repealed by Act 19 of 1885, § 7, and §§ 127-143 inclusive of Act 45 of 1882 substituted.]

Treasurer to lodge moneys in a bank.

61. The Treasurer of the said municipality shall be bound, within a reasonable time, to lodge with some joint-stock bank within the municipality, to be ordered by the council, all moneys from time to time entrusted to him or received by him, and shall, in books to be kept for that purpose, enter true accounts of all sums of money by him to be received and paid, and of the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance-sheet thereof, shall yearly, on the last day of February, or at such other times as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance-sheet, if found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality: Provided, always, that in no case shall any payment of municipal moneys be made to any person or persons whomsoever, without a warrant in that behalf being first granted under the hand of the Mayor, which warrant shall be in substance and form according to the schedule hereto annexed, marked No. 2.

Abstract and balance sheet to be prepared and audit.d.

How notices to be published.

62. Every notice calling a public meeting of the townsmen, and every notice or other document or thing required by this Act to be published, shall, where no other mode is prescribed, be published by causing a copy thereof to be posted or affixed in some conspicuous place upon or near the municipal office or market-place, and, when practicable, in one or more of the local newspapers.

How public meetings to be called.

63. All public meetings of townsmen shall be called by the Mayor of the town by notice under his hand, published in accordance with the sixty-second section of this Act; and no public meeting of townsmen shall be so called by the Mayor except upon a resolution of the council to that effect, and at all public meetings called by the council the Mayor, if present, shall preside: Provided always, that the Mayor, upon receiving a requisition signed by not less than twenty-five townsmen, shall call such public meeting within a reasonable time; and provided further, that the expenses incurred by the council through the Mayor or any of its officers in calling such meeting shall be defrayed by the persons signing the requisition, unless it shall appear to the council that such meeting was purely connected with municipal purposes, or its object of such

a character as in the opinion of the council would warrant it in charging the same expenses to the municipality.

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64. The storing of gunpowder, or other explosive material, shall not be permitted within the municipality, except in such places as may be approved of and licensed by the council for that purpose.

Gunpowder, &c.

65. No burial-ground shall be established within the municipality without the permission of the council; and so soon as any burial-ground within the municipality, or any portion thereof, shall become so crowded as to be, in the opinion of the council, dangerous to the public health, the council shall be empowered to give six months' notice that the burials therein must cease, and after the expiration of such six months it shall not be lawful to continue burials in such grounds, and any persons, after the expiration of such period, who shall inter, or cause any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court.

Burial-grounds.

66. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall and may be prosecuted for in any competent Court, and in the name of the Mayor, councillors, and townsmen, and shall, when recovered, be paid to the Treasurer of the Municipality for municipal purposes: Provided that no such prosecution shall be commenced later than three months from and after the date of the act or omission upon which the same shall be grounded.

How fine to be recovered.

67. Every warrant and power of attorney, deed, contract, or other document to be given, made, or entered into by the said council shall, when no other mode is prescribed, be under the common seal of the corporation, to be affixed thereto by the Mayor, and countersigned by the Town Clerk. And the said common seal of the corporation shall be and remain in the care and custody of the Mayor of the town for the time being.

Deeds, &c., to be under common seal of Council.

68. This Act may be cited as "the Queen's Town Municipality Act, 1879."

Short title.

SCHEDULE No. 1.

MUNICIPALITY OF QUEEN'S TOWN.

Debenture Certificate.

No. _____.

£ _____.

This is to certify that the Town Council of Queen's Town is indebted to _____ in the sum of _____, for so much money borrowed for the purpose of [here state the object for which the loan has been raised] under and by virtue of the provisions of the Municipality Act, 1879, and that the said money is secured by mortgage on [here state the nature of the mortgage or security as contemplated in the forty-third and forty-eighth sections of the said Act]; and further, that the said debt will be payable and paid by the said Town Council to the said _____ or assigns in the manner following, that is to say [here

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NATIVE LOCATIONS.

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insert the rate of interest, time of payment, and other conditions agreed upon.]

Given under my hand and the seal of the Corporation, at Queen's Town, this — day of —, 18—.

(C.D.)

Town Clerk.

(A.B.)

Mayor.

SCHEDULE No. 2.

The Treasurer of the Municipality of Queen's Town is hereby authorised to pay to — the sum of — being for [here state the object of the payment], which money was voted by the council at its meeting on — [or being for fixed salary, as the case may be].

Queen's Town, — day of —, 18—.

(A.B.)

Mayor.

No. —.

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[Sept. 11, 1879.

ACT

To Provide for the Disposal of Lands forming Native Locations.

Preamble.

WHEREAS it is expedient in several districts of the Colony to form Native Locations on Government waste lands, and whereas it is desirable that portions of the land in such locations shall be granted on personal and individual tenure : Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Power to divide lands in native locations, and grant titles on individual tenure.

1. Whenever any Native Location has already been or shall be formed or established on land the property of the Government, under the provisions of Act No. 8 ⁽¹⁾ of 1878, it shall be lawful for the Governor to divide a portion of such land into lots and to grant titles to such lots to separate individuals, being in such locations, upon quitrent tenure upon such annual rent, and upon and subject to such conditions and provisions as to the said Governor shall seem fit and proper, and as shall have been approved of by the two Houses of Parliament, anything in Act No. 14 ⁽²⁾ of 1878, or in any other act, ordinance, law, or custom, to the contrary notwithstanding : Provided always that the grantees of such lands shall be and remain subject to all existing regulations, and to all such regulations as may from time to time be lawfully made, for the proper government and conduct of Native Locations in this Colony.

Power to set aside lands adjoining such lots as commonage.

2. In addition to the land so divided into lots, as in the preceding section provided, it shall be lawful for the Governor to set aside and reserve a sufficient quantity of land in the vicinity of, or

¹ Repealed by Act 37, 1884.

² Repealed by Act 15, 1887.

adjoining, such lots as and for commonage land or lands for the common pasturage of stock, the property of the several occupiers of the said lots, and to make from time to time such regulations as to the said Governor shall seem fit, for fixing the number of live-stock which each owner of a lot shall be entitled to depasture on such commonage lands, and for generally regulating and preserving the use of the said lands, for the common benefit of the said holders of lots.

No. 2—1880.

3. This Act may be cited as the “Native Locations, Lands, and Commonage Act.”

Short title.

No. 41—1879.]

[Sept. 11, 1879.]

An Act to apply a Sum of Money for the Service of the year ending the 30th day of June, 1880.

[Spent.]

No. 1—1880.]

[July 1, 1880.]

An Act to apply a Sum not exceeding One Hundred and Fifty Thousand Pounds sterling towards the Service of the Year ending the 30th day of June, 1881.

[Spent.]

No. 2—1880.]

[July 26, 1880.]

ACT

To relieve certain Agricultural Immigrants from Payment of Quitrent under the “Agricultural Immigrants Land Act.”⁽¹⁾

WHEREAS certain persons have come into this Colony from Scotland and elsewhere in Great Britain, as agricultural immigrants under special agreements made and executed by them and by certain persons acting for and on behalf of the Government of this Colony in England; and in such agreements and in the notices annexed to or accompanying the same, no mention is made of the perpetual quitrent to be paid by such immigrants, as provided by the 6th sub-section of section 3 of Act No. 10 of 1877; And whereas such persons, being wholly ignorant of the provisions of the said sub-section, have been misled into the belief that they are entitled, after paying yearly for ten years one shilling per acre for such land as may be allotted to them under such Act, to receive a grant of the said land in perpetuity: And whereas it is expedient to relieve such immigrants from the payment of quitrent under the aforesaid circumstances: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

¹ See note to title of Act 10, 1877.

No. 4—1880.

No quitrent on grants of land to immigrants who have had no notice of its being payable.

1. Whenever any person shall before the taking effect of this Act have immigrated into this Colony as an agricultural immigrant under any special agreement made between him and any person lawfully acting for and on behalf of the Government of this Colony in Great Britain, whereby such immigrant is entitled to acquire land in this Colony under the provisions of Act No. 10 of 1877, but in which special agreement, or in the notices or other documents annexed to or accompanying such agreement, no mention is made of the quitrent to be paid under sub-sections 6 of section 3 of such Act, such immigrant, so soon as he shall have made the tenth annual payment of rent for and in respect of any land which may have been assigned or allotted to him, shall, on payment of the survey expenses, and other expenses of title, receive a grant of such land in perpetuity free of quitrent but subject to every other condition now attaching to quitrent grants in this Colony; anything contained in the aforesaid sub-section or in any other section or sub-section of the said Act, or in any other statutory enactment to the contrary notwithstanding.

Short title.

2. This Act may be cited as the "Agricultural Immigrants Relief Act, 1880."

No. 3—1880.]

[July 26, 1880.]

An Act to amend and explain in certain respects the Act No. 22 of 1879, intituled "An Act to provide for the Payment of Pensions to Widows of Officers on the Fixed Establishment of the Public Service of this Colony."

[Repealed by Act 32, 1895.]

No. 4—1880.]

[July 26, 1880.]

ACT

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

Preamble.

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

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

1. It shall be lawful for the Table Bay Dock and Breakwater Commission, with the sanction of the Governor, to raise and take up upon debentures or stock, or partly upon debentures and partly

upon stock, such sum or sums of money as from time to time shall be necessary, not exceeding in the whole, the sum of eighty-five thousand and nine hundred pounds; and all sums to be so raised shall be applied to the purposes in the preamble to this Act mentioned.

No. 5-1880.

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

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

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

Certain section of Act 27 of 1879 to apply.

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

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

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

Short title.

No. 5-1880.]

[July 26, 1880.]

ACT

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

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

Preamble.

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

Power to raise £100,000.

No. 7—1880.
Provisions of Act 27 of 1879 to apply.

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

Accounts of stock, debentures, &c., to be laid bef. re Parliament.

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

Short title.

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

No. 6—1880.]

[July 26, 1880.]

An Act to provide for the Detention within the Colony of certain Prisoners of War, now in Military Custody.

[Lapsed.]

No. 7—1880.]

[July 26, 1880.]

ACT

To Alter and Amend Act No. 8 of 1877, entitled "An Act for the Promotion of Irrigation." (1)

Preamble.

WHEREAS it is expedient to alter and amend in certain respects the Act No. 8 of 1877, entitled "An Act for the Promotion of Irrigation": Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Notice required by section 61 of Act 8 of 1877 need not be published in *Government Gazette*.

1. It shall not be necessary to publish in the *Government Gazette*, or in any other newspaper, the notice provided for by the 61st section of the said Act No. 8 of 1877, but it shall be sufficient to serve the same upon the mortgagees, if any, of the lands in question, personally, and upon every other person who shall to the knowledge of the Commissioner of Crown Lands and Public Works have any estate in or charge upon such lands, and to deposit with the Commissioner of Crown Lands and Public Works a solemn declaration proving such service.

Instalment not exceeding one fifth of loan may be advanced to applicant.

2. Notwithstanding the provisions contained in section sixty-four of Act 8, 1877, if the Government should think that a loan, in respect of any application under this Act, should be expedient,

¹ See Act 10, 1893.

it shall be lawful for the Commissioner of Crown Lands and Public Works to advance to the applicant, by way of instalment, a sum not exceeding one-fifth of the entire sum of the approved loan, provided that no second instalment shall be paid on account of the said loan until the Commissioner of Crown Lands and Public Works shall be satisfied that the sum previously advanced has been expended to the approval of the said Commissioner.

No. 8—1880.

3. The provisions contained in section sixty-five of Act 8 of 1877, regarding the advance by virtue of a certificate under the said Act shall apply to the instalments mentioned in the last preceding section.

Provisions of sec. 65 of Act 8 of 1877 to apply to such advance.

4. (1) If any owner shall so desire it, the amount of the rent-charge imposed under the provisions of the said Act No. 8 of 1877 may, with the consent of the Commissioner of Crown Lands and Public Works, be increased to such amount as will repay the sum advanced sooner than the said period of twenty-four years, in the said Act appointed for the payment of such rent-charge; such increased rent-charge to be calculated according to the schedule A hereunto annexed for that purpose.

Rent-charge may be increased to effect earlier repayment of advance.

5. (1) Any person entitled to land and charged with such rent-charge as in the said Act No. 8 of 1877 provided, shall be at liberty at any time before the expiration of twenty-three years after the commencement thereof, to redeem such rent-charge or any part thereof, not being less than eight pounds annual charge, on payment to the Civil Commissioner of the district of the arrears thereof (if any), and of such sum as shall be equal to the value of such rent-charge, to be ascertained according to the table in schedule B hereunto annexed for that purpose; and the said Civil Commissioner shall issue and deliver to such owner a certificate of such redemption.

Provision for earlier redemption of rent-charge.

6. The section 59 of Act No. 8 of 1877 is hereby repealed, and the expenses therein mentioned shall henceforth be paid and borne by the Government of this Colony.

Repeal of sec. 59 of Act 8 of 1877.

7. This Act may be cited for all purposes as "The Irrigation Act Amendment Act, 1880."

Short title.

No. 8—1880.]

[July 26, 1880.

ACT

To Secure in certain Cases the Right of Property in Telegraphic Messages.

WHEREAS it is expedient to secure in certain cases the right of property in telegraphic messages: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

¹ In lieu of annual rent charge there shall be payable in respect of all such loans the amount set forth in the Schedule to Act 11 of 1882.

No. 8—1880.

Newspaper telegrams protected for 120 hours from time of publication.

Period of protection not to exceed 130 hours from receipt of telegram.

Publication of part or substance to be deemed publication of telegram.

Penalties.

Protected telegrams to be headed "by telegraph."

Penalty for transmitting telegrams during period of protection.

Evidence of protected telegrams.

Imprisonment in case penalties not paid.

1. Whenever there shall be received at any office of the Telegraph Department any message transmitted by telegraph from any place outside the Colony of the Cape of Good Hope for the purpose of publication in any newspaper, or other printed paper within the said Colony, no person shall, without the consent, in writing, of the person to whom such message shall be addressed, or his agent thereto lawfully authorised, print or publish, or cause to be printed or published, such telegraphic message or the substance thereof, or any extract therefrom until after a period of one hundred and twenty hours from the time of the first publication of such message by some person entitled to publish the same: Provided that such period shall not extend beyond one hundred and thirty hours from the time of the receipt as aforesaid at such office of such message (Sundays excepted): Provided further that the publication of the whole or any part of such telegraphic message, or of the substance thereof, or (excepting the publication of any similar message in like manner, sent and lawfully received by the person publishing the same), of the intelligence therein contained, shall be deemed to be a publication thereof.

2. If any person print and publish, or cause to be printed and published, any matter contrary to the provisions of this Act, he shall, upon conviction, be liable to a penalty of not exceeding twenty pounds sterling, and every person who shall be convicted of any subsequent offence against this Act shall be liable to a penalty of not exceeding forty pounds sterling.

3. Every telegraphic message published under the protection of this Act shall be printed with the heading "by telegraph," and shall state the day and hour of its said receipt and publication respectively, and such statement shall be *prima facie* evidence of the time of the receipt and publication respectively of such message.

4. During the period of one hundred and thirty hours hereinbefore mentioned no intelligence protected by this Act shall be transmitted by telegraph to any person by or on behalf of any person other than the person who, under the provisions of this Act, shall be entitled to the exclusive use of such intelligence, and any person contravening the provisions of this section shall, upon conviction as in the second section mentioned, be liable to a penalty of not exceeding twenty pounds sterling for the first offence, and not exceeding forty pounds sterling for any subsequent offence.

5. In any prosecution under this Act the production of any document which purports to be such a telegraphic message as is by this Act protected, and which purports to have been delivered to some person lawfully entitled to receive the same by the Telegraph Department shall be *prima facie* evidence that such message is a message within the meaning of this Act.

6. Any person convicted under the provisions of this Act may, in default of payment of the penalty imposed upon him, be imprisoned for any period not exceeding three months, unless such penalty be sooner paid.

7. This Act may be cited as "The Telegraphic Messages Copyright Act, 1880."

No. 9—1880.
Short title.

No. 9—1880.]

[July 26, 1880.

ACT

To Alter and Amend in certain respects Act No. 38 of 1879, entitled "An Act to empower the Governor to Raise a Sum not exceeding £50,000 for the purpose of Constructing certain Lines of Telegraph."

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

Preamble.

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

Repeal of inconsistent schedule of Act 38 of 1879.

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

Line of telegraph to be according to schedule hereto.

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

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

Correction of misprint in Act 38 of 1879.

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

Short title.

SCHEDULE.

Malmesbury to Calvinia, *via* Piquetberg and Clanwilliam.

No. 10—1880.]

[July 29, 1880.

ACT

For (1) Constituting the Town of Graaff-Reinet a Municipality.

Preamble.

WHEREAS it is expedient to repeal so much of the Ordinance No. 9 of 1836, entitled "An Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony"; of the Ordinance No. 2 of 1844, entitled "An Ordinance for amending Ordinance No. 9 of 1836"; of the Ordinance No. 8 of 1848, entitled "An Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the Common Pasture Lands of the Municipality; and of the Ordinance No. 5 of 1852, entitled "An Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9 of 1836 to Purchase or Hire Immovable Property for Municipal Purposes"; and the Act 13 of 1864, intituled "An Act to amend the Ordinance No. 9 of 1836"; in so far as such Ordinances and Act, severally and respectively, shall apply to the municipality of Graaff-Reinet, together with so much of any other law as shall be repugnant to or inconsistent with the provisions of this Act, and to make other provisions in lieu thereof: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Former enactments to apply until this Act is enforced.

1. The said Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, and No. 5 of 1852, and Act 13 of 1864, in so far as the same are applicable to the municipality of Graaff-Reinet, shall continue to be of legal force and operation as heretofore, until after the first election of councillors as provided for in and by this Act; and immediately upon and after the declaration of the names of the said councillors shall have been published as hereinafter provided, the said Ordinances, Law, and Act, together with so much of any other law as shall be repugnant to or inconsistent with the provisions of this Act, in so far as the same apply as aforesaid, shall be and are hereby repealed.

Boundaries of the municipality.

2. The municipality of Graaff-Reinet shall comprise the town of Graaff-Reinet, and the common pasture lands thereof (as shown by the title signed by Lieutenant-Governor Wynyard, and dated the 2nd day of July, 1860).

Title of municipal body.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "the Mayor and councillors of Graaff-Reinet," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may in this Colony do and have.

4. The council of the said municipality shall consist of nine councillors, one of whom shall be the Mayor, and the said councillors shall be elected by the ratepayers of the said municipality voting as one constituency in manner hereinafter provided : Provided, however, that every councillor elected before the passing of this Act shall notwithstanding anything herein contained continue to hold office in the said council as if this Act had not been passed.

No. 10—1880.
Constitution of the
municipality.

5. [§§ 5, 6, 7, and 8, repealed by Act 34 of 1886.]

9. ⁽¹⁾ The following persons shall be disqualified from voting at any such election :

Disqualification.

Persons who have been convicted of treason, murder, rape, theft, fraud, perjury, or forgery, and who shall not have received a free pardon.

10. [Repealed by Act 34 of 1886.]

11. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor, until he shall have been invited to become such candidate, by a requisition signed by at least five qualified voters, and shall have transmitted such requisition, with his acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.

Requisitions to be
sent to councillors.

12. The Town Clerk shall, at least ten days before the day appointed for the election cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisition, to be published in manner hereinafter mentioned.

Requisitions to be
published.

13. On the second Wednesday in the month of December in every alternate year, an election shall take place for councillors of the said municipality, the first election, however, to be on the second Wednesday in the month of December after this Act shall have been passed.

When elections to
take place.

14. The poll shall be taken by some person or persons and at some place or places to be appointed for that purpose by the Mayor, or in case of the first election, by the chairman of the municipality : Provided that as often as the number of candidates nominated shall not exceed the number of councillors to be elected no poll shall be deemed necessary, but the candidate or candidates so nominated shall be deemed and taken to be duly elected : Provided also that the said chairman of the municipality, or Mayor, as the case may be, shall be the returning officer of the said municipality.

How poll to be
taken.

15. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

16. The election shall take place in the following manner :— Every ratepayer, qualified as aforesaid may vote for any candidate

Number of votes
allowed to each vo-
ter.

¹ See also § 6, Act 34, 1886.

- No. 10—1880. or candidates, not being more than the number to be elected, by delivering to the polling officer a voting paper, containing the christian and surname of the candidate or candidates for whom he votes, and signed by the person voting, or by the polling officer at his request, and stating his place of abode and occupation: Provided that no voter shall be capable of giving to any one candidate more than one vote.
- Vote to be registered. 17. The polling officer shall receive such voting paper, and register the vote.
- Duration of poll. 18. The poll shall commence at eight o'clock in the forenoon, and shall finally close at twelve o'clock noon of the same day.
- Penalty for false answers. 19. [Repealed by Act 34 of 1886.]
20. If any person shall wilfully make a false answer to either of these questions, he shall be liable to a penalty not exceeding ten pounds (£10), to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for any period not exceeding one month.
- Duty of polling officers after close of election. 21. The polling officer shall, at the close of the election, transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and so many candidates being equal to the number to be chosen, as shall have the greatest number of votes, shall be declared duly elected; and such returning officer shall forthwith cause a list thereof to be published in manner hereinafter mentioned.
- In case votes are equal. 22. In case of an equality of votes at any election of councillors, the returning officer shall cause to be determined by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.
- Rules for first election. 23. At the first election of councillors under this Act, the rate-payers shall elect, in manner hereinbefore provided, two councillors for each ward, who shall enter upon their office on the first day of January following, and shall hold office as such councillors until the expiration of two years from the said date.
- If councillor resign, die, &c. 24. If any councillor shall die, resign, become insolvent, assign his estate for the benefit of his creditors, or shall be absent without leave from the ordinary meetings of the council for a period of three calendar months, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office until the next biennial election.
- Election of mayor. 25. The councillors shall, at the first meeting of council in January following each general election, elect from among themselves by a majority of votes the Mayor of the municipality, who shall hold office for two years from the date of the councillors entering upon their office: Provided that in case of an equality of votes at any election of Mayor, the question between the candidates so equal shall be determined by lot.

26. It shall be lawful for the Mayor to resign his office, provided that he shall give to the council not less than one calendar month's notice of his intention so to do. No. 10—1880.
Resignation of
mayor.

27. If any mayor shall die or resign, or shall become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be absent from the municipality, without the permission of the council, for one calendar month, or shall neglect to attend the meetings of the council for the period of three calendar months, without leave, such Mayor shall be held to have vacated office, and the council shall forthwith elect out of their own number a successor for the remainder of the term of office. Provision in case
of resignation; &c.,
of mayor.

28. At the first meeting of every newly elected council, two auditors from among the ratepayers shall be appointed for the municipality by the councillors, who shall continue in office until the next general election. Auditors.

29. No person shall be eligible as an auditor who shall be a councillor, Treasurer, Clerk, or other officer of the municipality. Disqualification of
auditor.

30. If any auditor shall die, resign, or be declared insolvent, or shall assign his estate for the benefit of his creditors, another auditor shall be elected in his stead, on a day to be fixed by the Mayor. Resignation, &c.,
of auditor.

31. No councillor or person holding any office in the gift or disposal of the council shall, directly or indirectly, have any share or interest in any contract made by or with the council otherwise than as a shareholder in any bank with which such council may transact business, or shall directly or indirectly sell or supply any goods whatsoever to the council. And any person contravening the provisions of this section shall, if a councillor, be deemed to have *ipso facto* vacated office, and if a person holding any office in the gift or disposal of the council, he may be summarily dismissed from such office without notice, and without any claim for compensation for loss of office. Councillors and offi-
cers not to be con-
tractors.

32. The council shall have power and authority to do the following acts: To make and keep in repair the roads, streets, dams, sewers, drains, and bridges, within the limits of the municipality, and all such other lands vested in the municipality; to excavate, construct, and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works for supplying the municipality with water, and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, or to execute any other like works; to take order for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines with pipes and utensils; to establish markets, and to have or purchase any land, and to erect or purchase and keep in repair any building for the same; to assize weights and measures and appoint an officer for that purpose; to grant permits and licences, and to levy tolls and dues as hereinafter provided; to regulate the time and places for slaughtering sheep. Powers of the coun-
cil.

No. 10—1880.

and cattle, and the state and condition of slaughter-houses, tanneries and woolwashing establishments; to appoint one or more competent persons to examine meat, and other provisions exposed for sale, and who, in case such meat or other provisions be found unfit for food, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be to the advantage and convenience of the municipality; to make regulations for the management of the common pasture lands of the municipality; and for fixing the number and description of cattle which each ratepayer shall be allowed to depasture on such lands; to establish and provide for the management of tolls and public pounds: Provided that no toll due, or fee, or charge for any permit or licence, or any punishment or penalty, shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the thirty-sixth section mentioned: And provided also, that no regulations shall diminish the rights of commonage of proprietors or occupiers as to the number of stock to be allowed to be depastured below that stated in the seventy-first section of the Graaff-Reinet Municipal Regulations in force on the first day of May, 1879, viz:—“Every proprietor or occupier of a house or erf of the under-mentioned value, shall be allowed to depasture on the common pasture lands of the municipality the following number of cattle, being his *bonâ fide* property, viz.:—1st class, from £25 and under £200, five sheep or goats, three horses, mules, or other cattle or so many of each as will not exceed three in the whole; 2nd class, from £200 and under £500, ten sheep or goats, fourteen horses, mules, or other cattle, or so many of each as will not exceed fourteen in the whole; 3rd class, from £500 and upwards, fifteen sheep or goats, sixteen horses, mules, or other cattle, or so many of each as will not exceed sixteen in the whole.”

Water supply

33. The provisions of Act No. 16 of 1875, entitled “An Act for enabling the Commissioners of the Municipality of Graaff-Reinet to Procure a Better and Purer Supply of Water for the Inhabitants of such Municipality,” shall apply to the municipality constituted under this Act, and all powers and duties therein vested in or given to the commissioners for the municipality of Graaff-Reinet are hereby vested in and given *mutatis mutandis* to the councillors elected under this Act.

Distribution
water.

of 34. The distribution of water shall be regulated according to the division thereof made by the late board of landdrost and heemraden of Graaff-Reinet on the 19th November, 1827; but whereas, in certain cases, no provision has been made in the said water distribution with respect to the water commonly called “afloop water,” it shall be lawful for the council, and it is hereby empowered, to dispose of the said water, and to apportion it in such a manner and to such erven as it shall consider just and

equitable. The strength of the streams in the various furrows from which the erven in town are irrigated shall be regulated in manner as follows: that is to say, the whole of the water brought into the town, both by the upper and lower furrows, shall, for the purpose of distribution, be divided into five equal streams. The erven irrigated from the lower furrow, and those on the eastern side of the Dry River, shall be each entitled to one of those streams: that is to say, to a volume equal to one-fifth of the whole brought into the town.

The strength of the stream to supply the erven understood to be supplied from the upper furrow but not including those on the eastern side of the Dry River, shall be one-half of the strength of the stream supplying the lower furrow erven or one-tenth of the whole.

The strength of the stream to irrigate the erven entitled to special supplies of water shall be in strict accordance with the rules adopted by the said late board of landdrost and heemraden on the 19th November, 1827; and if the water-overseer shall fail in his duty to make the distribution accordingly, he shall be liable to a fine not exceeding five pounds sterling.

35. In the month of January in each year a water tax shall be paid to the council by the proprietors or occupiers of erven, according to the following scale:—For an allowance of two hours of a single stream of water, twice a week, the sum of nine shillings sterling; for the same allowance of a double stream or more, the sum of eighteen shillings sterling; and so in proportion for every longer or shorter time: Provided that all erven having an allowance of less than one hour twice a week of a single stream, or less than half-an-hour of a double stream, shall pay four shillings and sixpence sterling; And provided, also, that for each and every house, tenement, or other building on any of the erven above referred to, other than the dwelling-house belonging to such erf, which shall have been let during any part of the year, the proprietor or occupier shall pay the sum of three shillings sterling.

Water tax.

36. It shall be lawful for the council, at any meeting at which two-thirds of the members shall be present, to frame, from time to time, all such municipal regulations as may seem meet for the good rule and government of the municipality: Provided that all municipal regulations in force in the municipality of Graaff-Reinet at the time of the taking effect of this Act shall be of the same force and effect as if they had been duly framed, approved, and published under this Act, and shall continue to be in force and operative until such time as the same shall be altered or new ones published under this Act.

Power to frame regulations.

37. No municipal regulation framed by the council shall be of force to subject any person to any fine, penalty, or payment, until it shall have been submitted to the Governor by the council, and

Regulations to be approved of by Governor in Council.

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shall have been approved of by him, with the advice of the Executive Council, and published in the *Government Gazette*.

No proof required of published regulation having been duly made.

38. After any municipal regulation shall have been so published as aforesaid, it shall not be necessary, in any proceeding founded upon it, to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Limitation of penalties for contravention of regulations.

39. It shall not be competent, by means of any municipal regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding five pounds : Provided that it shall be competent for any such municipal regulation to provide that, if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation : Provided, moreover, that such period shall not exceed three months.

Vesting of municipal property.

40. All property which shall at the time of the taking effect of this Act be vested in the commissioners for the municipality of Graaff-Reinet, elected under and by virtue of Ordinance No. 9 of 1836, and the Amended Municipal Act No. 13 of 1864, shall, from and after the taking effect of this Act, become and be vested in the council elected under this Act, upon the like trusts and purposes for which the same was originally granted or transferred ; and in like manner all liabilities, debts, contracts, or engagements incurred, made, or entered into by the said commissioners, or their predecessors in office, on behalf of the municipality of Graaff-Reinet, shall be taken over by the council.

Power to sell such property under certain restrictions.

41. The council elected under this Act may, with the consent of the Governor of this Colony, testified by any writing under the hand of the Colonial Secretary, sell by public sale any of the land or property in the last preceding section mentioned for any purpose of a municipal nature which the council shall deem desirable and the said Governor shall approve of : Provided that the said council shall, before applying to the said Governor for his consent, give public notice of not less than twenty-one days in the manner hereinafter mentioned of their intention to apply for such consent, in which notice so published shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold, and of the object or purpose for which the money to arise from the sale is required : Provided, also, that when and as often as any land or property shall be sold under and according to the provisions of this section, then such land or property shall be subject to such servitudes, conditions, and provisions as shall be inserted in the transfer deed of the land or property so sold : Provided, further, that the said council may, with such consent as aforesaid, alienate any of the land or property aforesaid in exchange for other land or property, but such council shall not, except with such consent, alienate any such land or

property; and the provisions of this section in regard to the notice to be given before applying for a consent to sell shall extend to any application for a consent to an exchange.

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42. The council elected under this Act may, with the consent of the Governor aforesaid, testified as aforesaid, raise by way of mortgage of any land or property vested in the said council, or by debentures or other securities charged upon such land or property, any sum of money which shall be required for any purpose of a municipal nature which the said council shall deem desirable and the said Governor shall approve of: Provided that the provisions of the last preceding section requiring the publication of notice of an intended sale shall, *mutatis mutandis*, apply to the case of an intended mortgage or issue of debentures: Provided also, that as often as the said council shall raise money by the issue of debentures, to be charged upon any such land or property as aforesaid, the council shall execute to and in favour of any person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests rank *pari passu* upon the proceeds of the land or property comprised in such mortgage.

Power to mortgage property.

43. The sum of money to be raised under the last preceding section in any one year, reckoned from the first day of January till the thirty-first day of December, shall not exceed double the amount which shall be estimated as the probable sum to be yielded by the municipal rate assessed, or to be assessed, in manner hereinafter mentioned, for that year: Provided that no mortgage granted or debentures issued under the said last preceding section shall be invalidated or affected, either wholly or in part, by reason that the sum secured by such mortgage or debentures shall prove to have exceeded the sum which, under and according to the provisions of this section, ought to have been raised.

Limit of amounts to be raised on mortgage.

44. The council may, for any such purpose as is in the forty-second section described, mortgage or charge by debentures the municipal rates of the said municipality in security for any sum of money to be borrowed by the said council: Provided that no sum of money shall be capable of being borrowed from Government or from any person or persons or body corporate, or for any purpose whatsoever, under the provisions of this section, unless with the previous consent of a majority of the ratepayers of the said municipality present at a meeting to be convened by the council, upon a notice of not less than twenty-one days, to be published in the manner hereinafter mentioned: And provided that it shall not be lawful for the said ratepayers to sanction, or for the said council to borrow upon security of the said rates, any sum or sums exceeding at any one time the sum of three thousand pounds sterling.

Municipal rates may be charged with money borrowed.

45. Every mortgage aforesaid or power of attorney for authorising the execution of a mortgage of any land or property under this Act shall be under the common seal of the corporation, and

Mortgages, &c., to be under seal of municipality.

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shall be executed by two councillors, and be countersigned by the Town Clerk, and every debenture issued under this Act shall be executed in the same manner.

Fresh mortgages
or debentures to re-
deem those falling
due.

46. As often as any mortgage granted, or debenture issued, under any of the preceding sections of this Act shall be called up, or any debenture shall become payable, it shall be lawful for the said council to raise by a fresh mortgage of the same land, property, or rates, which was or were mortgaged by such mortgage, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off; and the council may raise upon debentures moneys required to pay off mortgages, and conversely may raise by mortgage moneys required to pay off debentures, so long as the same land, property, and rates which were charged by the one form of security, and none other, shall be charged by the other or substituted form of security: Provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

Power of leasing.

47. The council may lease with the consent of the Governor any portion of the common pasture lands belonging to the municipality for the purpose of erecting woolwashing establishments, for building, and for any other purpose, for a period not exceeding thirty-three years: Provided that no such lease shall be granted by the council until a notice in writing of the proposal of the council to grant such lease shall have been posted for general information at some conspicuous place of public resort, within the municipality, for a period of not less than twenty-one days, and shall cause the same to be published in a local paper for the same period, which notice shall in some part thereof describe the part or portion of land proposed to be leased, and the object, terms, and conditions of the proposed lease, and shall require any person objecting to the proposed lease to lodge with the council, within twenty-one days from and after the posting and publication of such notice, his objection thereto in writing, whereupon the council shall receive and consider the objections, if any, and shall grant or refuse the said lease as they shall think fit: Provided also, that all such leases shall first be put up at auction to public competition, and shall contain a power to re-enter for non-payment of rent or non-performance of covenants.

Lease of mines.

48. The council may, by public sale or tender, lease the privilege of working any mines or quarries belonging to the corporation.

Sub-letting.

49. No lessee of any such land, or of any mines or quarries, shall assign or sub-let the same without the previous consent of the council, testified in writing, first had and obtained.

Power to appropriate lands under certain restrictions, and for certain purposes.

50. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, for the purpose of making, widening, or improving any street, market,

or public building, or to dig out or carry away any materials belonging to any person or persons within the said municipality, then, and in that case, it shall be lawful for the said council, and it is hereby authorised and empowered to treat and agree with every such person or persons for the purchase or hire, as the case may be, of any such land, buildings, or materials as aforesaid, and generally to enter into such contract or contracts for the obtaining of any such land, buildings, or materials upon such terms and conditions as the said council shall deem expedient, and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party, and accepted by the other, then the said council shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within twenty-one days from the service of the said notice, whether he or they are willing to accept the sum therein mentioned or not; and in case the person shall refuse to accept the sum offered, or shall neglect to reply to the said notice, then the said council shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council, and for that purpose to transmit to the said council, within a certain reasonable time, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said corporation by the Town Clerk for the time being, and by the person or persons claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, in case of a difference of opinion, to call in an umpire, whose decision shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme or any Circuit Court of this Colony, or of the Court of the Eastern Districts, and shall be binding and conclusive, and may be pleaded in bar to any action or proceeding at law, brought for, or on account of, the same subject matter; and in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said council, and it is hereby authorised, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid in its first notice in this section mentioned, for or on account, and at the risk, of such person as aforesaid, who shall at all times be entitled to draw the same out of the

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said bank as his absolute property; and the said council, upon so lodging the said sum, shall be authorised and entitled to take or use the said land, buildings, or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of or property in the land, buildings, or materials aforesaid had been duly done and performed.

In case of appropriation of lands of absent owners.

51. In case the said council shall require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials in the last preceding section mentioned, of which land the owner or owners shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, and one or more newspapers published in the town of Graaff-Reinet, for three months, describing as accurately as may be the materials, land, or buildings which are required to be taken or used, and calling by name on the owner or owners of the said land, buildings, or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any persons duly authorised by him or them, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner or owners to apply, within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings, in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken which are prescribed in the last preceding section, precisely as if the said owner or owners had from the first been in actual occupation; and in case such owner or owners shall not apply to the said council within the same period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such person shall make oath, before some Justice of the Peace, that he hath, to the best of his judgment, fairly appraised such value; and thereupon it shall and may be lawful for the said council to pay whatever sum such person shall have valued the land, buildings, or materials in question at into the Guardian's Fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony;

and the said council, upon so paying the said sum, shall be authorised and entitled to take or to use the land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in, the said land, buildings, or materials aforesaid had been duly done and performed.

52. At all meetings of the Town Council five members of the council shall form a quorum: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-sixth and sixty-first sections of this Act.

Quorum of council.

53. An ordinary meeting of the council shall take place at least once in every fortnight, and all such ordinary meetings shall be open to the public.

Ordinary meetings once a fortnight.

54. The Mayor or any two councillors may at any time call a special meeting of the council, provided that he or they cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them, or by the Town Clerk, to be notified to every Councillor, either personally, or at his usual place of abode, twenty-four hours at least before such meeting.

Special meetings.

55. At every meeting of the Council, the Mayor, if present, shall preside; in case of his absence, the councillors present shall elect a chairman from amongst themselves.

Mayor to preside.

56. In all cases of an equality of votes, the Mayor or chairman shall have a second or casting vote.

Casting vote.

57. Minutes of the proceedings of every meeting shall be entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

Minute book of meetings.

58. It shall be lawful for the Council to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided always, that the proceedings of every such committee shall be submitted to the council for its approval; the Mayor to be *ex-officio* member of all such committees.

Committees to be formed.

59. It shall be lawful for the council from time to time, to appoint fit persons (not being members of the council) to be Town Clerk and Treasurer, and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries as the council shall deem reasonable; and, unless it shall be otherwise stipulated in the contract of service, to remove all such officers, upon a notice of not less than three months, or in case of misconduct, without any notice.

Clerk, treasurer, and other officers.

60. The said council are hereby empowered from time to time to appoint and employ such number of able-bodied street-keepers,

Street-keepers and constables.

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location constables, policemen, overseers, labourers, and others as shall be required for the protection of the inhabitants and property, streets and public places, within the municipality, by day and by night, and for other purposes; and to provide all such street-keepers, constables, and policemen with such clothing, arms, ammunition, and weapons, and shall appoint to them such duties and hours or times of duty, and shall also make such rules, orders, and regulations, relative to such street-keepers, constables, policemen, and others and their duties, as shall be deemed fit.

Power to levy rates.

61. For the purpose of raising the means of making new roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other water works; for the purchase of water-pipes, fire-engines and appurtenances; and for the effecting of all other permanent public works and improvements within the municipality; for the purpose of raising the means for effecting the repairs of all such works as the council are hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have the power to impose, levy, and recover all such market dues, water rates, and pound fees as shall be deemed necessary and reasonable; and shall also have the power, as often as shall be deemed necessary, to make and levy in manner hereinafter provided, rates or assessments upon all immovable property within the municipality, the value of such property to be ascertained in manner hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be present at the meeting, at which such rate shall be imposed, at least nine members of the said council; And provided also, that no rate or assessment, excepting water rates, shall be imposed upon any almshouses, botanical gardens, or hospitals, nor on any buildings appropriated for public worship, nor upon burial-grounds, nor upon buildings solely appropriated to the purposes of education.

Appraisers to be appointed.

62. Within three months after the promulgation of this Act, the council shall appoint one or more competent appraisers, not being members or officers of such council, for the purpose of valuing all and singular the immovable property situate within the municipality.

Valuations may be inspected.

63. As soon as any valuation as aforesaid shall be completed, it shall lie in the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days, and at reasonable times, inspect the same and take extracts therefrom, and the council shall by public notice, announce for general information, that it will, upon some day and at some hour and place to be fixed by such notice, hold a court, at which, at least, a quorum of members shall be present for the purpose of hearing and determining objections to such

Court for hearing objections.

valuation: Provided that the notice shall be published fourteen days at least before the day appointed therein for the holding of such court: And provided also that it shall not be necessary in any suit or action for the recovery of any rate to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid, in one or more of the local newspapers.

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64. Upon the day and at the place and hour mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation by any owner or occupier, or other person on his behalf, and shall inquire into the merits of such objections, and shall confirm or correct any valuation objected to: Provided that the said court may be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with the proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

How objections to valuations to be heard.

65. The decision of the said court upon any objection to any valuation shall be final and conclusive, and shall not be capable of being reviewed or reversed by any court or proceeding whatever.

No appeal or review.

66. The council shall annually, in the month of December, make an estimate of the amount of money required for municipal purposes in the next ensuing year, and shall assess a rate accordingly upon all immovable property liable thereto, and give public notice thereof in one or more of the newspapers of the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year to levy any rate or rates amounting in the aggregate to more than one penny in the pound on the value of the immovable property subject to such rates, without obtaining the consent of the majority of the ratepayers present and entitled to vote, according to the eighth section of this Act, at a public meeting to be called for the purpose of considering such rate or rates; of the object and time and place of holding such meeting, at least seven days' notice shall be given by publication in one or more of the Graaff-Reinet newspapers; and all rates assessed under the provisions of this Act shall be recoverable against the owner or occupier thereof.

Rates to be assessed and notice thereof

Limitation of rates.

67. Every rate so assessed, as aforesaid, shall become due and payable upon a certain day, to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in one of the local newspapers. Provided that it shall not be necessary in any suit or proceeding, for the recovery of any such rate, to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

When rates payable.

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Collection of rates.

68. As soon as any rate or rates shall have been assessed as aforesaid, the same shall be payable, and the council shall appoint under the corporate seal one or more fit person or persons to collect such rate or rates, which shall, on non-payment thereof, be recoverable at the suit of any such collector, by action in the Court of the Resident Magistrate of Graaff-Reinet, or in case any person liable for any rate shall not reside within the district of Graaff-Reinet, in the Court of the Resident Magistrate of the district in which such ratepayer shall reside.

Power to sue for rates.

69. In case, by reason of the non-payment of any rate, it shall be necessary to sue for the same as in the last preceding section mentioned, the council may, through its collector, and it is hereby authorised, to sue the owner or the occupier, either separately or both of them in one and the same action, each for the whole rate: Provided, however, that the occupier of any property who shall not at the same time be the owner thereof, and who shall not have entered into such occupation in pursuance of a contract or agreement for becoming the owner of the same shall in the absence of any written agreement to the contrary, be entitled to retain or recover from such owner the amount of any rate as aforesaid which such occupier shall have paid.

Publication of rates in arrear.

70. The council may once in every year publish in one or more of the newspapers of the municipality a statement of every sum in arrear, and of the property in respect of which the same is due.

Valuation to be made every three years.

71. The first valuation to be made, as aforesaid, for the purposes of this Act, shall subsist and be in force for three years from the date of the first assessment under this Act; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as is hereinbefore directed with regard to the first valuation.

New buildings to be valued within the three years.

72. In case any new buildings shall be erected on any property during any such period of three years, increasing the value of such property, it shall be lawful for the council to proceed to have the land and such buildings thereon valued or re-valued as the case may be, in the same manner as is hereinbefore provided with regard to the first valuation; and after such valuation is completed the property so valued or re-valued shall be in the same plight and condition as to future rates as if it had been included in the first or then preceding general valuation.

Tolls.

73. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such tolls or dues as may be reasonable upon all persons making use of any road, bridge, or market place within the municipality, which the council is hereby empowered to make and maintain, and in case of the non-payment of such tolls or dues, to recover the same by legal process, or in such other manner as may by the municipal regulations be in that behalf provided.

74. No toll shall be payable by any officer or soldier, or member of any colonial or imperial military forces on duty, or by any member of any police force appointed under the Divisional Police Act, 1873, or any other Act, or any judicial or civil officer, mail-carrier, or other Government servant, whilst travelling on public duty; and further, that no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock in the next succeeding night; for and in respect of the same vehicle or animal.

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Exemption from toll.

75. The Treasurer of the said municipality shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters in respect whereof each sum shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof, shall yearly at such time as the council shall appoint, be handed by him to the auditors and to such members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality.

Treasurer's accounts.

76. Every notice calling a public meeting of the ratepayers, and every notice or other document or thing required by this Act to be published, shall (except when otherwise provided), be so published by causing a copy thereof to be inserted in one or more of the newspapers within the municipality, and a copy of the same shall also be affixed in some conspicuous place, upon or near the Town-hall: Provided always that the Mayor shall call a meeting on receiving a requisition to that effect signed by not less than twenty-five duly qualified ratepayers.

Notices of public meetings to be published.

77. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council in the name of the "Municipal Council of Graaff-Reinet," and all such fines and penalties, when recovered, shall be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act of omission or commission upon which such prosecution shall be founded: And provided also that in all such prosecutions the Town Clerk may appear on behalf of the council.

How fines to be recovered.

78. The storing of kerosene, gunpowder, or other explosive material shall not be permitted, except in such places as may be approved of and licensed by the said council for that purpose.

Gunpowder regulations.

79. It shall be competent for the Town Council to set apart any part or portion of the municipal lands for burial-grounds or cemeteries, and to prohibit burials in any other part within the municipality, and any person or persons causing any interment to

Burial grounds.

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be made elsewhere than in the part or parts so set apart, shall be liable to a fine not exceeding fifty pounds, to be recovered in any competent Court.

Short title.

80. This Act may, for all purposes, be cited as "The Graaff-Reinet Municipality Act, 1880."

No. 11—1880.]

[July 29, 1880.

Act to Provide for the Better Maintenance of Discipline in certain Colonial Corps while on Active Service.

[Repealed by Act 32, 1892].

No. 12—1880.]

[July 29, 1880.

ACT

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

Preamble.

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

Repeal of inconsistent enactments.

1. So much of the Royal Letters Patent, commonly called the "Charter of Justice," of the Act No. 39 of 1877, of the Act No. 5 of 1879, and of any other law in force in this Colony at the time

of the taking effect of this Act, as shall be repugnant to or inconsistent with the provisions of this Act, shall be, and the same is hereby repealed.

No. 13—1880.

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

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

Appeal to be to court of appeal.

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

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

No. 13—1880.]

[July 29, 1880.]

ACT

To Provide for the Detention within the Colony of certain Prisoners of War.

WHEREAS the persons named in the schedule to this Act have from time to time been captured in arms against Her Majesty the Queen, and have since such capture been, and now are, detained as prisoners of war: And whereas it is necessary for the preservation of the tranquillity of South Africa, and for the general safety, that the said persons should continue to be detained and kept in custody as hereinafter provided; and that all due precautions should be taken to prevent them from joining and using their influence with the tribes to which they respectively belong: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall and may be lawful for the Governor for the time being to detain and keep as prisoners of war the persons named in the schedule to this Act, or any of such persons, during the pleasure of the said Governor, in the custody of such officer or officers, in such place and under such restrictions as to the said Governor from time to time shall seem meet.

Authority to detain prisoners of war named in schedule.

2. It shall and may be lawful for the said Governor to provide sufficient means for the safe custody and maintenance as prisoners of war of the said persons and each of them during such time as the said Governor shall deem it desirable that such persons or any of them shall be detained and kept in custody as aforesaid.

Means for safe custody, &c., to be provided.

¹ But see § 1, Act 17, 1886.

No. 13—1880.

Place of detention to be fixed by proclamation.

3. The place of detention shall be defined and fixed by proclamation, to be published in the *Government Gazette*, but may, from time to time, by like proclamation, be changed and altered as may be found expedient.

Regulations to be made.

4. It shall be lawful for the said Governor from time to time to make such regulations as may be considered necessary, in order to secure the safe custody and detention of such persons and each of them during the time they or he shall be detained and kept in custody for the purposes aforesaid, and to regulate the communication with the said persons and each of them.

Prisoners going beyond limits to be apprehended, &c.

5. In case the said persons, or any of them, shall, during the time they or he shall be detained and kept in custody as aforesaid, proceed beyond the limits of the said place of detention without the permission, in writing, of the Secretary for Native Affairs, or in case they or any of them shall contravene any regulation which may be made as aforesaid, it shall be lawful for any person, with or without warrant, to apprehend them or him; and thereupon it shall be lawful for the said Governor to take such steps as may be considered necessary for the further and more effectual safe custody of the said offender or offenders during the remainder of the term of their detention and custody as aforesaid.

Penalties for attempt to rescue, or assist in escape of prisoners.

6. Every person who shall rescue or attempt to rescue, or aid or incite the said persons, or any of them, to escape, or attempt to escape, beyond the limits of the said place of detention, or shall knowingly harbour the said persons, or any of them, when they have so escaped, shall, on conviction before any competent Court, be liable to imprisonment, with or without hard labour, for any term not exceeding one year.

Indemnity clause.

7. The said Governor and the commander or commanders of Her Majesty's naval or military forces for the time being, and all persons acting under them or any or either of them, shall be, and they are, hereby jointly and severally indemnified, freed, and discharged from and against all actions, suits, and prosecutions whatsoever, whether criminal or civil, which might be brought or instituted in any of the Courts of this Colony for, or on account, or in respect of, any acts, matters, and things whatsoever done by the said Governor or the said commander or commanders of Her Majesty's naval or military forces, or by any person or persons acting under them or any or either of them respectively in any command or capacity, civil or military, in bringing or conveying the said persons, or any of them, within the limits of this Colony, and in detaining and keeping them, or any of them, in custody therein prior to the taking effect of this Act: Provided that all such acts, matters, and things shall have been done *bonâ fide* and properly in furtherance and execution of bringing or conveying the said persons, or any of them, within the limits of this Colony, and detaining and keeping them, or any of them, in custody therein as aforesaid: Provided also, that every such act, matter,

or thing shall be presumed to have been done *bonâ fide* and properly, until the contrary shall be made to appear by the party complaining.

No. 14 1880.

SCHEDULE.

Ngubo.
 Nxito.
 Joey.
 Stock Tyali.
 Jacobus Afrikaaner.
 Klaas Pofadder.
 John Adams.
 Jan Kop or Kok (*alias* Sanagab or Zenekop).
 Titus Lynx.
 Piet Rooy.
 David Diederick.
 Carl Ruyter.

No. 14—1880.]

[July 29, 1880.

ACT

To Amend, in certain respects, Act No. 29 of 1868, being
 “An Act for the Organisation and Regulation of a
 Police Force for the Northern Border of the Colony.”

WHEREAS doubts have arisen as to whether there exists any legal power to try and determine offences committed by members of the Police Force acting on the Northern Border of this Colony in cases where the offence shall be committed outside the limits of the Colony: And whereas it is expedient to remove such doubts and to confer jurisdiction in respect of such offences, as well as of all others created by the Act No. 29 of 1868, upon the officer duly appointed to exercise jurisdiction for the better protection of Her Majesty's subjects on the Northern Frontier of this Colony: Be it enacted by the Governor of the Cape of Good Hope, acting by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Section XIII of Act No. 29 of 1868 is hereby repealed.
2. All the offences created by the said Act No. 29 of 1868 shall be cognizable, triable, and punishable by any Resident Magistrate having jurisdiction in the place where such offence shall be committed, or by the officer appointed under the third section of Act No. 27 of 1868, to exercise jurisdiction for the better protection of Her Majesty's subjects on the Northern Frontier of this Colony, who is hereby authorised and empowered to try and punish offenders against the said Act in all cases, whether the offence be committed within the limits of his local jurisdiction or elsewhere, the true intent and meaning of this Act being to confer upon the officer last mentioned power and jurisdiction to try and punish

Repeal of sec. 13
 of Act 29 of 1868.
 Jurisdiction in
 cases of offences un-
 der such Act.

No. 15—1890.

persons guilty of offences created by the said Act No. 29 of 1868, although such offence shall not have been committed within the limits of his local jurisdiction or within this Colony.

No. 15--1880.]

[July 29, 1880.]

ACT

To provide for the Establishment and Regulation of a force to be called "The Cape Field Artillery." (1)

Preamble.

WHEREAS it is expedient that the defensive forces of the Colony should be strengthened by the establishment of a sufficient force of field artillerymen, and that efficiency and discipline should be maintained in such force when established as aforesaid: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Power to embody field artillery.

1. The Governor shall cause such number of fit and able men as Parliament shall, from year to year, provide for, to be embodied to serve as a field-artillery force within the said Colony or beyond the borders thereof as occasion may require.

Name of force.

2. The force so embodied shall be called "The Cape Field Artillery."

Officers to be appointed by Governor.

3. It shall and may be lawful for the Governor, as occasion shall require, to appoint and issue Commissions to a sufficient number of officers of such rank as may be required for the purposes of such force, and all such officers shall be under and subject to the orders of the Commandant-General of the Forces of this Colony.

Oath of allegiance, &c., to be taken.

4. Every person who shall be enrolled in the said force shall be bound to serve for five years, and shall, upon enrolment, be required to pass a medical examination, and take the following oath or make an affirmation to the same effect before some duly authorised person, that is to say:—"I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law, and that I will faithfully serve in the Cape Field Artillery for five years, unless I shall be sooner discharged. So help me God." Provided always that such members of the Cape Mounted Riflemen as shall be embodied in the said force shall not be bound to serve, unless by special agreement, for a longer period than the residue of the period for which such persons may be bound to serve in the force, called "The Cape Mounted Riflemen."

Necessary arms and equipments to be provided.

5. It shall and may be lawful for the Governor, from time to time, as occasion shall require, to provide pieces of artillery and other arms, ammunition, and all necessary equipment for the said

¹ Cape Field Artillery amalgamated with C. M. R., and ceased to exist as a separate corps on 1st July, 1884. See *Gazette* notice No. 920 of 11th Sept., 1884.

force, and to procure for such force all necessary barrack and store accommodation.

No. 18—1880.

6. It shall and may be lawful for the Governor, from time to time, to make such regulations respecting the training, arms, accoutrements, ammunition, clothing, and equipment of such force, and respecting all other matters connected therewith, as may be required for promoting the discipline and efficiency thereof.

Regulations to be made.

7. All and singular the provisions of section nine, and every subsequent section of Act No. 9 of 1878, and the schedule to the said Act shall, *mutatis mutandis*, apply to the force by this Act constituted: Provided always that the words "then commanding officer" shall be substituted for the words "field officer" or "field officers of the wing," wherever such words occur in the said Act No. 9 of 1878: Provided, further, that officers of the Cape Mounted Riflemen shall be eligible to be members of boards of officers under this Act.

Certain sections of Act 9 of 1878, *mutatis mutandis*, to apply.

8. This Act may be cited for all purposes as the "Cape Field Artillery Act, 1880."

Short title.

No. 16—1880.]

[July 29, 1880.]

An Act to Indemnify certain Persons in regard to Acts done in carrying out recent Military Operations against Enemies and Rebels in Basutoland and upon the Northern Border of this Colony.

[Not Printed.]

No. 17—1880.]

[July 29, 1880.]

An Act to provide for the Management of the Outer or Reserved Commonage of Schietfontein.

[Repealed by Act 18, 1882.]

No. 18—1880.]

[July 29, 1880.]

ACT

To Authorise the Municipality of Aliwal North to Borrow a sum not exceeding Five Thousand Pounds Sterling, for the purpose of Erecting a Town-hall, Market-house, and Offices for the use of the Inhabitants of the Town of Aliwal North. (¹)

WHEREAS it is expedient to provide the inhabitants of the town of Aliwal North with a suitable Town-hall, Market-house, and Offices: And whereas, at a public meeting of resident householders convened for that purpose on the 16th day of April, 1880, it was resolved, by the unanimous consent of all such householders then present, that the commissioners of the said municipality of Aliwal

Preamble.

¹ See Act 10, 1887.

No. 19—1880.

North be authorised to carry out the objects before mentioned at a cost not exceeding the sum of five thousand pounds sterling: Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to municipality to borrow £5,000.

1. It shall be lawful for the commissioners of the municipality of Aliwal North to borrow, from time to time, such sum or sums of money, not exceeding in the whole the sum of five thousand pounds sterling, for the purposes aforesaid, and to impose, for the purpose of providing for the payment of the interest or principal, or interest and principal of the moneys aforesaid, rates upon the immovable property situate within the municipality, and liable to be rated for municipal purposes; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner; as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836, section 28.

Interest on loans to be a charge on municipal revenues.

2. As a fund for the payment of the interest upon, and gradual extinction of, the loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said municipality as aforesaid, an annual sum equal to the interest on the whole amount of such loans, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sums shall be annually charged upon and payable out of the revenues of the said municipality, so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

Capital charged upon municipal rates

3. The aforesaid sum of five thousand pounds sterling, or such lesser sum as shall have been borrowed for the purposes aforesaid by the said commissioners is hereby charged upon, and made payable out of, the rates and revenues in the first section of this Act mentioned: Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal, or interest and principal, of the said debt, any funds or moneys coming to them from any source whatever, and not specially appropriated or required for any other object.

Lender to receive a written acknowledgment, as in schedule.

4. The commissioners aforesaid shall grant to the party, or parties, or company, society, or co-partnership, from whom they shall borrow such money as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the aforesaid sum of five thousand pounds sterling; which acknowledgment shall in substance be in the form in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by the chairman and two of the commissioners for the time being of the said municipality.

Loans subject to "Public Bodies Debts Act of 1867."

5. All moneys borrowed for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Separate accounts to be kept of moneys borrowed.

6. The commissioners shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act,

and of the expenditure of such moneys in the construction and maintenance of the said Town-hall, Market-house, and Offices: And the said commissioners shall yearly, as long as any part of the debt contracted under the authority of this Act shall be owing, prepare and deposit in the office of the municipality of Aliwal North, for the inspection, at all reasonable times, of any resident householder of the municipality, an account showing the particulars aforesaid, and giving any other information which the said commissioners shall deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said municipality not later than the 1st day of March in the year next succeeding.

7. The necessary costs, charges, and expenses of obtaining this Act and of obtaining suitable plans, drawings, designs, and specifications for the said Town-hall, Market-house, and Offices may be paid by the said commissioners out of the moneys so to be borrowed as aforesaid. Costs and charges may be paid out of loans.

8. This Act may be cited for all purposes as "The Aliwal North Town-hall and Market-house Act, 1880." Short title.

SCHEDULE.

We, the undersigned, Commissioners of the Municipality of Aliwal North, do hereby acknowledge that the Commissioners, in their said capacity, are indebted to _____ in the sum of _____, for so much money borrowed by the said Commissioners for the purposes set forth in "The Aliwal North Town-hall and Market-house Act, 1880"; and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage for and on behalf of the Commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert according to the agreement the rate of interest and the times of payment thereof, and the date or dates or other conditions upon which the principal of the debt shall become payable).

Given under our hands, at Aliwal North, this _____ day of _____, 18____.

A.B., Chairman of Municipality.
C.D., } Commissioners.
E.F., }

Witnesses :

G.H.,
I.K.

No. 19—1880.]

[July 29, 1880.]

An Act to apply a Sum of ' Money for the Service of the Year ending the 30th day of June, 1881.

[Spent.]

1694

ORANGE RIVER BRIDGES LOAN.

No. 21—1880.

No. 20—1880.]

[July 30, 1880.

An Act to provide for the Voluntary Registration of Births within the several Divisions of this Colony.

[Repealed by Act 7, 1894.]

No. 21—1880.]

[July 30, 1880.

ACT

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

Preamble.

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

Authority to raise the sum of £41,237.

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

- (a) For the works of the said bridges over the Orange River, in addition to the amount provided by Act No. 26 of 1874, the sum of £40,000 (forty thousand pounds).
- (b) For discount and charges of raising loan, the sum of £1,237 (one thousand two hundred and thirty-seven pounds).

Borrowing powers.

2. The several borrowing powers and other provisions contained in sections two to eight inclusive of Act No. 6 of 1877 shall, *mutatis mutandis*, apply to all sums of money borrowed under the authority of this Act.

Short title.

3. This Act may be cited as "The Additional Orange River Bridges Loan Act, 1880."

No. 22—1880.]

[July 30, 1880.

ACT

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

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

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

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

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

1 See Act No. 3, 1881.

No. 22—1880.

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

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

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

Borrowing powers of Act 6 of 1877 to apply.

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

Accounts to be laid before Parliament.

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

Short title.

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

No. 23—1880.]

[July 30, 1880.

ACT

(1) For the Incorporation of the Municipality of East London.

WHEREAS it is expedient that the municipality of East London should be incorporated and shall have perpetual succession, and possess, exercise, and enjoy all the rights and privileges which municipal corporations can or may possess, exercise, or enjoy in this Colony :

Preamble,

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

1. The Ordinances No. 9 of 1836, No. 2 of 1844, No. 8 of 1848, No. 5 of 1852, and the Act No. 13 of 1864, in so far as the same are applicable to the municipality of East London, shall continue to be of legal force and operative as heretofore, until after the first election of councillors, as provided for in and by this Act; and immediately upon and after the names of the councillors shall have been published, as hereinafter provided, the said Ordinances and Act, in so far as the same apply as aforesaid, and also so much of the Act No. 8 of 1877, or any other law as is inconsistent with this Act, shall be and the same are hereby repealed: Provided that the municipal regulations in force at the time of taking effect of this Act shall continue to be in force and operation until such time as the same shall be altered or new ones published under this Act: And provided also, that the commissioners and officers of the municipality who may be in office at the time of the taking effect of this Act shall, until after the first election of councillors under this Act, remain in office, and exercise all such powers and authorities as previous to the taking effect of this Act were vested in them: And provided also, that all municipal rates assessed before the taking effect of this Act, and then due and in arrear, shall be deemed and taken to have been assessed under this Act, and the assessment roll in use at the time of the taking effect of this Act shall continue to be used until a new one shall be completed under this Act.

Repeal of certain statutes.

Existing rules to be in force till new ones are framed.

2. The municipality of East London shall comprehend the town and township of East London, including all common lands and property within the area formed by the boundaries hereinafter more particularly mentioned and described, to wit :

Boundaries of the municipality.

West Bank of the Buffalo River.—From the mouth of the spruit which bounds sections 2, 1, 4, and 5, following that spruit to its eastern source at the Fort Grey Road; thence along that road to the continuation of the south-eastern boundary of section 8; thence along that boundary to the Buffalo River; thence down that river to the sea; thence along the coast line to the spruit as aforesaid.

No. 23—1880.

East Bank of the Buffalo River.—From the mouth of the spruit in the bend of the Buffalo River above the said spruit to the common beacons of lots 112 and 113; thence along the south-eastern boundary of the said lot 113; thence along the southern boundary of lots 67 and 68 to the Amalinda River; thence up that river to the south-west corner beacon of lot 74; thence along the south-eastern boundaries of lots 74, 73, 72, 23, and 70, to the most easterly corner of lot 70; thence in a direct line to the south-easterly corner beacon of lot 24 (Tapsen's lot) on Mr. Griffith's plan of survey; thence to the western corner beacon of lots 2 and 3 (German immigrant lots); thence along the western boundaries of sections 3, 25, 26, 43, and 44, to the south-western corner beacon of 44; thence following the southern line of lot 44, the western and southern boundaries of lot 50, the south-western boundary of lot 51, and the southern boundary of lots 53, 54, 55, 56, and 57 to the East London and Maclean Road; thence following that road to the P'hlanza River; thence as indicated on the sketch plan, framed by Mr. A. E. Murray, Government surveyor, dated 14th June, 1876, down the P'hlanza River aforesaid to a point near its mouth, marked A on the said plan; thence in a straight line to a point marked F; thence in a straight line to a point marked C; thence in a straight line to a point on the west side of the Inkyanza River, marked D; thence in a straight line to a point on the Limekiln Spruit, marked E; thence down that spruit to its mouth, marked F; thence following the coast line to the harbour works fence, marked G; thence along that fence to its northern corner, marked H; thence along the same fence to its junction with the Guigney River; thence down that river to the Buffalo River; thence up the Buffalo River to the point first named.

Creation of body corporate and its title.

3. There shall be in the said municipality a body corporate, which shall take and bear the name of "the Mayor, Councillors, and Townsmen of East London," and by that name shall have perpetual succession, and sue and be sued, and shall have a common seal; and shall, by the council thereof, do all acts, and have and enjoy all the rights and privileges which bodies corporate, as such, may do and have.

Constitution of municipal council.

4. The council of the said municipality shall consist of twelve members one of whom shall be the Mayor.

Division of the municipality into wards.

5. (1) The said municipality shall consist of three wards, as follows:

Ward No. 1.—That portion of the municipality which is situate on the west bank of the Buffalo River.

¹ See § 20 Act 11, 1895.

Ward No. 2.—That portion of the municipality which is situate between the east bank of the Buffalo River and Union-street, or a line drawn either way to points on the Buffalo River and sea beach respectively in continuation thereof, being the whole of the township hitherto known as East London East.

No. 29—1890.

Ward No. 3.—The whole of the remaining portion of the municipality not included in either of the foregoing wards.

6. The said council may, from time to time, if they think fit, alter the boundaries of all or any or either of the said wards, and extend the limits of the town or municipality, and may purchase and hold adjoining properties for the purpose of extending the common pasturage lands: Provided that the council shall, before making any such alteration, increase, extension, or purchase, give, in one or more of the newspapers published in East London, public notice ⁽¹⁾ of the alteration, increase, extension or purchase intended to be made; which notice shall be published for not less than thirty-one days before any such alteration, increase, extension, or purchase shall be made; and a copy of the same shall also be posted in some conspicuous place upon or near the municipal office or market place: and in case six townsmen or more or any other person who may consider that his right will be interfered with by the proposed alteration, increase, extension, or purchase shall, within the time aforesaid, object to the same in writing, or to the objects, terms, and conditions thereof, the notice and the objections shall be forwarded to the Governor for his consideration and consent; and on such consent being obtained, but not otherwise, the council may complete the proposed alteration, increase, extension, or purchase aforesaid.

Boundaries of wards may be altered.

7. Four ⁽²⁾ councillors shall be elected for each ward in manner hereinafter mentioned.

Four councillors to each ward.

8. Every person of full age who is the owner or occupier of any immovable property in any ward of the municipality of the yearly value of not less than ten pounds sterling, in regard to which property no municipal rate shall at the time of any election of councillors, or a councillor of such ward, be due, and in arrear, shall be qualified and entitled to vote at such election, in respect of such ward: Provided that his name shall appear in the list of voters to be framed as hereinafter mentioned, and as a ratepayer in the assessment roll of such ward, which shall have been made next or latest before the election at which such person shall be elected: Provided also that the assessment roll in existence at the time of the taking effect of this Act shall be deemed and taken to have been framed under this Act, and that all municipal rates assessed before the taking effect of this Act, and then due and in

Qualification of voters for councillors

¹ See § 21 Act 11, 1895.

² Three. See § 22 Act 11, 1895.

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arrear, shall be deemed and taken to have been assessed under this Act.

9. [Repealed by § 15 Act 11, 1895.]

Requisition of candidates necessary.

10. No person shall be deemed a candidate at any election, nor qualified to be elected a councillor for any ward until such person shall have been invited to become such candidate by a requisition, signed by at least five qualified voters of such ward, and shall have transmitted such requisition, with the acceptance thereof, addressed to the Town Clerk, and delivered at his office between the hours of ten a.m. and three p.m., at least fourteen days before such election is appointed to take place.

Case of joint occupiers.

11. When any property as aforesaid is occupied by more persons than one, each of such co-occupiers shall, subject to the provisions in the preceding sections mentioned, be entitled to vote in respect of such property, or eligible to be elected a councillor; Provided the yearly value of such property when divided by the number of such co-occupiers shall be equal to the sum of ten pounds sterling or twenty pounds sterling respectively for each such co-occupier.

Persons disqualified to be councillors.

12. (1) The following persons shall be disqualified from voting or being elected as councillors at any election under this Act, viz., persons who have been convicted of treason, murder, rape, theft, receiving stolen goods knowing them to have been stolen, fraud, perjury, forgery, or any attempt to commit any of such offences, and who shall not have received a free pardon.

Town clerk to make yearly list of voters.

13. (2) On or before the first Saturday in November next after the passing of this Act, and afterwards on or before the first Saturday in November in every year, the Town Clerk shall cause a list to be made in alphabetical order for each ward of all persons qualified to vote at the election of councillors for each ward, setting forth the christian and surname of each at full length, the place of abode, and the nature of the qualification of such person.

Publication of such lists.

14. The chairman of the commissioners until the appointment of a Mayor, and afterwards the Mayor, shall forthwith cause such lists to be published by affixing the same to some conspicuous place upon or near the municipal office or market-place: and to every list so published shall be subjoined a notice, signed by such chairman or Mayor, that all objections thereto and claims to be inserted therein will be heard and determined at some time and place to be named in such notice, and to be fixed by such chairman or Mayor.

Provision for hearing objections to lists

15. The chairman of the commissioners and two commissioners, until the appointment of a Mayor and council under this Act, and afterwards the Mayor and two councillors, to be selected for that purpose by the commissioners or councillors, as the case may be, shall have the power after hearing objections and claims in open court, to strike out of any list the names of persons not entitled

¹ See § 15 Act 11, 1895.

² See § 16 Ibid.

to be therein, and also to insert in any list the names of all persons entitled to be, but not appearing in such list.

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16. The list so settled shall be called "The Townsmen's Roll of East London," and shall be brought into use on the first day of January in each year, and shall continue to be used until the next succeeding list shall be brought into use.

Title of the lists.

17. The chairman of the commissioners and afterwards the Mayor shall immediately after the settlement of such roll publish the same in accordance with the sixty-third section of this Act.

Republishing of lists when settled.

18. On the last Saturday in February next after the passing of this Act, an election shall be held in manner hereinafter provided for twelve councillors, being four for each ward who shall enter upon their office upon the first day of March following, and thenceforth on the last Saturday in February in each succeeding year an election shall take place for three councillors, being one for each ward, excepting in every third year when such election shall be for six councillors, in terms of the thirtieth section of this Act. All occasional vacancies shall be filled up as hereinafter mentioned.

Yearly election of councillors.

19. The chairman of the commissioners, until the appointment of a Mayor under this Act, and thereafter the Mayor shall at least twenty-eight days before the day appointed for the election of a councillor or councillors by notice to be published as hereinafter provided, notify the times and places at which and the ward or wards for which the election or elections will be held, and shall, by such notice require that all requisitions and acceptances thereof under the tenth section of this Act be sent in to him fourteen days at least before the day appointed for such election.

Times and places of election to be notified.

20. The Town Clerk shall at least ten days before the day appointed for any election cause the names of the candidates, together with the names of persons who have signed such requisition, to be published in manner hereinafter mentioned.

Publication of requisitions to candidates.

21. Every meeting for the election of a councillor or councillors shall be presided over by a polling officer, to be appointed for that purpose by the Mayor, or, before the appointment of a Mayor under this Act, by the chairman of the commissioners. The poll shall commence at ten o'clock in the forenoon, and close at three o'clock in the afternoon of the same day.

Mayor to preside at meetings of council.

22. At every election of a councillor or councillors every person whose name appears on the townsmen's roll for any ward then in use (a copy of which shall be furnished to each polling officer for his guidance at such election) shall be entitled to vote in such ward in person for any candidates, not being more than the number to be elected for such ward, but not elsewhere or otherwise.

Voters in each ward to have as many votes as there are vacancies.

23. The votes shall be taken by ballot in manner following: that is to say, every voter shall, in the polling-booth, in the presence of the polling officer, set his name on a paper provided by the returning officer against the name of the candidate or candidates for whom he intends to vote, and hand the same to the

Voting to be by ballot.

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polling officer, who shall forthwith deposit such paper in a locked-up box to be provided for the reception of such papers and such box shall not be opened until after the close of the poll, and then only by the chairman of the commissioners, or Mayor as the case may be, in the presence of the polling officer only. No voter shall be allowed to give more than one vote to one candidate.

What questions
may be asked of vo-
ters.

24. No inquiry shall at any election be permitted to be made as to the right of any person to vote, except as follows, that is to say, the polling officer may of himself, or at the request of any qualified voter, put to any voter the following questions, or either of them and no others :

1st. Are you the person whose name appears as A. B. on the Townsmen's roll of East London, and on the voting paper now handed in by you ?

2nd. Have all municipal rates assessed upon the immovable property now occupied (or owned) by you been paid ?

And in case it shall be proved to the satisfaction of the polling officer before accepting the voting paper or of the chairman or Mayor as the case may be before declaring the poll that the person has made a false answer to either of such questions, the polling officer shall reject and the Mayor or chairman as the case may be expunge the vote of such person.

Penalty for false
answers.

25. If any person shall wilfully make a false answer to either of the above questions, he shall in addition to the disqualification before mentioned be liable to a penalty not exceeding ten pounds to be recovered in the Court of the Resident Magistrate, and in default of payment may be imprisoned for a period not exceeding one month, if such penalty be not sooner paid.

Candidates may be
present at polling.

26. All candidates shall be entitled to be present personally or to be represented by proxy in the polling booth (but not at the polling table which shall be properly isolated) during the time the polling is going on, but shall not interfere in any manner in the election. Any person interfering in the election or holding intercourse in the polling booth with any voter previous to such voter recording his vote may be forthwith removed from the polling booth and prohibited from entering the same during the hours of election; and any person so interfering and refusing to obey the orders of the polling officer to leave the booth or re-entering the same during the hours aforesaid, shall for each act of interference be liable to a penalty of not more than five pounds, to be recovered in the Court of the Resident Magistrate.

If number of can-
didates only equal to
vacancies, they are to
be declared elected.

27. In the event of the number of duly qualified candidates invited to stand as councillors for any particular ward, and accepting the requisition mentioned in section ten, being not more than the number required to fill the vacancies in the representation of such ward, the Mayor, or before the appointment of a Mayor, the chairman of the commissioners, shall forthwith declare such candidate or candidates duly elected.

28. On the opening of the ballot box as hereinbefore mentioned the person or persons having the greatest number of votes duly recorded shall be taken to be duly elected, but if at any election the ballot shall by reason of an equality of votes be rendered indecisive, the returning officer shall thereupon publicly determine by lot which of the persons for whom an equality of votes has been given shall be elected.

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How if votes for two or more candidates equal.

29. When the chairman of the commissioners or the Mayor as the case may be, has ascertained the names of the parties so elected, he shall forthwith cause a list thereof with the names of the wards for which they are respectively elected to be published in one or more of the local newspapers.

List of elected persons to be published.

30. (1) Of the persons so elected as before mentioned the councillor who for each ward respectively shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year, from the first day of March next after the passing of this Act, and the councillor who for each ward respectively shall have been elected by the next smallest number of votes shall vacate his seat at the end of two years from the said first day of March, and the remaining two councillors who for each ward respectively shall have been elected by the greatest number of votes shall vacate their seats at the expiration of three years from the said first day of March; and upon the retirement of such councillors respectively they shall be succeeded by councillors who shall be elected as hereinbefore provided, so that at every subsequent yearly election there shall be elected one councillor for each ward, except at every such third yearly election when there shall be elected two councillors for each ward, every such councillor so elected entering on his office on the first day of March in each year, and continuing therein for three years thereafter; and every retiring councillor shall be eligible for re-election: Provided that in case by reason of any two or more councillors in any ward having been elected by an equal number of votes, or in the event of the election having been an uncontested one, it shall be uncertain in what rotation they shall vacate their seats the Mayor shall at the first meeting of councillors decide by lot the rotation in which such person shall retire.

Provision for retirement of councillors in rotation.

31. At the first ordinary meeting following the first general election of councillors under this Act, the councillors shall choose from among themselves by a majority of votes the Mayor of the town, who shall hold office for one year; and thereafter at the first ordinary meeting following every annual election of councillors, the councillors for the time being shall in like manner, choose from among themselves the Mayor of the town for the ensuing year, and such Mayor shall forthwith enter upon his office and shall continue therein for the year next ensuing: Provided that

Mayor to be elected by councillors.

¹ See § 23, Act 11, 1895.

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the chair at any meeting of the council for the election of Mayor shall be taken by some member of the council, chosen by a majority of votes of councillors present, and in case of an equality of votes by lot, who is not a candidate for the office of Mayor: And provided also, that any person who may have filled or may have held the office of Mayor may be re-elected to such office. In case of an equality of votes at any election of Mayor, the question between the candidates having such an equal number of votes shall be determined by the presiding councillor by lot.

Also auditors of
municipal accounts.

32. At the second ordinary meeting after the annual election of councillors, the council shall appoint from amongst the townsmen two persons to be auditors of the accounts of the council, who shall continue in office until the same day in the following year, subject to the provisions of section thirty-five of this Act: Provided that no person shall be eligible to be an auditor who shall be a councillor, treasurer, clerk, or other officer of the municipality, and in case of an equality of votes at any election of auditors, the Mayor shall determine by his casting vote which of the persons for whom an equal number of votes shall have been given shall be elected in case such persons cannot both be elected.

Provision in case
office of mayor va-
cant.

33. If the Mayor or any councillor shall die, resign, become insolvent, or be absent from the ordinary meetings of the council for a period of three calendar months without the leave of the council (such leave in no case to be for more than three months during the year of office), his office shall be declared vacant, and another Mayor or councillor, as the case may be, shall be chosen or elected in his place in manner aforesaid, and shall hold office for the remainder of the term for which the Mayor or councillor, who has vacated office, would otherwise have remained in office: And provided that the Mayor shall in no case resign his office without giving one month's notice to the council.

In case of office of
auditor being vacant

34. If any auditor shall die, resign, assign his estate, become insolvent or incompetent, or in any way disqualified, his office shall at once become and be declared vacant, and the council shall, at the first ordinary meeting thereafter, appoint another auditor to fill the vacancy.

No councillor to
have municipal con-
tracts.

35. No member of the council, or person holding any office in the gift or disposal thereof, shall, directly or indirectly, have any share or interest in any contract with or employment by the council otherwise than as a shareholder in any bank or fire insurance company with which such council may transact business, or shall receive any fee, reward, or compensation for any vote given or act performed in his capacity as councillor or officer. And such councillor or officer who shall contravene the provisions of this section shall thenceforward cease to be a member of the council or to hold such office as aforesaid, and in case of an officer, shall not be entitled to any pension or compensation for loss of office, and shall further be liable to a penalty not exceeding fifty

pounds: Provided that nothing herein contained shall apply to the case of a lease *bonâ fide* entered into between the council and a councillor or officer, as landlord, and tenant, or to the case of an officer of the council receiving the ordinary salary or remuneration for the performance of the duties of his office.

36. The council shall have power and authority to do the following acts:

Powers of council.

To make, construct, alter, keep clean and in repair, the roads, streets, dams, furrows, sewers, drains, culverts, and bridges within the limits of the municipality.

To excavate, construct, and lay down within the limits of the municipality watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, wells, and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair, or to grant leave to any person, or company of persons, to lay down pipes, or to execute any other like works.

To establish and retain the sole right to any ferry, pontoon, bridge, or other public means of crossing the Buffalo River.

To make provisions for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with hose, pipes, and all necessary utensils, and to establish and to maintain a fire brigade.

To establish, alter, regulate, and maintain markets and fairs, and to set apart places for these purposes.

To light or provide for the lighting of the streets.

To hold, occupy, lease, or purchase any land, and to erect, lease, or purchase, maintain, and keep in repair any building or buildings for any municipal requirement or purpose.

To lease, purchase, or erect and maintain such school buildings and manage such schools as the council shall, from time to time, think proper, and the exigencies of the times may render necessary and advisable, and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such schools should be required under any Act which may now be or may hereafter be in force for this purpose: Provided, always, that the ordinary revenue of the town be not used in the lease, purchase, erection, or maintenance of any school buildings.

To cause all buildings which shall be certified in writing by any three master builders to be unsafe to the public to be placed in a state of security, and, if necessary, removed at the expense of the owners of such buildings: Provided that notice in writing shall have been first given by the

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council to the owner or owners of such buildings that such buildings are in a state of insecurity, and that the same must be removed or placed in a state of security within a reasonable time.

- To cause all buildings used by the public capable of containing more than two hundred persons to be provided at the expense of the owner or owners of such buildings with sufficient and proper means of egress in cases of fire or panic: Provided that notice in writing shall have been first given by the council to the owner or owners of such buildings that the existing means of egress is insufficient, and must be made sufficient within a reasonable time.
- To erect and maintain proper weighing machines for ascertaining the weight of wagons and other carriages and their loads.
- To grant permits and licences for any purposes, to be defined by the municipal regulations, and to make such charges for the same as may be so defined.
- To levy tolls and dues, as hereinafter provided.
- To make such provisions for the isolation of cases of dangerous contagious diseases affecting persons or animals within the municipality, and for the suppression and prevention of the same as shall be necessary from time to time, and according to law.
- To define the width and direction of such streets as may be made on private property by the owners thereof; which streets when so defined, shall thereupon, upon application by the owners of the property, become public streets.
- To make provision for the removal and disposal of all night soil, stable litter, excrement, filth, slops and refuse from public and private premises and from the streets, and to construct and maintain cemeteries, and generally to devise and carry out all such measures as shall appear to the council to the advantage and convenience of the townsmen.
- To establish and provide for the management of public pounds within the said municipal limits.
- To assize weights and measures according to the standard in force.

Provisions of Act of 1857 to apply.

37. The provisions of Act No. 15 of 1857, entitled "An Act for enabling Municipalities to obtain Additional Police by contributing towards the Expense thereof," shall *mutatis mutandis*, continue applicable to the Municipality of East London hereby constituted; the words "Town Council" being read in place of the words "municipal commissioners" or "commissioners."

What municipal regulations may be framed.

38. (1) It shall be lawful for the council at any meeting at which not less than nine of the members shall be present, and agreeing

¹ See §§ 3-7, Act 11, 1895.

thereto, by a majority to frame bye-laws, rules, and regulations as to the registration of births and deaths within the municipality, as to the compulsory vaccination of all persons residing within the municipality, the distribution of water to all such persons, the inspection of public and private wells, tanks, cisterns, and reservoirs, and the temporary or permanent closing of any such in which the water is so polluted as to be injurious to public health, the inspection, construction, and cleaning of ashpits, privies, cess-pools, and middens, and of stables, kraals and enclosures wherein horses, horned cattle, sheep, goats, pigs, or other live-stock may be stabled, kraaled, or kept; the times and places for slaughtering cattle, sheep, or goats within the municipality, and the state and condition of slaughter-houses or enclosures, skin stores, tanneries, and wool-washeries within the municipality, the confining or killing of dogs, pigs, goats, and fowls, the appointment of one or more competent persons to examine meat and other provisions, milk, spirituous and other drinks offered for sale, and who, in case of such meat, provisions, or drinks being found unfit for human food or drink, shall be empowered to cause the same to be destroyed; the prevention, abatement, and removal, of nuisances, and the recovery of the expenses thereby incurred from the person or persons committing or permitting such nuisances; what acts of commission or omission, neglect or refusal shall be deemed to constitute a nuisance, the weight of loads to be carried through and upon the public streets and roads within the municipality; the undue obstruction of the public streets and footpaths by carriages or otherwise, and securing that the footpaths shall be for the use and enjoyment of foot passengers; as to the registration, rates of charge and conduct of coolies; to make all such sanitary and other regulations for the preservation of the health of the inhabitants of the town, and of natives and others residing or staying within the Native Location as may be deemed advisable; as to the management of the common pasturage lands of the municipality; the number and description of cattle which each resident householder (who for the purpose here specified shall be deemed and taken to be a person occupying immovable property within the municipality of the yearly value of not less than ten pounds), shall be allowed to depasture on such lands; as to the portion or portions of the commonage upon which carriers and others frequenting or passing through the municipality, or attending the markets thereof may depasture their stock, as to the establishment, continuance, management, and regulation of public pounds within the municipality, the erection of toll-bars and the imposition of tolls for the maintenance and repairs of the public streets and roads within the municipality, the establishment of one or more ferries, pontoons, bridges, or other public means of crossing the river Buffalo, and levying of tolls in connection therewith; as to the user, or non-user, of the streets and public places within the

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municipality for holding of public auctions, and the imposition of reasonable tolls and dues to be paid to the council in respect of such use; the licensing of any boats, cabs, carriages, or vehicles of any description, not being Government property, plying for hire within the limits of the municipality; the granting of licences or permits for digging or getting brick, clay, or gravel, or quarrying stone or cutting fire-wood on the commonage, and generally as may seem meet for the good rule and government of the municipality, and as may be expedient for the proper working of the powers thereby given, and as may appear necessary for the purpose of carrying out the provisions of the sixtieth section of this Act as well as all the other provisions of this Act and all such measures as shall appear to the council to be for the benefit, convenience, or improvement of the municipality, and of the health and comfort of the inhabitants thereof, with power, from time to time, to alter, vary, or rescind all or any of such bye-laws, rules, and regulations, and to frame such others as may from time to time appear expedient: Provided that no such bye-law, rule, or regulation, nor any alteration, variation, or rescindment thereof, shall be of force until the same has been published, as is in the sixty-third and sixty-fourth sections of this Act provided, for twenty-eight days (together with a notice calling upon all townsmen who may have any objections to the same, to lodge such objections in writing within the period aforesaid), and thereafter shall have been submitted by the council to the Governor (together with the objections, if any, that may have been so lodged), and shall have been approved of by him with the advice of the Executive Council, and published in the *Government Gazette*.

Published regulations to be deemed duly made.

39. After any municipal bye-law, rule, or regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it, to prove that the required number of members of the council was present at the meeting at which such bye-law, rule or regulation was framed.

Power to impose fines.

40. It shall be competent for the council by any such bye-law, rule, or regulation, as aforesaid to provide for punishing the contravention thereof by a fine not exceeding ten pounds, and in default of payment of such fine, to imprisonment unless such fine be sooner paid for any period prescribed by such regulation not exceeding three months.

Power to establish tolls.

41. It shall be lawful for the council, by any municipal regulation as aforesaid, to impose such tolls or dues as may be reasonable on all persons making use of any road, street, ferry, pontoon, bridge, or market-place, within the municipality, which the council is hereby empowered to make or maintain, and in case of non-payment thereof, to recover the same by legal process, or in such other manner as may by any such municipal regulation be in that behalf provided; but no toll shall be payable by any officer or private of Her Majesty's forces, or any colonial police,

volunteer, or other force, or by any judicial or civil officer, mail-carrier, or other Government servant, while travelling on public duty, or by any person or persons, who under or by virtue of the provisions of a certain agreement bearing date the first day of October, 1874, and made between the Divisional Council of East London and the municipal commissioners of East London, are exempt from payment of such toll, provided that no more than one toll shall be payable in any one day to be computed from twelve o'clock in one night to twelve in the next succeeding night for or in respect of the same vehicle or animal, except such as may be in respect of any ferry, pontoon, bridge, or other means of crossing the Buffalo River.

42. All property and servitudes as heretofore or by this Act vested in the said commissioners, or chairman of the commissioners, and all unsold erven within the municipality's limits, and all municipal pasturage lands, after the taking effect of this Act, and by virtue thereof, are hereby and shall be transferred to and vested in the corporation hereby created, or to and in the Mayor respectively, upon the like trusts and purposes for which the same were originally granted or transferred, and, as to such erven and pasturage lands, subject to the provisions for the sale, leasing, or other disposition thereof hereinafter contained; and in like manner all liabilities or debts lawfully incurred and contracts lawfully entered into by the aforesaid commissioners, acting for and on behalf of the said municipality, shall become the liabilities, debts, contracts, and engagements of the said corporation, and all expenses incurred in the passing of this Act shall also in like manner be charged to the corporation herein created.

Lands and servitudes vested in Town Council.

43. It shall be lawful for the council, by virtue of a resolution to that effect passed at any ordinary meeting at which at least nine members are present and agreeing thereto, by a majority of not less than two-thirds of those present, and with the consent of the Governor, to be duly certified by writing under the hand of some proper officer to raise by public sale, or by mortgage of any land or property vested in the said council, or of any municipal rates, or by debentures or other securities charged upon such land or property or rates, any sum of money which shall be necessary to carry on any important public work, or other municipal purpose, which the council shall deem desirable and the Governor shall approve of: Provided that the said council shall, before applying to the Governor for his consent, give continuous public notice of at least one month of their intention to apply for such consent, in which notice shall be given a full and clear statement of the situation, nature, and extent of the land or property proposed to be sold or mortgaged, or charged by these debentures or other securities, and of the object or purpose for which the money to arise from such sale, mortgage, or issue of debentures, or other securities, is required; and which notice shall further call for objections

Power, with consent of Governor, to raise money on mortgage or debentures.

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to such sale, mortgage, or issue of debentures, or to such object or purpose to be lodged with the council in writing; which objections, *mutatis mutandis*, shall be dealt with in manner provided for objections according to section six of this Act.

Debenture holders
to rank *pari passu* on
municipal property.
Debentures to be
under municipal seal.

44. As often as the said council shall raise money by the issue of debentures, to be charged upon any land or property or rates as aforesaid, the council shall execute to and in favour of any person or persons whom the said council shall propose, a mortgage of the land or property upon which it is intended that the said debentures shall be charged, to be held by such person or persons in trust for the holders of the debentures so issued, which holders shall, according to their respective amounts and interests, rank *pari passu* upon the proceeds of the land or property comprised in the mortgage. Every mortgage aforesaid, or power of attorney for authorising the execution of a mortgage of any land or property under this Act, and every debenture issued under this Act, shall be under the common seal of the said corporation, and shall be executed by the Mayor and countersigned by the Town Clerk. The debentures herein mentioned shall be as near as is material to form No. 1 annexed to this Act, and all transfers of such debentures shall be registered in the books of the corporation herein created.

Fresh debentures
may be issued as old
ones fall due.

45. As often as any mortgage granted or debenture issued under the two last preceding sections of this Act shall be called up or become payable, it shall be lawful for the said council to raise by fresh mortgage of the same land or property mortgaged, or to raise by the issue of fresh debentures, any sum not exceeding the sum then required to be paid off, and the council may raise upon debentures moneys to pay off mortgages, and conversely, may raise by mortgage moneys required to pay off debentures, so long as the same land and property which were charged by the one form of security and none other shall be charged by the other or substituted form of security; provided that it shall not be necessary for the council to obtain the consent of the Governor aforesaid for the granting of any mortgage or the issue of any debentures under the provisions of this section.

Power of leasing
pasturage lands.

46. The council, by virtue of a resolution of not less than nine members present at any ordinary meeting, and agreeing thereto by a majority, may from time to time lease any portions of the municipal pasturage lands for agricultural, garden, building, or trading purposes, for any period not exceeding fourteen years; provided that continuous public notice shall have been given of not less than twenty-one days previous to the intended leasing, setting forth the objects, terms, and conditions of the proposed lease, and requiring any person objecting to the proposed leasing to lodge with the council, within fourteen days after the first publication of such notice, his objection thereto in writing; and in case six townsmen or more, or any other person who may consider

that his rights will be interfered with by the proposed leasing, shall, within the time aforesaid, object to the same, or to the objects, terms, and conditions thereof, the notice and objections shall be forwarded to the Governor for his consideration and decision, and in case such decision shall be in favour of the council, but not otherwise, the council may enter into such lease notwithstanding such objections.

47. The council may, by public tender, after public notice of not less than twenty-one days, grant from time to time privileges of working any quarries belonging to the council, or beneath the municipal pasturage lands, for any term not exceeding five years, upon such terms as to the council may seem fit.

Licences to quarry.

48. No lessee of any such land, or of any quarries, shall assign or sublet the same without the previous consent of the council testified in writing first had and obtained.

Not to be sublet.

49. In case the said council shall require to take or use any land, with or without the buildings, if any erected thereon, for the purpose of making, widening, or improving any street, market or public building, or to dig out or to carry away any materials belonging to any person within the municipality, then in that case it shall be lawful for the said council, by virtue of a resolution of eight members present at any ordinary meeting, and agreeing thereto, and it is hereby authorised and empowered to treat and agree with ever such person for the purchase or hire, as the case may be, of any such land, buildings, or materials as aforesaid, or for the payment of consequential damages, and generally to enter into such contract or contracts relative to the obtaining of any such land, buildings, or materials, upon any such terms and conditions as may be mutually agreed upon between the council and said proprietors, and in case any such person and the said council shall not agree upon the purchase money, hire, or other recompense to be respectively given by the one party and accepted by the other, then the said council may cause to be served upon such person a written notice, offering as recompense or compensation whatever sum of money it shall deem sufficient, and requiring such person to state in writing to the said council, or to some person by it appointed, within fourteen days of the said notice, whether he is willing to accept the sum therein mentioned or not; and in case the person shall neglect or refuse to accept the sum offered, or shall neglect to reply to the said notice, the said council shall, by another notice, in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said council, and for that purpose to transmit to the said council, within a certain reasonable time to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration, and the said council, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of

Powers of council to appropriate certain lands.

No. 23—1880.

submission to be prepared, which shall be signed on behalf of the said municipality by the Town Clerk for the time being, and by the person claiming such recompense, or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, together with a power to the said arbitrators, previous to entering upon the reference, to appoint an umpire, and the decision of the arbitrators, or, in case of difference, the decision of the umpire, shall be final; and the award of such arbitrators or umpire, as the case may be, shall be made a rule of the Supreme Court of this Colony, or of the Court of the Eastern Districts, or of any Circuit Court, and shall be binding and conclusive, and may be pleaded, in bar of any action or proceeding at law brought for, or on account of, the same subject matter: Provided, however, that unless the amount so settled by the arbitrators, or umpire as the value of any property so required by the council or such hire or other recompense shall not be less than three-fourths of the amount demanded by the owner of such property or materials, the council shall be bound to pay the amount of such owner's demand in full, together with the whole costs of and incidental to the reference: And provided further, that all expenses incurred by such arbitration, fees of arbitrators, and legal assistance of whatever kind, shall, except in the case above provided, be considered costs in the case, and shall be paid by the parties, one or other of them, in such manner as the arbitrators or umpire shall direct; and in case such person as aforesaid claiming such recompense or compensation shall neglect or refuse to name some person to be such arbitrators as aforesaid, or to sign the said deed of submission, it shall be lawful for the said council, and it is hereby authorised, to lodge in some joint-stock bank in the Colony the sum of money offered by it as aforesaid, on its first notice in this section mentioned, for and on account of and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property, and the said council, upon so lodging the said sum, shall be authorised and entitled to take or use the said land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been an order by the arbitrators or umpire under the provisions of this section, and as if all acts by law required for vesting in the said council a sufficient title to the use of, or property in, the land, buildings, or materials aforesaid had been duly done and performed.

In case of the appropriation of lands of absent owners.

50. In case the said council, shall for any purpose in the last preceding section, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, in the last preceding section mentioned, the owner of which shall be absent from the Colony, and not represented by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government*

Gazette, and in one or more newspapers published in the town of East London, for not less than once in each month for twelve successive months, describing as accurately as may be, the materials, land, or buildings which are required to be taken or used, and calling by name on the owner of the said land, buildings, or materials, if known, or, if not known, upon the owner, whoever he may be, to take notice that the said council is ready and willing to treat with the owner or any persons duly authorised by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, or materials, and requiring such owner to apply, within twelve months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner shall so apply within the said period, the like proceeding in regard to the agreeing for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner had from the first been in actual occupation, and in case such owner shall not apply to the said council within the said period, it shall be lawful for the said council to appoint some competent person to be approved of by the Civil Commissioner of the division, to appraise the value of the land, buildings, or materials required, and such persons shall make oath before some Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value, and thereupon it shall and may be lawful for the said council to pay whatever sum the said land, buildings, and materials shall have been valued at by such persons into the Guardian's Fund to the credit of the person or persons entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105 of 1833, in regard to moneys placed in the said fund belonging to the persons absent from the Colony; and the said council upon so paying the said sum shall be authorised and entitled to take or use the land, buildings, or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in, the land, buildings, or materials aforesaid had been duly done and performed.

51. All acts, matters, and things hereby authorised or required to be done by the council, and all questions that may come before it, shall, except as hereinafter excepted, be done and decided by the majority of councillors who shall be present at any meeting at which not less than seven members of the council shall attend: Provided that nothing herein contained shall extend to alter or affect the provisions of the thirty-eighth, forty-third, forty-fifth, forty-ninth, fiftieth, and fifty-ninth sections of this Act.

Quorum of council.

52. The ordinary meeting of councillors following the first general election of councillors under this Act shall be held on the

Ordinary meetings.

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first Thursday following such election, and all subsequent ordinary and special or extraordinary meetings of the council shall be held as directed by the municipal regulations, and all meetings of the council shall be open to the public.

In absence of mayor
a chairman to be
chosen.

53. At every meeting of council, the Mayor, if present, shall preside, and in case of his absence, the councillors present shall elect a chairman from among themselves, who shall thereupon and during such absence have authority to sign all documents and do all such acts as herein is provided shall be done by the Mayor. In all cases of equality of votes the Mayor or chairman, as the case may be, shall have a second or casting vote.

Minute book to be
kept.

54. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and shall be read and confirmed at the next succeeding meeting, and signed by the person presiding thereat. All such minutes shall be deemed and taken to be original minutes and such books shall and may be produced and read as *prima facie* evidence of all the proceedings therein recorded in any proceeding, civil or criminal, in any Court.

Committees may be
formed.

55. It shall be lawful for the council from time to time to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as may seem fit, for any purpose which, in the judgment of the council, would be better managed by means of a committee: Provided always that the proceedings of every such committee shall be regularly entered in a minute book and submitted to the council for its approval, and the Mayor shall *ex officio* be a member of all such committees.

Town clerk and
treasurer to be ap-
pointed; also other
necessary officers.

56. It shall be lawful for the council from time to time to appoint fit and proper persons (not being members of the council) to be Town Clerk and Treasurer; and also to appoint such other officers as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so to be appointed such salaries or remuneration as the council shall deem reasonable, and to demand of all such officers such security as the council may deem sufficient; and, unless it shall otherwise be stipulated in the contract of service, to remove all such officers upon notice of not less than three months, or, in case of misconduct without any notice.

Streetkeepers,
police, and others.

57. The said council are hereby empowered, from time to time to appoint and employ such number of street-keepers, policemen, and special constables as shall be required for the protection of the inhabitants and property, streets, and public places within the municipality by day and by night; and to provide all such street-keepers, policemen, and special constables with such clothing, arms, ammunition, and weapons, and appoint to them such duties and hours or time of duty, and shall make such rules, orders, and regulations, relative to such street-keepers, policemen, and special

constables and their duties as shall be deemed fit. All such street-keepers and policemen shall act as constables within the municipality while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers, authorities, privileges, and immunities, and shall be subjected to such and the like penalties and forfeitures as ordinary constables are invested with, or shall or may have or enjoy, or are or may be subject or liable to by law.

58. For the purpose of raising the means for making new roads, streets, market-places and conveniences, bridges, drains, sewers, watercourses, reservoirs, aqueducts, and other waterworks; for the purchase of such lands, or the erection of such buildings, as may be required in or about the execution of the powers hereby given to the Council; for the purchase of water-pipes, fire-engines and appurtenances; for the effecting of all other public works and improvements within the municipality; for lighting the streets and public places in the municipality, and for providing proper and necessary plant for the same; for the purpose of raising the means for effecting the repairs of such works as the council is empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; and for the payment of salaries and all other ordinary current expenses required to be borne by the municipality, the council shall have power to impose, levy, and recover all such market dues, water rates, dog and carriage tax, and other fees and licence moneys as shall be deemed necessary and reasonable, and shall be authorised by any such municipal regulation as aforesaid; and shall also have the power, as often as shall be deemed necessary, to make and levy a rate upon all immovable property within the municipality, the value of such property to be ascertained as hereinafter provided: Provided that no rate shall be made or levied by the council unless there shall be at least nine members of the council present at the meeting at which such rates shall be imposed, and consenting thereto by a majority, and provided also that no rate except a water rate or rate levied for the purpose of raising funds to meet interest or other expenses connected with the construction at any time of a bridge across the Buffalo River shall be imposed upon any immovable property belonging to Her Majesty the Queen or to her Colonial Government (other than such property as may be from time to time occupied for the purpose of a railway station, railway stores and workshops, or residences for the employés on any railway, or which may be occupied by any person or persons on his or their individual capacity); nor on public prisons or police stations, almshouses, or hospitals; nor on any buildings solely appropriated to the purposes of gratuitous education; nor upon any building solely appropriated to public worship, nor upon any burial-grounds: Provided the exemption last mentioned shall not be construed to extend to any separate or

Purposes for which rates may be imposed

No. 23—1880.

adjoining building or buildings in which the teacher or teachers, or his or their family, or any other person or persons, dwell, or which he or they occupy, but shall solely apply to such buildings as are especially appropriated for the education and use of the pupils; and all persons owning or occupying property within the limits of the municipality, except such property exempted, shall be liable to be rated on account of such property to any municipal rate in such manner and to such extent as is in this Act provided; but nothing in this Act contained shall be taken to authorise the assessment of the same rate both upon the owner and the occupier of any one property in respect of such property.

Estimates of re-
venue.

59. The council shall annually in the month of February make an estimate of the amount of money required for municipal purposes, and shall assess such rate or rates accordingly as to the council shall seem fit upon either the owners or occupiers of immovable property, or one or more of such rates upon the owner or owners and one or more upon the occupier or occupiers, provided that any such occupiers' rate as aforesaid shall be assessed only upon such persons as are *bonâ fide* tenants of immovable property and not merely boarders or temporary lodgers therein: And the Council shall give public notice thereof in one or more of the newspapers published in the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the year ending on the last day of February next following, make a supplementary estimate, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year ending on the day aforesaid to levy any rate or rates amounting in the aggregate to more than threepence in the pound on the value of the immovable property subject to such rates without obtaining the consent of the majority of the townsmen present and entitled to vote according to the eighth and eleventh sections of this Act at a public meeting to be called for the purpose of authorising such rate or rates, of the object and the time and place of holding which meeting at least seven days' notice shall be given as provided in the sixty-third and sixty-fourth sections of this Act: And provided that in case of a rate being so levied as aforesaid upon the occupiers of immovable property the owners shall in all cases in which such properties shall be unoccupied or occupied by the owners thereof, be deemed to be the occupiers thereof within the meaning of this Act and liable to the payment of such rate notwithstanding the payment by them of any other rates levied upon the owner or owners in respect of the same property.

Assessment of
rates.

How property to
be valued, &c.

60. The mode of valuing the immovable property within the municipality for rating purposes; of objecting to the valuation; of conducting and hearing of appeals against the valuation; the time during which any valuation shall be in force, and how often the same shall be renewed, and the effect of the valuation, shall be as

directed by any municipal regulations to be from time to time made in conformity with the powers hereinbefore contained.

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61. Every rate assessed by the said council shall become due and payable upon a certain day, to be fixed by the council, of which day, and the amount of which rate, the said council shall give at least twenty-one days' notice in one or more of the local newspapers; and when any such notice shall have been given, it shall be incumbent upon all persons liable to such rate to pay the amount thereof to any person whom the council may have authorised to receive the same on or before the day fixed in the said notice for the payment of the same, on pain of being forthwith liable to legal proceedings, at the suit of the Town Clerk, for the recovery of the amount, and in any suit or proceeding for the recovery of any rate, the valuation roll of the municipality for the time being shall be *prima facie* evidence of the value of the property rated, and it shall not be necessary to prove anything further as to the due assessment of the rate and of due notice thereof having been given than the publication of the notice in the commencement of this section mentioned. The Town Clerk may, in suing for the recovery of any rate assessed upon the owner or owners of immovable property proceed against the owner, or, in case of his absence from the municipality, his agent, or the person receiving the rents for him, or against the occupier, either separately or both of them in one and the same action, each for the whole rate, in the Court of the Resident Magistrate for the district of East London, and recover the same by the judgment and process of such Court; provided that no occupier of any immovable property shall be liable for any rate which became due and payable thereon at any time before he entered on the occupation thereof; and provided, further, that any person who, as occupier, may have become liable for any rate assessed upon either owner or occupier of immovable property as aforesaid shall continue to be so liable, although he may have ceased to occupy the property in respect of which the rate has been imposed; and provided, also, that any occupier who shall have paid any such rate assessed upon the owner as aforesaid shall be entitled to recover the same from the owner, unless there be an agreement to the contrary.

Enforcement of
payment of rates.

62. The Treasurer of the said municipality shall be bound, within a reasonable time, to lodge with some joint-stock bank within the municipality, to be ordered by the council all moneys from time to time entrusted to him or received by him, and shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and on the several matters in respect whereof such sums shall have been received and paid; all such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof, shall yearly, on the last day of February, or at such other times as the council shall appoint, be handed by him to the auditors and to such

Treasurer to lodge
moneys in a bank.

No. 23—1880.

members of the council as the Mayor shall name, for the purpose of being examined and audited; and such abstract or balance sheet, if found correct, shall be signed by the auditors, and shall be forthwith published by the Treasurer in one or more of the newspapers published within the municipality: Provided always, that in no case shall any payment of municipal moneys be made to any person or persons whomsoever, without a warrant in that behalf being first granted under the hand of the Mayor, which warrant shall be in substance and form according to the schedule hereto annexed, marked No. 2.

How payments to be made.

How notices to be published.

63. Every notice calling a public meeting of the townsmen, and every notice or other document or thing required by this Act to be published, shall, where no other mode is prescribed, be published by causing a copy thereof to be posted or affixed in some conspicuous place upon or near the municipal office or market-place, and, when practicable, in one or more of the local newspapers.

How public meetings to be called.

64. All public meetings of the townsmen shall be called by the Mayor of the town by notice under his hand, published in accordance with the sixty-third section of this Act; and no public meeting of townsmen shall be so called by the Mayor, except upon a resolution of the council to that effect, and at all public meetings called by the council the Mayor, if present, shall preside: Provided, always, that the Mayor, upon receiving a requisition, signed by not less than twenty-five townsmen, shall call such public meeting within a reasonable time; and provided, further, that the expenses incurred by the council through the Mayor or any of its officers in calling such meeting shall be defrayed by the persons signing the requisition, unless it shall appear to the council that such meeting was purely connected with municipal purposes, or its object of such a character as, in the opinion of the council, would warrant it in charging the same expenses to the Municipality.

Licence to store gunpowder, &c.

65. The storing of paraffine, gunpowder, or other explosive material, shall not be permitted within the municipality, except in such places as may be approved of and licensed by the council for that purpose.

Burial-ground.

66. No burial-ground shall be established within the municipality without the permission of the council; and so soon as any burial-ground within the municipality, or any portion thereof, shall become, either from overcrowding or from any other cause, in the opinion of the council, dangerous to the public health, the council shall be empowered to give six months' notice that the burials therein must either wholly or partially cease, and after the expiration of such six months it shall not be lawful to continue burials, except such as may be authorised by the council, in such grounds, and any person, after the expiration of such period, who shall, without such authority, inter, or cause any interment to be made therein, shall be liable to pay a fine not exceeding fifty pounds, to be recovered in any competent Court, and in default of

payment of such fine, to imprisonment for not exceeding six months: Provided that, whenever any such burial-ground shall be so closed as aforesaid it shall be incumbent upon the council to provide (at the option of the council), either by means of a new burial-ground or by the allotment of the use of a portion of any existing or new public burial-ground, sufficient accommodation to meet the requirements of any religious denomination whose burial-ground shall have been so closed.

No. 23—1880.

67. All fines and penalties imposed by this Act, or by any municipal regulations made by virtue thereof, shall and may be prosecuted for in any competent Court, and in the name of the Mayor, councillors, and townsmen, and shall when recovered be paid to the Treasurer of the municipality for municipal purposes: Provided that no such prosecution shall be commenced later than three months from and after the date of the act or omission upon which the same shall be grounded.

How fines and penalties to be sued for.

68. Every warrant and power of attorney, deed, contract, or other document to be given, made or entered into by the said council, shall, when no other mode is prescribed, be under the common seal of the corporation, to be affixed thereto by the Mayor, and countersigned by the Town Clerk. And the said common seal of the corporation shall be and remain in the care and custody of the Mayor of the town for the time being.

Municipal documents to be under common seal.

69. This Act may be cited as "The East London Municipality Act, 1880."

Short title.

ANNEXURES.

(SCHEDULE No. 1.)

Municipality of East London.—Debenture Certificate.

No. _____.

£ _____.

This is to certify that the Town Council of East London is indebted to _____ in the sum of _____ for so much money borrowed for the purpose of (here state the object for which the loan has been raised) under and by virtue of the provisions of the East London Municipality Act of 1880, and that the said money is secured by mortgage on (here state the nature of the mortgage or security as contemplated in the forty-third and forty-fourth sections of the said Act); and further that the said debt will be payable and paid by the said Town Council to the said _____ or assigns in the manner following, that is to say (here insert the rate of interest, time of payment, and other conditions agreed upon).

Given under my hand and the seal of corporation, at East London, this _____ day of _____ 18____.

(C. D.),
Town Clerk.

(A. B.),
Mayor.

1720

GRIQUALAND WEST LOAN.

No. 24—1880.

(SCHEDULE No. 2.)

The Treasurer of the Municipality of East London is hereby authorised to pay to _____ the sum of _____, being for (here state the object of the payment), which money was voted by the Council at its meeting on _____ (or being for fixed salary, as the case may be).

East London, _____ day of _____, 18____.

(A. B.),
Mayor.

No. _____.

No. 24—1880.]

[July, 30, 1880.

ACT

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

Preamble.

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

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

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

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

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

expenditure incurred by that State in making or constructing within the territory of the said State the line of railway so connecting with the Natal railway, or any line of railway within this Colony as aforesaid.

No. 24—1880.

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

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

Short title.
When Act to take effect.

SCHEDULE.

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

No. 25—1880.]

[July 30, 1880.]

An Act for applying a Sum not exceeding Five Hundred and Eighty-seven Thousand Four Hundred and Three Pounds Sixteen Shillings and Fourpence sterling, for the purpose of meeting and covering certain Unauthorised Expenditure and a certain Deficiency existing in the Public Treasury.

[Spent.]

No. 26—1880.]

[July 30, 1880.]

An Act to alter in a certain respect the Customs Duties payable in this Colony.

[Superseded by Act 13, 1884]

No 27—1880.]

[July 30, 1880,

ACT

To prevent the Introduction of the Phylloxera Vastatrix into the Vineyards of this Colony.

Preamble

WHEREAS serious and destructive ravages have been committed in the vineyards of various parts of Europe, America, and elsewhere, by the insect known by the name of Phylloxera Vastatrix: And whereas there is reason to fear the introduction into this Colony of this said insect, and it is desirable to prevent by every possible means the occurrence of such a calamity; Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to Governor to prevent importation of grapes, vines, &c.

1. (1) It shall be lawful for the Governor, with the advice of the Executive Council, by proclamation to be published in the *Government Gazette*, either to prohibit absolutely the introduction, or to make such regulations as may, from time to time, be deemed expedient, concerning the introduction into this Colony, from places beyond the boundaries thereof, of all grapes, vines, or cuttings, or portions of vines, trees, plants, tubers, roots, bulbs, or any portion or portions thereof respectively; and also, at the discretion of the said Governor, of all articles or things of any sort or description whatsoever, by means of which the said insect might be introduced into this Colony.

To impose penalty for contravention of proclamation.

2. It shall be lawful for the Governor from time to time to revoke or alter any such proclamation as aforesaid, and also in and by any such proclamation as aforesaid, to provide that persons contravening the same or anything therein contained shall on conviction forfeit any sum not exceeding £500 sterling, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any term not exceeding two years, unless the fine be sooner paid.

Articles attempted to be introduced to be seized and destroyed.

3. It shall be lawful for any person duly authorised in that behalf under the hand of the principal officer of Customs at any port, or the Resident Magistrate of any district, to seize and detain, and, if necessary, to destroy, any article or thing introduced or attempted to be introduced into this Colony after the publication of any such proclamation as aforesaid, and in contravention thereof; and any person who shall obstruct or impede any person so authorised in or about such seizure, detention, or destruction shall, on conviction, forfeit any sum not exceeding one hundred pounds sterling, and in default of payment thereof shall be liable to be imprisoned, with or without hard labour, for any period not exceeding six months, unless the fine be sooner paid.

Persons obstructing liable to penalty of £100.

4. [Repealed by Act 6, 1886, and § 5 of that Act substituted.]

¹ See Act 6, 1886, § 9.

5. In case the said insect shall be suspected to have made its appearance in any vineyard in this Colony, it shall be lawful for any person or persons authorised in that behalf, by writing under the hand of the Colonial Secretary or Under Colonial Secretary for the time being, to enter into and inspect such vineyard, and to adopt all necessary means to ascertain the existence or non-existence of such insect in the said vineyard, and any one obstructing or preventing the person or persons so authorised from entering into and inspecting such vineyard, or in any way interfering with such person or persons in the prosecution of their investigations, shall be liable, on conviction, to pay a fine not exceeding one hundred pounds sterling, or to imprisonment for a term not exceeding six months, unless such fine be sooner paid.

No. 27—1880.
Power to inspect vineyards.

Penalty for obstructing inspector.

6. And whereas the Governor of this Colony, by a certain proclamation, published in the *Government Gazette*, numbered 14 of 1880, and bearing date the 26th day of January, 1880, and purporting to be issued by virtue of the powers vested in him by Act No. 9 of 1876, did absolutely prohibit the introduction into this Colony of all grapes, vines, or cuttings, or portions of vines, plants, tubers, roots, bulbs, or any portion or portions thereof respectively, from any places beyond the limits of the said Colony whatsoever: And whereas doubts have arisen, or may hereafter arise, as to the legal authority of such proclamation or the power of the Governor to issue the same, and it is expedient to remove such doubts: Be it therefore further enacted by the authority aforesaid:

Indemnity for proclamation already published, and proceedings thereunder.

The proclamation of the Governor, published in the *Government Gazette*, being No. 14 of 1880, and bearing date the 26th of January, 1880, shall be taken and deemed, and is hereby declared to be of the same legal force and effect, and all acts done by any officers of the Government under and by virtue of the same shall be taken, and are hereby declared to have been as lawfully and properly done as if the said proclamation had been issued, and such acts done thereunder, after the passing of this Act and in pursuance of the provisions hereinbefore contained.

7. This Act may be cited as the "Vineyards Protection Act, 1880."

Short title.

No. 1—1881.]

[April 20, 1881.

ACT

To provide for the Expenses of Carrying out Military Operations within and beyond the Boundaries of the Colony. (1)

Preamble.

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

Expenditure of £2,000,000 authorised.

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

Sums to be borrowed on debentures or stock.

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

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

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

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

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

Short title.

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

No. 2—1881.]

[May 21, 1881.

Act for Preventing the Spread of Contagious and Infectious Diseases among Cattle and other Animals.

[Repealed by Act 27, 1893.]

¹ See also Act 24, 1878.

No. 3—1881.]

[June 6, 1881.

ACT

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

WHEREAS certain Acts of Parliament, hereinafter mentioned, do not contain sufficient provisions for the creation of funds for the payment of the interest upon, and the gradual extinction of, the debts raised or to be raised upon debentures under the authority of such Acts respectively: And whereas it is desirable that such provisions should be made: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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

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

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

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

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

Redeemed debentures to be cancelled by treasurer.

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

Short title.

¹ But see Act 16, 1886.

No. 4—1881.]

[June 16, 1881.

ACT

To enable the Governor to grant Titles to certain Crown Lands at Mostert Bay.

Preamble.

WHEREAS certain persons have for considerable periods of time occupied certain erven or plots of crown land adjoining the sea shore at Mostert Bay, in the division of Stellenbosch, and have from time to time erected buildings thereon without having received any title to such lands, but without having been interrupted by the Government in such occupation, or in the erection of such buildings: And whereas it is desirable that the Government should receive authority to grant to such of the occupiers of the said erven or plots of land as it may deem expedient titles thereto, upon such terms as to the said Government may, in each case, seem equitable: And whereas it is further desirable that land should be reserved and set apart as commonage for the use and benefit of the inhabitants of Mostert Bay aforesaid: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Governor may grant quitrent titles to occupiers.

1. It shall be lawful for the Governor to grant, upon perpetual quitrent, to such of the several occupiers of ground in the preamble to this Act mentioned as he may deem fit, the whole or any portion of the erven or plots heretofore occupied by them respectively upon such terms as to the said Governor may seem in each case equitable.

Conditions of such grants.

2. All such grants shall state therein the quitrent payable, and shall further be subject to the condition that all existing roads and thoroughfares shall remain free and uninterrupted, unless the same shall be closed or altered by competent authority, and shall also be subject to the several conditions and servitudes contained in the sub-sections to section 10 of Act No. 14 of 1878, (1) marked c, d, e, and f respectively.

Expenses to be paid by grantee.

3. The expenses of survey, erection of beacons, and of the title deed, shall be paid by each grantee to the Civil Commissioner of the district at the time of the issue of title.

Commonage may be set aside.

4. It shall be lawful for the Governor to set aside and proclaim as commonage for the use of the occupiers of erven at Mostert Bay aforesaid, and of the public frequenting that watering place, so much of the crown lands lying between Mostert Bay and Fish Hoek Bay, as he may deem necessary for that purpose, subject, however, to such regulations as may be made from time to time, with the approval of the Governor, and to the right of the said Governor to sell at any future time such parts of the commonage, in small lots or erven, as to the said Governor may seem fit and

¹ See Act No. 15, 1887.

GRAHAM'S TOWN AND PORT ALFRED RAILWAY. 1727

reasonable to satisfy any further demand for the purchase of such lots. No. 5—1881.

5. The provisions of the sixth section of the said Act No. 14, 1878,⁽¹⁾ shall extend and apply to any grants made under the authority of this Act. Sec. 6 of Act 14, 1878, to apply to grants.

6. This Act may be cited as the "Mostert Bay Crown Lands Act, 1881." Short title.

No. 5—1881.] (2)

[June 16, 1881.

ACT

To Authorise the Construction of a Railway from Graham's Town to Port Alfred.

WHEREAS the House of Assembly did on the 23rd day of July, 1880, resolve as follows:—"That this House is prepared to recommend a grant of £50,000 to any company or individual who shall construct a railway similar in all respects to the railway lines already constructed in this Colony, on a gauge of not less than three feet six inches, and at a gradient of not more than one in forty, between Port Alfred and Graham's Town within a period of five years, to be paid upon the completion of the said railway in a condition fit for traffic": And whereas the Legislative Council did, on the 24th day of July, 1880, assent to and concur in such resolution: and whereas it is necessary and expedient to empower the Governor to carry out the said resolution: and whereas it is necessary to confer upon any individual or company who may construct such railway the powers of expropriation of land and other powers necessary for the purpose of such construction: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to contract and agree with any individual or joint-stock company willing to construct the railway in the preamble to this Act mentioned, at his or their own expense, to pay to him or them the sum of £50,000 upon the completion of the said railway within the term of five years from the entering into of any such contract, according to the conditions mentioned in the said preamble.

Governor may give £50,000 to persons making the railway.

2. Such individual or company as aforesaid (hereinafter in this Act styled "the contractor") shall, upon the completion of such contract with the Governor, be and is hereby authorised and empowered to construct and work a railway between Port Alfred and Graham's Town according to plans to be submitted to the Governor, and referred to in such contract, and to erect and work a telegraph along the line, subject to the provisions of the Act No.

Authority of contractor to construct railway.

¹ See Act 15, 1887.

² See Act 33, 1894.

No. 5—1861.

20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

Power of entry on lands for purposes of survey.

3. The contractor may, by any persons thereto duly authorised in writing, enter upon any land for the purpose of surveying the same, and of probing and boring in order to ascertain the nature of the soil or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Contractor may enter on Crown land free of charge.

4. The contractor may, subject to any limitation contained in the contract with the Government, enter upon and take possession of and hold and retain for the purposes of this Act, free of charge, so much of any Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also enter upon any Crown land lying convenient to the said railway, and dig for, excavate, and carry away all stones, clay, or other material required for the purposes of the said railway free of charge: Provided that nothing in this Act contained shall establish any servitude in favour of the contractor upon any such land which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Powers conferred by Road Act 9 of 1858 given to contractor.

5. All and singular the powers which are by the Public Roads Act, No. 9, 1858, (¹) bestowed upon the commissioners of roads in regard to taking and acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the contractor precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided that if any land or materials belonging to any person who shall be absent from the Colony, or whose place of residence shall be unknown to such contractor, shall be required for the making or maintaining of the said railway, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9, 1858, upon such proprietor, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be a sufficient notice to such proprietor: Provided also that it shall not be necessary before the exercise of any such powers as aforesaid that any proceeding shall be taken to settle the amount of compensation or recompense to be paid for or in respect of such land or materials, but it shall be lawful for such contractor to enter upon, take possession of and use any land or materials which may be required for the purpose of the said railway, leaving all questions as to the recompense or compensation to be paid for or

¹ Repealed by Act 40, 1889.

in respect of such land or materials to be settled afterwards in manner provided by the twelfth and thirteenth sections of the said Act No. 9, 1858: Provided, further, that no brick-field, garden, orchard, plantation, or ground ornamentally planted, shall be used for the purpose of depositing or excavating soil without the consent of the owner thereof: and provided, lastly, that the extent of the land taken for the railway shall not exceed in width thirty feet for the formation line, and sufficient additional width required for the slopes, drainage, fencing, and stations and approach roads thereto, and that in so doing as little damage as possible shall be done to such lands as aforesaid.

No 5—1881.

6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858,⁽¹⁾ relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, and to any buildings and works connected therewith, shall, *mutatis mutandis*, extend and apply to injuries done to the said railway and any buildings connected therewith.

Also protection of Sections 56 and 57 of same Act.

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the contractor to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road; and such contractor shall be bound to make all such cuttings, embankments, and approaches with all such culverts and drains and all such repairs as may be requisite to make good the street or road across or over or under the said railway at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains as aforesaid.

Provisions in cases where railway crosses any street or road.

8. Nothing in this Act contained shall prevent any streets or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places: provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings.

Streets or roads may be made crossing railway.

9. It shall be lawful for the contractor to exercise all and singular the powers by this Act conferred upon such contractor, by or through an agent in this Colony, duly appointed; provided that notice of every appointment of any such agent, and of his name and address in this Colony, shall from time to time be published in the *Government Gazette*, and in one or more newspapers published in Graham's Town.

Contractor may act by duly appointed agent.

10. The said railway shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe

Railway not to be opened until certificate of Government officer obtained.

¹ Repealed by Act 40, 1889.

No. 6—1881.

conveyance of passengers, and the cost of obtaining such certificate shall be borne by the contractor.

After 20 years' traffic Government may purchase the railway.

11. At any time after the expiration of twenty years after the date of opening of traffic of the said railway, or of any section thereof, the Colonial Government shall have the right, if so disposed, to purchase from the proprietor or proprietors of the said railway, and such proprietor or proprietors shall be bound, if required so to do, to sell to such Government the said railway with all fixed property appurtenant thereto, lying within the limits of deviation aforesaid, and all rolling stock, engines, carriages, plant, machinery and every matter or thing belonging to or connected with the said railway, together with the telegraph and apparatus, upon such terms as may be agreed upon. If the said Government and the said proprietor or proprietors cannot agree upon the terms upon which such purchase shall be made, all questions in dispute between them with reference thereto shall be submitted to three arbitrators, one to be nominated by the said Government, one by the said proprietor or proprietors, and the third to be selected by the two arbitrators so nominated; and if the two first mentioned arbitrators shall not agree on the selection of such third arbitrator within thirty days of their being nominated as aforesaid, then it shall be competent for the Supreme Court or Court of the Eastern Districts, on application made by either party to the dispute, to appoint such third arbitrator, and the award of such arbitrators or the majority of them on all questions submitted to them shall be final and conclusive, and shall be made a rule or order of the Supreme Court or Court of the Eastern Districts: provided that the said Government shall not purchase the said railway or take any proceedings under this section without the consent of both Houses of Parliament first had and obtained.

Arbitration.

Regulation of Act 19 of 1861 to apply to this railway.

12. Upon the completion of the said railway the individual or company which shall have constructed the same shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861."

Short title.

13. This Act may be cited as the "Graham's Town and Port Alfred Railway Act, 1881."

No. 6—1881.]

[June 25, 1881.]

ACT

To Authorise the Commissioners of the Municipality of the Paarl to borrow a further Sum of Money for Improving the Water Supply and Erecting a Town House.

Preamble.

WHEREAS by "The Town of the Paarl Water Act (No. 8) of 1869," provision was made for enabling the commissioners of the town of the Paarl to borrow a sum not exceeding fifteen hundred pounds sterling for the purpose of increasing the water supply for

the town of the Paarl: And whereas by the "Town of the Paarl Water Act, (1) 1879," the said commissioners were authorised to borrow a further sum of money not exceeding three thousand five hundred pounds sterling for the purpose of further increasing the water supply of the said municipality: And whereas it is expedient to authorise the said commissioners to borrow a further sum of money not exceeding three thousand five hundred pounds sterling for the purpose of further increasing and improving the said water supply, and a sum not exceeding four thousand pounds for the purpose of building a Town House in the said town.

No. 7—1881.

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

1. It shall be lawful for the commissioners of the municipality of the Paarl to borrow, and take up such sum or sums of money not exceeding in the whole the sum of seven thousand five hundred pounds sterling in addition to the sums previously borrowed under the provisions of the aforesaid Acts, as shall be required for the purposes following, that is to say: for the purpose of further increasing and improving the water supply of the said municipality, a sum not exceeding three thousand five hundred pounds, and for the purpose of building a Town House in the said town of the Paarl, a sum not exceeding four thousand pounds.

Power to borrow
£7,500.

2. The provision of the first section of the said Act No. 8 of 1869, as to the assessment of rates for providing for the payment of principal as well as interest, and the provisions of the third, fourth, fifth, and sixth sections thereof, shall apply to the money borrowed under this Act precisely as if the same were, *mutatis mutandis*, herein repeated.

Provision of former
local Acts to apply.

3. This Act may be cited for all purposes as the "Town of Paarl Loan Act, 1881."

Short title.

No. 7—1881.]

[June 25, 1881.]

ACT

To organise, establish and regulate a Force for the better Defence of the Colony, to be called "The Cape Infantry." (2)

WHEREAS it is expedient that the permanent armed force for the defence of the Colony should be increased: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1 No. 17.

2 See Acts 32, 1892 and 4, 1893.—Cape Infantry ceased to exist as a separate corps on 1st July, 1886. See Government Notice 711 of 12th August, 1886.

No. 7—1881.

Governor may embody sufficient number of men.

1. The Governor, with the advice of the Executive Council, shall cause such a sufficient number of fit and able men as Parliament shall from year to year provide for, ⁽¹⁾ to be enrolled and embodied and serve as an armed force, who shall be sworn before a Justice of the Peace to act as a military force for the defence of the Colony.

“The Cape Infantry.”
Enlistment for 5 years and option of enlisting for 3 years further.

2. The force so embodied shall be called “The Cape Infantry.”

3. Every person so enrolled as in the first section of this Act provided, shall be enlisted and bound to serve in the said force for the term of five years: and at the expiration of such period of service, it shall be competent for any such person, with the approval of the officer commanding such force, to re-enlist, and be bound to serve therein for a further period of three years.

How force to be commanded.

4. The said force shall be under the command of a competent field-officer to be styled Lieutenant-Colonel, one or more other field-officers to be styled Majors, and officers to be styled Captains, Lieutenants, and Second-Lieutenants respectively, and such other officers as may from time to time be found necessary to the discipline, training, and efficiency of the said force, and all such officers shall be under and subject to the orders and command of the Commandant-General ⁽¹⁾ of the Forces of this Colony, to whom such field-officers shall from time to time as occasion may require, or whenever they shall be called upon so to do by the Commandant-General, report on the condition of the force under his command, and on all matters of importance connected therewith; and shall consult with and be guided by the advice of the said Commandant-General in respect of the subjects of such reports.

Governor to appoint officers.

5. The Governor shall, with the advice aforesaid, by warrant under his hand, appoint the several officers in the preceding section mentioned, and may from time to time displace and remove such officers and appoint others in their place as to him shall seem meet.

Commanding officer to appoint non-commissioned officers.

6. It shall be lawful for the commanding officer of the said force to appoint such number of sergeants, corporals and buglers as the Governor may from time to time authorise to be appointed: Provided always that the said commanding officer, acting upon the judgment of a board of officers constituted as hereinafter mentioned shall have the power to displace or reduce to a lower rank such sergeants, corporals and buglers respectively.

Governor to make certain regulations.

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

Duties of the officers.

8. It shall be the duty of the field and other officers of the said force, to suppress all tumults and riots, in any part of the Colony

where they may be on duty, and to assist in the defence of the Colony, and to discharge military duties in connection therewith.

No. 7—1881.

9. Every person who shall be enrolled, or who shall re-enlist in the said force shall, upon such enrolment or re-enlistment, be required to pass a medical examination and take the following oath, or make an affirmation to the same effect, before some duly authorised person, that is to say:—

Persons enrolled to pass medical examination and take oath of allegiance.

“I, A. B., do swear that I will bear true and faithful allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law, and that I will faithfully serve in the Cape Infantry of the Colony of the Cape of Good Hope, for ————— years unless I shall be sooner discharged.”

10. The Governor shall provide from time to time as occasion may require, arms, ammunition and all necessary equipments and camp equipage for persons enrolled in the said force.

Governor to provide arms and accoutrements.

11. Any member of the force who may be charged with the offence of contravening any regulation which may be made, under and by virtue of this Act, or any of the offences in the schedule hereinafter mentioned, may be tried by and before:—1. Any of the superior Courts of Law in this Colony within the jurisdiction of which such offence shall have been committed. 2. The Court of the Resident Magistrate of the district in which such offence has been committed; or 3. A board of officers as hereinafter mentioned. And shall, upon conviction be liable to be punished as follows:—

How offenders against regulations to be tried.

1. If the conviction shall be before any of the said superior Courts, such Court may sentence the offender to be imprisoned with or without hard labour for a period not exceeding five years, or to pay a fine not exceeding twenty pounds, and, in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding one year; or to both such fine and such imprisonment.
2. If the conviction shall be before a Court of Resident Magistrate, such Court may sentence the offender to pay a fine not exceeding ten pounds, and in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding six months; or to be imprisoned as aforesaid without the infliction of any fine; or to both such fine and such imprisonment.
3. If the conviction shall be by a board of officers, such board may sentence the offender as mentioned in the last preceding paragraph.

Punishments.

12. In case any non-commissioned officer or private shall offend against any such regulation as aforesaid, it shall be lawful for any officer commanding a company, or any officer commanding a detachment of the said force, to stop from the pay of such offender

Power to stop pay of offenders and to pass certain sentences.

No. 7—1881.

any sum not exceeding one pound, or to sentence him to imprisonment with or without hard labour for any period not exceeding fourteen days, or to sentence him to such punishment as may be provided on that behalf in any such regulation as aforesaid, or such officer may take proceedings for the purpose of such offender being tried under the eleventh section of this Act ; provided that such offender shall, if he so request, have a right to have such proceedings taken instead of being tried by such officer ; and provided also that any officer who shall try any offender under the provisions of this section shall forthwith after such trial forward the proceedings in, and full particulars of, the case to the field officer commanding the said force.

Cases not dealt with under last section to be reported to commanding officer.

13. Upon any member of the force being charged with any of the offences in this Act mentioned, the charge, in case the offence shall not have been summarily dealt with under the last preceding section, shall be forthwith reported to the officer in command of the company or detachment to which such offender is then attached, who shall thereupon forthwith report the particulars of the case to the officer in command of the force, who shall having regard to the said particulars and the nature and magnitude of the offence, direct whether the offender shall be proceeded against before a board of officers as aforesaid, before the Court of Resident Magistrate having jurisdiction in the case, or (as to offences in the eleventh section hereof mentioned) before a superior Court as aforesaid : Provided that nothing herein contained shall prevent either of such officers from ordering the discharge of any prisoner in case it appears to him that there are not sufficient grounds for putting such prisoner upon his trial ; and if the proceedings are directed to be before a superior Court, or before a Court of Resident Magistrate, they shall be the same in all respects as in the case of an ordinary offender or supposed offender against the law, and the said offender shall be in the same plight and condition as any other person charged with any criminal offence.

Constitution of board of officers.

14. The board of officers hereinbefore mentioned shall consist of not less than three officers of the said force, of whom the field-officer commanding may be one ; and the said officers shall be selected and summoned by the said field-officer. The said field-officer, if present, and if not, the senior officer present, shall be the president of such board, and the decision of the majority of the members of such board shall be deemed to be the decision of such board ; Provided that, in case the members of the said board shall be equally divided in opinion, the decision of the president shall be deemed to be the decision of the board.

Form of proceeding before such board.

15. The proceedings before and at any trial by a board of officers shall, except otherwise herein mentioned, as near as may be, be the same as those from time to time prescribed as to criminal cases in a Court of Resident Magistrate ; and all the evidence which may be given before such board shall be taken down in

writing by the president thereof, by whom also the witnesses shall be duly sworn; and any person so sworn, who shall wilfully and corruptly give false evidence before any such board, shall be deemed to be guilty of the crime of perjury, and upon conviction thereof, shall suffer any punishment by law provided for that crime.

No. 7—1881.

16. Every person who may be required to give or produce evidence in any case pending before any such board of officers shall be summoned, in writing, by any officer of the said force; and any witness so duly summoned who shall not attend, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or shall not produce the documents under his power or control required to be produced by him, or to answer all such questions as the said board may legally demand of him, shall be liable to be dealt with by such board in like manner as if such witness had been a witness duly summoned to appear before a Resident Magistrate in a criminal case pending in the Court of such Resident Magistrate.

Summoning witnesses.

17. When and as often as any such board of officers as aforesaid shall sentence any offender under this Act to be imprisoned, with or without hard labour, for any period exceeding fourteen days, or to pay a fine exceeding one pound, the president of such board shall forthwith, after pronouncing such sentence, transmit the original proceedings in the case, together with such remarks, if any, as he may desire to append, to the Registrar of the Supreme Court, or if the trial has taken place within the jurisdiction of the Eastern Districts Court, or of the High Court of Griqualand West, to the Registrar of such Courts respectively, and the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," shall, *mutatis mutandis*, extend and apply to such proceedings, as if the same had been proceedings in a case decided by a Court of Resident Magistrate which, under the said forty-seventh section would have had to be sent for review by a Judge of one of the Superior Courts.

When proceedings to be transmitted for review and to what Courts.

18. All offenders arrested for any offence under this Act, and all offenders sentenced to imprisonment by an officer or board of officers as aforesaid, may be imprisoned in any building set apart as a guard-room or police prison by order of the field-officer commanding: Provided that in case the sentence shall exceed fourteen days' imprisonment with or without hard labour, the person convicted shall be removed to the nearest public gaol, there to undergo such sentence, and when so removed he shall be in the same plight and condition as if the sentence had been a sentence of one of the ordinary Courts of Law of this Colony: And provided also, that so long as any man shall be imprisoned in any guard-room or prison as aforesaid, the same shall as to

Where imprisonment to take place.

No. 7—1881.

such offender be deemed to be a public gaol, and the prisoner shall be deemed to be a prisoner confined therein within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the Gaols of this Colony," but every board of officers aforesaid and the Resident Magistrate of the district shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such guard-room or prison as by the Ordinance aforesaid are given to the Resident Magistrate of the district, as to the public gaols within his district.

Term of imprisonment not to reckon as part of service.

19. No period during which any offender shall be imprisoned for any offence for which he shall be afterwards convicted, or during which he shall be imprisoned under a sentence of any Court or board as aforesaid, shall be reckoned for any purpose as part of the period of the service of such offender unless the Court or board aforesaid ordering such imprisonment shall otherwise direct.

Provisions of Act not to interfere with prosecutions under the ordinary law.

20. Nothing in this Act contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Act in all cases in which he would by law, without this Act, be liable to such prosecution; but no member of the said force acquitted or convicted of any crime or offence under the provisions of this Act, shall be liable to be again tried for the same crime or offence: Provided that nothing herein contained shall prevent a member of the said force who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

Power of field officers to suspend or dismiss non-commissioned officers.

21. It shall be lawful for the said field-officers commanding the said force to suspend or dismiss from his employment any non-commissioned officer or private whom they shall think remiss or negligent in the execution of his duty, or otherwise unfit for the same; and when any such non-commissioned officer or private shall be so dismissed, or shall otherwise cease to belong to the said force, all powers and authorities vested in him by virtue of this Act shall cease and determine: Provided however, that no sentence of dismissal shall take effect unless and until the same be confirmed by the Commandant-General of the Colonial Forces.

Certain sections of Act No. 9 of 1878 to apply.

22. The several sections of Act No. 9 of 1878, ⁽¹⁾ being the "Cape Mounted Riflemen Act, 1878," numbered consecutively from 20 to 35, including both of such sections, together with the schedule of offences annexed to the said Act shall, *mutatis mutandis*, be taken to apply to the several members of the force intended to be embodied and enrolled under this Act, and shall be read as if, *mutatis mutandis*, they had been inserted herein and formed part of the provisions of this Act.

Short title.

23. This Act may be cited as the "Cape Infantry Act, 1881."

¹ Repealed by Act No. 32, 1892.

No. 8—1881.]

[June 25, 1881.]

ACT

To increase the Powers of the Municipal Council of Port Elizabeth.

WHEREAS certain powers were conferred on the council of the municipality of Port Elizabeth by the Act No. 14 of 1868, entitled “An Act for constituting the Town of Port Elizabeth a Municipality”: (1) And whereas it is found desirable to increase those powers and to authorise and enable the said Council

Preamble.

- a. To establish a Town Improvement Fund and to vote moneys out of the revenues of the town towards such fund;
- b. To purchase or acquire land and buildings for the purposes of town improvement;
- c. To erect buildings, and to sell, lease, or otherwise deal with land or buildings;
- d. To provide for the better ordering of streets and thoroughfares;
- e. To provide for the better protection of property from fire, and to recover from the owners or tenants of property all expenses incurred in saving life or property from fire, or in extinguishing fires:

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

1. The council of the municipality of Port Elizabeth shall be, and is hereby authorised to establish a fund to be called “The Town Improvement Fund.” Establishment of Town Improvement Fund.

2. The said Town Improvement Fund and all property acquired under this Act shall be vested in the Mayor of the municipality of Port Elizabeth for the time being as trustee, and all the accounts thereof shall be kept separate and distinct from any other funds of the municipality. Fund vested in Mayor.

3. The said council is hereby authorised to place on the estimates of any year any sum of money to be invested in the said Town Improvement Fund, and on the same being duly voted by the council shall pay over such sum out of the revenues of the municipality to the said trustee. Sums to be invested in fund to be placed on Municipal estimates.

4. The said council shall cause to be published in one or more of the local papers, during the months of January and July in each year, an audited account made up to the 31st December and 30th June respectively, showing the details of income and expenditure; and also annually, in the month of January, a statement of the assets and liabilities of the said fund. Accounts to be published.

5. The said council is hereby authorised and empowered for the purposes of town improvement to purchase or acquire any land or buildings subject to the provisions hereinafter contained. Power to purchase land.

¹ See also Acts 25, 1873, and 25, 1895.

No. 8—1881.

Notice to be given of proposal to purchase.

6. When it is desired to acquire any land or buildings under this Act, notice of motion shall be given by a councillor to that effect at an ordinary meeting of the said council. Such motion shall be decided at the next ordinary meeting of the council, at which two-thirds of the councillors shall be present, and if agreed to by a majority of the councillors then present shall be advertised in the *Government Gazette* and one or more of the local papers, not less than twice a week during four consecutive weeks, and such advertisement shall appoint a day at or after the expiration of the said four weeks, before which objections may be sent in to the said council by any owner of such property or by any ratepayer, all whose municipal rates at the time have been duly paid.

In absence of objections purchase to be made.

7. Should no objections be handed in to the council by any such owner or ratepayer, the vote or resolution passing the motion in the last preceding section hereof mentioned shall be binding and of full force and effect.

Provision for hearing objections.

8. Should any objection be sent in to the council by any such owner or ratepayer within the time limited as aforesaid, the council shall advertise in the local paper a date not earlier than one month from such objections being received on which the council will sit to hear such objections, and the council shall be and is hereby constituted a court for the consideration of such objections, and its decision thereon shall be binding. Always provided that such decision shall not be binding on the owner of any property in so far as may relate to the amount of money or other consideration to be given to such owner for such property.

Purchase being decided on 52 Sec. of Act 14 of 1868 to apply.

9. On the Council arriving at a decision to purchase or acquire any such property it shall be lawful for the council, and it is hereby authorised and empowered, to exercise in regard to such property all the powers and authorities set forth in the fifty-second section of the said Act No. 14 or 1868.

In cases of absent proprietors of lands to be purchased.

10. In case the said council shall in the exercise of the powers conferred on them by this Act determine to purchase or acquire any land or buildings, the owner or owners whereof shall be absent from this Colony and not represented by any agent duly accredited, or shall not be discoverable, then the said council shall take the same proceedings in respect thereof as are set forth in the fifty-third section of the said Act No. 14 of 1868.

Mode of proceeding in case of Council being unable to obtain transfer by reason of absence or refusal of owners.

11. In all cases in which the said council shall acquire any property by virtue of the ninth and tenth sections of this Act, or by virtue of the provisions of the fifty-second and fifty-third sections of the Act No. 14 of 1868, if the said council shall be unable by reason of the absence or refusal of the owner or owners of such property or their lawful representatives to obtain transfer thereof in the usual form, the following proceedings shall be taken :

- a. A certified copy of the original grant and diagram of the particular piece of ground required as aforesaid, and in case such land shall be a sub-division, a diagram in

duplicate prepared by a Government land surveyor, shall be lodged and remain in the municipal office for inspection of all persons concerned during the whole time of the several advertisements and other proceedings in connection therewith prescribed by this Act.

- b. Such diagram shall contain all such information as is required by the rules of the office of the Registrar of Deeds, and shall be subject to examination in accordance with those rules.
- c. On completion of all the proceedings required for the acquisition of the said property, it shall be lawful for the said council to apply under the provisions of the "Titles Registration and Derelict Lands Act, (1) 1881," for an order upon the Registrar of Deeds to transfer to the said council the property so acquired.

12. Should any property acquired by the said council under the provisions of this Act or otherwise include or constitute the whole of the properties on both sides of any street, lane, or passage, the council is hereby invested with authority to close such street, lane, or passage, provided that no such street, lane, or passage, shall be closed until a notice shall have been published for the period, in the manner and for the purpose hereinbefore in the sixth section provided; and thereupon the like proceedings shall be had and taken as are in the seventh and eighth sections provided: and provided further that any person aggrieved by the decision of the council, may within three months thereafter apply to any competent Court for relief, and failing any such application the decree of the council shall be final and binding and conclusive as against all persons; and the council shall have full authority to deal with such ground as hereinafter provided, as though no street had previously existed thereon.

When Council may close streets, &c., lying between properties purchased.

13. When the council desire to sell, let, lease or otherwise deal with any property acquired by them under this Act, including any such street, lane or passage, as in the last preceding section mentioned, or to erect any buildings thereon, notice of motion shall be given by a councillor stating the precise manner in which it is proposed to act.

When Council desires to sell or lease lands.

14. No motion relating to any matter arising under the provisions of this Act shall be decided at any meeting of the council at which there shall be less than two-thirds of the members thereof present. As often as the required number of members shall not be present, and as often as the votes shall be equal, such motion shall and may be postponed from time to time until decided. And upon every such motion the Mayor or person presiding at any meeting shall not, in case of an equality of votes, have a second or casting vote, anything in the said Act No. 14, 1868, to the contrary notwithstanding.

Quorum of Members to decide any motion under this Act.

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No motion to be repeated in the same year.

Upon motion passed, power to sell lease, &c.

Rent, &c, after payment of incumbrances to be paid into town improvement fund.

Public Bodies Debts Act, 1867, to apply.

Transfer and mortgages to be in name of the Mayor.

Mayor to obey instructions of council.

Mayor not to be personally responsible.

Persons desirous of selling lands to Municipality to submit plans.

15. No motion which has been negatived shall be repeated in the same year of our Lord, but after the first of January of the ensuing year any matter that has been negatived in the previous year may be revived after due notice.

16. The said council is hereby authorised upon the passing of any motion to that effect in manner hereinbefore provided, to sell, let, or lease any property acquired by them under this Act, or to remove buildings or erect new buildings thereon; or to mortgage the same, or to issue debentures on account thereof for any sum not exceeding the cost thereof, including the cost of any buildings that may be erected thereupon by the council.

17. After payment of the interest on such mortgage or debentures and the due payment of all repairs or other charges on such property, the rent or other proceeds derived from any letting, leasing, or other use of any such land or buildings acquired or erected under this Act, as also the proceeds of any such land or buildings as may be sold, after payment of the cost thereof, shall be paid into the Town Improvement Fund.

18. Over the above the claim on the said property by virtue of any such mortgage, the holder of such mortgage or of any debentures issued under this Act shall be entitled to the full benefit of the provisions of the Public Bodies Debts Act, 1867.

19. All transfers to and from the said council, and all mortgages passed by them under the provisions of this Act, shall be made in favour of or by the Mayor for the time being as trustee.

20. The said Mayor as trustee shall, in all matters relating to the Town Improvement Fund or any property acquired under this Act, obey the instructions of the council as expressed and recorded from time to time in the minutes of the said council, and copies of all such minutes shall be forwarded to the Mayor, in writing, by the Town Clerk immediately after the same have been passed.

21. The Mayor as such trustee shall not by acting on any minutes or instructions so received from the council through the Town Clerk incur any personal responsibility whatever, nor shall he be answerable for any irregularity or error in the passing or recording of such minutes, nor for any act, negligence, or omission on the part of the council or its officers.

STREETS AND THOROUGHFARES.

22. All persons who may be desirous of selling lands within the said municipality in sub-divisions, shall submit a plan of the same for the approval of the said council, and no transfer of any such land sold in sub-divisions after the taking effect of this Act shall be passed in the office of the Registrar of Deeds until a certificate shall be produced to the said Registrar under the hand of the Mayor or Town Clerk, certifying that the plan of such sub-divisions has been submitted to and approved by the said council.

23. It shall be the duty of the said council to see that due provision is made in every plan so submitted for the efficient drainage thereof; that the streets or passages reserved are of sufficient width to accommodate the traffic that may be expected thereon, and that all streets or thoroughfares shall be clearthrough-out and open into existing streets or thoroughfares.

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Drainage to be provided for.

24. The owners of such property shall before the sale thereof, form and level the proposed streets or thoroughfares, and shall make over the same to the council in proper condition for use, and the council shall thereafter be bound to keep and maintain the said streets and thoroughfares.

Owners of property to make streets.

25. When the ratepayers in any ward, district or street desire to have special paving or other works effected therein, or to have a larger proportion of police, sanitary, or other officers employed therein, or a larger supply of gas or other light or water or other service than can be allotted to such ward, district, or street, out of the general rates of any year, such ratepayers or any number of them may propose and conclude any agreement with the said council whereby, in consideration of certain additional payments over and above the ordinary rates, such works or services may be supplied.

Agreement may be made with council for special paving, water and gas supply, &c.

26. In the event of any of the owners of property in any such ward, district, or street desiring such special works or services of a nature chargeable on the landlords' rate, the said council shall on requisition of not less than ten of such owners call a meeting of all the owners of rateable property in such ward, district, or street by notice to be published in one or more local papers for not less than twice a week during two successive weeks immediately preceding the day appointed for such meeting; and if it be decided at such meeting by the votes of such owners who are entered in the valuation roll of the municipality as owners of not less than two-thirds of the aggregate value of the assessed property in such ward, district, or street, that a rate shall be passed for the purpose of defraying the cost of such works or services, such rate as they may agree upon, not exceeding one penny in the pound on the assessed value of the property in the said ward, district, or street, shall be binding upon the whole of the owners of such property, and shall be levied as provided in the Act No. 14 of 1868, for the levying and collection of the landlords' rate, and in like manner the said council shall and may, by similar notice, convene a meeting of the tenants or occupiers of rateable property in any such ward, district, or street, on requisition of not less than ten of such tenants, for the purpose of voting a rate for any such special works or services of a nature chargeable on the tenants' rates, and if at such meeting it shall be decided by the votes of persons who are entered in the valuation roll of the municipality as tenants or occupiers of property to the extent of two-thirds of the aggregate annual value or rental of the assessed

For the purposes in last section mentioned, meetings to be called and special rates assessed.

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property in such ward, district, or street, that a rate shall be passed for the purposes aforesaid, such rate as they shall agree on, not exceeding sixpence in the pound on the assessed annual value or rental of all the property in such ward, district, or street shall be binding upon all the ratepayers in such ward, district or street, and shall be recoverable as provided in the said Act No. 14, 1868, for the levying and collection of the tenants' rate.

Meaning of word
"district."

27. The word "district" in the last two preceding sections of this Act shall mean any group of streets or thoroughfares, the principal owners or tenants whereof may desire to co-operate in the demand for such extra works or services, and on application from such persons it shall be the duty of the council to define in any agreement as in the twenty-sixth section hereof mentioned, or in the notice convening any meeting as provided in the twenty-seventh section hereof, the precise boundaries of such district.

FIRE.

Power to acquire
stations for fire
engines.

28. In addition to the powers conferred on the said council by the Act No. 14, 1868, ⁽¹⁾ with regard to the prevention and extinguishment of fires, the said council shall have power to take on lease, purchase or otherwise acquire stations for engines and such other houses, buildings, or land, as they may think requisite for the storing of engines and apparatus or the accommodation of the persons charged with the management thereof; and may from time to time sell any property acquired by or vested in them for these purposes.

Fire brigade to be
organised.

29. The council shall engage and organise a force of firemen, to be called "the municipal fire brigade," which shall be under the command of an officer to be appointed by the council under the name of the superintendent of the municipal fire brigade: and the council shall pay the superintendent and men of such fire brigade such salaries or other remuneration as they think expedient.

Power to frame
regulations for such
brigade.

30. The council may by bye-laws make regulations for the training, discipline, and good conduct of the men belonging to the said fire brigade, for their speedy attendance with engines, fire-escapes, and other necessary implements and apparatus on the occasion of any alarm of fire, and generally for the maintenance in a due state of efficiency of the said brigade, and may annex to such regulations penalties for any breach thereof: Provided that all such bye-laws shall be made, approved of, and confirmed in manner directed by the Act No. 14, 1868.

Powers given to
officers in charge of
the brigade in case
of fire.

31. On the occasion of any fire the superintendent or other officer in charge of the fire brigade may, in his discretion, avail himself of the assistance and take the command of any persons who may voluntarily place their services at his disposal, and may remove or order any fireman to remove any persons who interfere, by their presence or otherwise, with the operations of the fire

¹ See § 35, Act 14, 1868.

brigade; and generally he may take any measures that may appear expedient for the protection of life and property; with power by himself or his men to break into or through, or take possession of, or pull down, any premises for the purpose of saving life or property or putting an end to a fire, doing as little damage as possible; and for these purposes he shall have free right of access to and liberty to draw water from all tanks, cisterns, pipes, or other supplies of water, whether on municipal or private property.

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32. All police constables shall be authorised to aid the fire brigade in the execution of their duties, they may close any street, passage or thoroughfare in or near which a fire is burning, and they may on their own motion or on the request of the superintendent or other officer of the fire brigade, remove any persons who interfere by their presence or otherwise with the operations of the fire brigade.

Police to assist brigade.

33. The council, the Mayor, the superintendent and men of the fire brigade, as also all police constables and other persons acting under the orders of such superintendent or other officer in charge of the fire brigade, are hereby indemnified and exempted from all claims or demands whatsoever by reason of any damage done to property in the execution of their duties.

Indemnity against damage caused in execution of duty.

34. In every case of fire the council shall be authorised to charge on every shop, store, warehouse, station, hotel, manufactory, timber or store-yard, carpenter's shop, or block of offices, in which fire breaks out, the sum of ten pounds sterling for the services of the fire brigade, and also the sum of two pounds sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said premises, or upon the neighbouring premises, to prevent the extension of the fire; and on every dwelling-house or other building, not above specified, in which fire breaks out, the council shall be authorised to charge the sum of five pounds sterling for the services of the fire brigade, and also the sum of one pound sterling per hour for every jet of water supplied from the municipal waterworks during the time that such jet shall be playing upon the said dwelling-house or other building, or upon the neighbouring premises, to prevent the extension of the fire.

Charges to be made for services of brigade.

35. The amounts charged as aforesaid shall be paid by the tenant of the property on which the same shall be charged, or on his default by the owner thereof, and shall be recoverable from either by action in the name of the council in the Court of the Resident Magistrate or any Court of Law having jurisdiction.

By whom to be paid.

36. Whenever the council has incurred any expenses in saving or removing or attempting to save or remove merchandise, furniture, or other goods or articles from any fire, or in pulling down or destroying any buildings in order to prevent the spread of the fire, or otherwise in saving, or attempting to save, buildings or

Expenses incurred may be recovered.

No. 8-1881.

property adjacent to a fire, the said council shall be entitled to recover the amounts so expended from those interested in equitable proportions, whether the said buildings or property be ultimately saved or not.

Town Clerk to ascertain value of properties dealt with in order to proportion payment of expenses.

37. In order to decide on the equitable distribution of such expenses, the Town Clerk shall ascertain as near as may be the values of the properties dealt with, and divide the outlay accordingly, and the amounts so apportioned shall be paid by the several owners of the properties dealt with, and shall be recoverable from such owners, respectively, in any competent Court after seven days notice of such apportionment, unless within such seven days they shall intimate to the Town Clerk their objections to the same, and agree to submit the whole apportionment of expenses to arbitration, as in the next succeeding section provided.

Arbitration in case of dispute.

38. Should any of such owners object to the distribution as arranged by the Town Clerk, or dispute his liability to contribute to such expenses, the whole matter shall be referred to the arbitration of three persons, whereof the council shall appoint one, the persons objecting to the Town Clerk's distribution or a majority of them shall appoint another, and these two shall nominate a third. These three arbitrators shall sit and take all such evidence as may be tendered, and frame a distribution account and award, which, when signed by the arbitrators or any two of them, shall be final and binding on all parties concerned, and recoverable from the respective persons therein named by action in the Court of the Resident Magistrate or any other Court having jurisdiction.

What shall be deemed "loss or damage by fire."

39. Any damage occasioned by the fire brigade in the due execution of their duties, and all expenses incurred by them or by the other parties empowered by this Act, in the removal or attempted removal of goods, or in operations to save property and extinguish fire, and charged to the owners or occupiers of property under this Act, including the charges mentioned in section thirty-four of this Act, shall be deemed to be loss or damage by fire within the meaning of any policy of insurance of such property or goods against fire.

Interpretation of terms.

40. In the several clauses of this Act the word "municipality" shall mean the Municipality of Port Elizabeth; the words "Mayor," "council," "councillors," and "Town Clerk," shall respectively mean the Mayor, council, councillors, and Town Clerk of the said Municipality; and the words "insurance company" shall include any persons corporate or incorporate or any person carrying on the business of fire insurance.

Short title.

41. This Act may be cited for all purposes as the "Port Elizabeth Town Improvement Act, 1881."

No. 9—1881.]

[June 25, 1881.

ACT

For Regulating the Stellenbosch Undenominational College and Public Schools.

WHEREAS it is expedient to provide means for the superintendence and direction of the affairs of the Stellenbosch College or Arts Department, the Undenominational Public School for Boys, otherwise known as the Stellenbosch Gymnasium, and such preparatory or branch departments as now are or may hereafter be connected therewith: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The general superintendence and direction of the affairs of the Stellenbosch College or Arts Department, the Undenominational Public School for Boys, otherwise known as the Stellenbosch Gymnasium, and such preparatory or branch departments as now are, or may hereafter be connected therewith, shall for the future be vested in a council of nine members, of whom three shall form a quorum, and the said council shall be called the Council of the Stellenbosch Undenominational College and Public Schools.

Direction of College affairs to be vested in a council.

2. One of the members of the council shall be appointed by the Governor, one shall be elected by the Divisional Council of Stellenbosch, one shall be elected by the Commissioners of the Municipality of Stellenbosch, and the other six shall be elected jointly by the Guarantors, Life Governors and Past Students, as in the succeeding section defined.

How members of the council to be appointed.

3. The term "guarantor" shall mean every person who at the time of any election by guarantors, life governors, and past students as in the last section provided for, shall be furnishing a guarantee in connection with any of the institutions to which this Act applies, under the provisions of Act No. 13 of 1865; the term "life governor" shall mean every person who shall have contributed by way of donation not less than £10 sterling to the funds of the said institutions, or any one or more of them; and the term "past student" shall mean all former students of the said college who shall have matriculated or graduated in the University of the Cape of Good Hope or become graduates of any university recognised by the said University of the Cape of Good Hope, provided such persons shall have studied in the ordinary course for a period of two years at least in the said college, and shall have paid to the funds of the said institutions, or any one or more of them a sum of £5 sterling; provided further that it shall not be competent for any guarantor, life governor, or past student to exercise, in more than one of the capacities mentioned in this section, the right conferred by this Act, of voting at any election.

Interpretation of certain terms used in this Act.

4. The Reverend John Murray, M.A., the Reverend Nicolaas Jacobus Hofmeyr, the Reverend Johannes Henoch Neethling,

Names of first members of the council.

o. 9--1881.

Cornelis Smuts, M.D., the Reverend Johannes Izaak Marais, Henry Edward Richard Bright, Petrus Wilhelmus Jacobus Bosman, George Lodewyk Meiring, Gideon Johannes Krige, shall become the first council of the Stellenbosch Undenominational College and Public Schools, as by this Act provided.

Mode of electing a president of the council.

5. The said first council shall at their first meeting after the passing of this Act, and thereafter the council from time to time being, shall annually elect a president of the council for the ensuing year, and such first council shall at their such first meeting, also fix, by ballot, on three of their number, who shall retire on the 31st December, 1881; upon three of their number who shall retire on the 31st December, 1882; and the remaining three members shall retire on the 31st December, 1883.

President or chairman to preside at meetings.

6. The said president shall preside at the meetings of the said council, when present, and, in his absence the said council shall elect a chairman, and such president or chairman, as the case may be, shall have a casting vote in addition to his ordinary vote.

How vacancies in the council to be filled up.

7. The vacancies created in the manner by the fifth section provided shall be filled up as follows:—On or before the 31st day of December, 1881, the Governor of the Colony shall appoint one member, and the body of Guarantors, Life Governors and Past Students, shall elect two members to supply the vacancies so occurring on the 31st of December, 1881; in like manner before the end of December, 1882, the Divisional Council of Stellenbosch shall elect one member, and the body of Guarantors, Life Governors and Past Students shall elect two members to supply the vacancies so occurring in the end of December, 1882; and in like manner before the end of December, 1883, the Commissioners of the Municipality of Stellenbosch shall elect one member, and the body of Guarantors, Life Governors, and Past Students shall elect two members to supply the vacancies so occurring in the end of December, 1883; and thereafter annually on or before the 31st of December, in each year the three members who have been longest in office shall retire from office, and the vacancies so arising shall be filled up by the persons or bodies having the right to appoint or elect in a similar rotation, provided that all members retiring from office as aforesaid shall be eligible for re-election.

Professors, &c., ineligible as councillors.

8. No professor, lecturer, or teacher connected with the institutions to which this Act applies, or any of them, shall be eligible for a seat at such Council.

Names of persons elected or appointed to be communicated to council.

9. Whenever any appointment or election shall take place under this Act, the Governor in case of appointment, or the persons or bodies electing, in case of election, shall forthwith communicate to the said council the name or names of the person or persons appointed or elected as aforesaid: provided, however, that no neglect or delay on the part of the said Governor, or persons, or bodies in so doing, shall in any way invalidate the proceedings of the said council.

10. Whenever it shall fall to the general body of guarantors, life governors, and past students to elect any member or members of the said council, a general meeting of the said guarantors, life governors and past students for such purpose, shall forthwith be held in the college buildings, or in some other convenient place; and the said meeting shall be called by the council by notice specifying the time, place, and object of the meeting, which shall be published in the *Government Gazette* and in one or more newspapers circulating in the locality, not less than three weeks before the time fixed for such meeting, which notice shall give the names of the members of council then retiring; and the president of the council for the time being, or failing him, some one to be elected by the said meeting shall preside as chairman at said meeting; and every guarantor, life governor and past student, shall be entitled to one vote for every member of the said council then to be elected, and the election shall be by ballot or otherwise as such meeting shall determine, and the members who shall have the greatest number of votes shall be declared duly elected: provided that in case of an equality of votes the president or chairman aforesaid shall have a casting vote in addition to his ordinary vote.

No. 9—1881.
Proceedings when election has to be made.

11. Any member of the council who shall be absent from the meetings of the council during six consecutive months except with leave of the council, or who shall become insolvent, or incapacitated by mental or bodily infirmity, shall *ipso facto* vacate his office.

How office of councillor vacated.

12. Whenever any member of the council shall die, or resign, or shall otherwise vacate office before the period for which he was appointed or elected shall have expired, the secretary of the council shall, without delay, give notice of such vacancy to the Governor, or to the persons or bodies by whom the member whose seat has become vacant, was elected, as the case may be, and thereupon the Governor, in case such member shall have been appointed by him, or the persons or bodies, by whom such member was elected, as the case may be, shall forthwith proceed to appoint or elect his successor; and the person so appointed or elected shall hold office only during the unexpired period of the term for which the person in whose room he shall be appointed or elected had been appointed or elected.

Proceedings to be taken on occurrence of vacancy.

13. Should any member or members of the first council die, or resign, or otherwise vacate office before the period for his or their so vacating office in accordance with the rotation aforesaid shall have arrived, the vacancy or vacancies so arising shall be filled up in the following manner: The first thereof shall be filled up by the Governor; the second thereof by the Guarantors, Life Governors and Past Students, as aforesaid; the third thereof by the Divisional Council of Stellenbosch; the fourth thereof by Guarantors, Life Governors and Past Students; the fifth thereof by the Commissioners of the Municipality of Stellenbosch; the sixth thereof

By whom vacancies to be supplied.

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by the said Guarantors, Life Governors, and Past Students, and so on in a like rotation.

Voting by proxy.

14. At all elections of members of the council, guarantors, life governors and past students, who shall reside at a greater distance than ten miles from Stellenbosch, and every female life governor shall be entitled to vote by proxy, which proxy shall be in the following form:—

I, (name and designation) do hereby authorise and appoint _____ of _____ to record my vote for (specifying name or names) at the election of a member or members of the Council of the Stellenbosch Undenominational College and Public Schools, to take place on the day of _____. Dated this ____ day of _____

(Signature here.)

In case vacancy not supplied by Government or by election.

15. If at any time upon the occurrence of any vacancy or vacancies in the said council, there shall be a failure on the part of the said Governor to appoint, or on the part of any of the said persons or bodies to elect, a member or members to fill the said vacancy or vacancies at the time hereinbefore provided, the remaining members of the said council shall thereupon elect a member or members to fill such vacancy or vacancies, as the case may be.

Voter's book to be kept by secretary.

16. The council shall cause a book to be kept by its secretary, in which shall be registered alphabetically the names of all guarantors, life governors, and past students, qualified to vote as aforesaid, and the registry aforesaid of the names of any persons in such book, shall be conclusive evidence of the right of such persons to vote for the purposes of this Act.

All college property to be vested in council.

17. All property movable and immovable of every sort and description belonging to the institutions to which this Act is applicable or any of them, or to which the said institutions, or any of them, shall become entitled, and all claims for moneys payable thereto shall be vested in, and become the property of the said council for the time being, in trust for the purposes of the said Stellenbosch Undenominational College and Public Schools; and the said council shall have power to buy and sell, and take and give transfer or delivery of property movable and immovable, and grant and take leases of property and pledge or mortgage such property, and generally become and be owners and administrators in trust for the said Stellenbosch Undenominational College and Public Schools; provided, however, that no immovable property vested in the said council shall be sold or mortgaged without the consent of the Governor first had and obtained.

Power to lease, mortgage, and sell.

Council to provide necessary college buildings.

18. The council shall provide the necessary buildings, apartments, and other requisites for the said institutions to which this Act is applicable, and shall administer the grants of money received from the public revenue for educational purposes in accordance with the regulations laid down by law with regard to appropriation of grants of public money for educational purposes.

19. The right and duty to appoint and dismiss professors, lecturers, and teachers, in the said institutions, or any of them, shall be in the said council, but no such appointment or dismissal shall take effect without the consent first had and obtained of the officer or department directing the public education of the Colony for the time being; and the said council shall also regulate and fix the fees to be paid by the students and scholars and how the same shall be appropriated. No. 9—1881.
Appointment and dismissal of professors, &c., to be vested in council.
20. The council shall from time to time as occasion may require, appoint a secretary and treasurer and such other officers as shall be deemed necessary on such terms and with such instructions as the said council shall deem expedient. Secretary and other officers to be appointed.
21. The council shall from time to time frame such rules and bye-laws for their own guidance, and for the better regulation of the affairs of the said institutions or any of them, the discipline and instruction therein, and the conduct of the students and scholars thereof as the said council shall find expedient; and all such rules and bye-laws shall be in force and have effect until cancelled or amended by the said council, provided the same be not repugnant to any of the provisions of this Act. Power to make bye-laws and regulations.
22. The council shall cause true and correct records to be kept of all its proceedings, and true and correct accounts of all moneys received and paid on behalf and account of the said institutions respectively, and shall once in each year transmit to Government a report of the proceedings and management thereof, together with a statement of the revenue and expenditure during the preceding year. Records and accounts to be kept.
23. One of the members of the council nominated thereto by the council shall, together with the professors of the college, form a senate in which shall be vested the superintendence and regulation of the discipline and instruction of the several departments and classes of the college, in accordance with regulations to be passed for that purpose by the said senate, and approved of by the council. Formation of a senate.
24. The senate shall annually, in the month of July, elect one of their number to be chairman, who shall hold office for one year, and, in the event of a vacancy, shall elect another to hold office during the remainder of the year. The chairman shall, when present, preside at all meetings, and when absent from any meeting the senate shall elect a member to be chairman thereof. The chairman presiding at any meeting, at which the votes of members are equal, shall have a casting vote in addition to his ordinary vote. Senate annually to elect a chairman.
25. The senate may, from time to time, frame, or alter, or amend, rules for regulating the holding and proceedings of its meetings, and for the due discharge of the duties appertaining to the senate. Senate may make and alter rules for its meetings.
26. All actions and other proceedings at law to be instituted by or against the Council of the Stellenbosch Undenominational How council to sue and be sued.

No. 10—1881.

College and Public Schools shall be so instituted and proceeded in by or against the secretary to the said council for the time being.

Short title.

27. This Act may be cited as "The Stellenbosch Undenominational College and Public Schools Act, 1881."

No. 10—1881.]

[June 25, 1881.

ACT

For the Conversion of Lease Lands into Grants under the Crown Lands Act No. 14 of 1878. (1)

Preamble.

WHEREAS it is desirable that certain lessees of land, under the provisions of Act No. 19 of 1864, shall be allowed to participate in the benefits intended to be conferred on purchasers of crown lands, under the provisions of Act No. 14 of 1878, entitled the Crown Lands Act: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Certain lessees of Crown lands entitled to purchase or to get quitrent titles.

1. In case any lessee of crown land, holding a lease for a term of or exceeding five years under the Act No. 19 of 1864, shall have caused to be ascertained the price at which the land as leased may be purchased by him under the provisions of the Act No. 5 of 1870, it shall be lawful for him either to purchase such land as provided in such last-mentioned Act, or to obtain a perpetual quitrent title thereto in manner hereinafter provided.

How quitrent to be calculated.

2. If such lessee shall not be desirous of purchasing such land under the provisions of the said Act No. 5 of 1870, it shall be lawful for him, after the price of the said land shall have been ascertained as aforesaid, to claim a perpetual quitrent title thereto, paying annually as quitrent, redeemable at twenty years' purchase, a sum equal to six per centum upon the amount of such price; and upon the issue of such title all and singular the provisions of the sixth section of the Act No. 14 of 1878, regulating the redemption of quitrent, shall *mutatis mutandis* become applicable thereto.

Short title.

3. This Act may be cited as the "Lease Lands Conversion Act, 1881."

¹ Repealed by Act 15, 1887, save as to lands disposed of prior to taking effect of latter Act.

No. 11—1881.]

[June 25, 1881.]

ACT

To Provide for the Construction and Maintenance of a Bridge across the Vaal River in this Colony at or near the Township of Barkly, Griqualand West.

WHEREAS it is expedient that a bridge should be erected across the Vaal River within this Colony, at or near the township of Barkly, Griqualand West: and whereas one Moritz Unger, of Kimberley, is prepared to construct such bridge, upon condition that he the said Moritz Unger, his heirs or assigns, shall be entitled to demand and receive reasonable tolls to be levied at such bridge for a term of twenty-one years: and whereas it is expedient and desirable for the public interest to authorise and empower the said Moritz Unger to construct the said bridge upon the terms and conditions hereinafter set forth: Be it enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Subject to the conditions hereinafter contained, it shall be lawful for the said Moritz Unger to construct a bridge across the Vaal River, within the Colony of the Cape of Good Hope, at a point near where the main road from Kimberley to Barkly crosses the said river, the said bridge to rest on the south side upon a portion of the farm Pniel, belonging to the Berlin Missionary Society, and on the north side upon a portion of the commonage of the township of Barkly aforesaid.

Power to Moritz Unger to construct a bridge over the Vaal River.

2. It shall be lawful for the said Moritz Unger, his heirs, or assigns, and he and they are hereby permitted and authorised, to levy tolls upon such bridge at either end thereof, or on the approaches thereto, such tolls not to exceed the rates set forth in the schedule hereto annexed, estimated in current coin of Great Britain and Ireland, and all such tolls as shall be so authorised shall become and be payable by all persons crossing such bridge, save that all persons actually travelling across the said bridge on the immediate service of the Government of this Colony, and all vehicles actually the property of Her Majesty or of such Government, and employed on the service thereof, and all mails passing across such bridge, to or from, or in route to any place within or beyond this Colony, forwarded by the said Government, and the vehicles carrying the same, and the drivers or carriers respectively thereof shall, when carrying such mails or driving such vehicles as aforesaid, be toll-free, as well as the beasts drawing or carrying the same respectively.

Authority to levy tolls.

Exemptions from liability to toll.

3. It shall be lawful for the said Moritz Unger, his heirs or assigns, and he or they are hereby permitted and authorised, from and after the opening of such bridge for public traffic, to levy upon

Tolls may be levied on persons crossing the Vaal within twelve miles of bridge.

No. 11—1881.

persons, beasts, and vehicles crossing or going through the said Vaal River at any place within a radius of twelve miles from the said bridge, the like tolls as would be leviable upon the same persons, beasts, and vehicles crossing the said bridge, saving the like exemptions as are in the second section hereof provided, and all tolls which shall be so authorised shall be payable in like manner as the tolls authorised under the said second section hereof: Provided, however, that the provisions of this section shall not be held to apply to any persons residing upon any farm or commonage which in the original extent thereof is immediately abutting upon the said Vaal River, within the said radius of twelve miles from the said bridge nor at any railway bridge constructed by the Colonial Government or company authorised on their behalf.

No boat or pontoon to ply for hire within twelve miles of bridge.†

4. From and after the opening of the said bridge for public traffic no boat or pontoon shall ply for hire or reward of any kind across the said Vaal River, within a radius of twelve miles from the said bridge, and it shall not be lawful for the Governor of the Colony of the Cape of Good Hope or for any Divisional Council to enter into any contract with any private person or persons, joint-stock company, or other co-partnership, under and by virtue of the provisions of the Act No. 25 of 1864,⁽¹⁾ for the construction of any bridge or bridges across the said Vaal River within the said radius of twelve miles from the site of the bridge authorised to be constructed under this Act, during the said twenty-one years, except as in the last preceding section provided.

Powers and privileges given to Moritz Unger.

5. The powers and privileges hereinbefore granted unto the said Moritz Unger, his heirs or assigns, shall be subject to the terms and conditions following:

1. That the said Moritz Unger, his heirs or assigns, shall commence the construction of the said bridge within a period of twelve months after the promulgation of this Act, and shall complete and open the same for public traffic within a further period of three years after the expiration of the said twelve months; and shall construct the same in a workmanlike and substantial manner, to the satisfaction of an inspector, to be appointed by the Governor of the Colony of the Cape of Good Hope, and all working drawings and specifications necessary for the erection of the said bridge shall be submitted to and approved of by the Chief Inspector of Public Works in this Colony or by a consulting engineer in England to be named by the Crown Agents before the construction of such bridge be commenced.
2. That the said Moritz Unger, his heirs, or assigns, shall give proper security to the satisfaction of the Governor of the said Colony, to maintain the said bridge in a good and

¹ Repealed by Act 40, 1889.

substantial state of repair, and subject to such penalties as may be required by the said Governor; and any question of good and substantial repairs of the said bridge shall be determined by the judgment of two inspectors, one to be appointed by the Governor of the said Colony and the other by the said Moritz Unger, his heirs or assigns, and they shall have the power of nominating an umpire in case of disagreement between them, whose judgment shall be final.

No. 11—1881.

3. That the said Moritz Unger shall within three months after the taking effect of this Act deposit with the Colonial Government a sum of two thousand pounds sterling (£2,000), or provide approved security for the payment of the said sum, and that if the said bridge be not begun before twelve months from the taking effect of this Act, the said security shall be forfeited and remain the property of the Colonial Government and this Act shall thenceforth be void and of no effect.

6. In case any land belonging to the Crown or any private person or persons, company, or society, shall be required for the necessary building and maintenance of the said bridge, and of the toll-houses and other buildings (if any), or for the construction of roads or approaches from the said main road to the said bridge, the said Moritz Unger, his heirs or assigns, shall be entitled to purchase, and the owner or owners of the said land shall be bound to sell the same; and in case of any difference of opinion between the said parties as to the value of the land so required, such value shall be determined by the arbitration of three persons, one to be appointed by the said Moritz Unger, his heirs or assigns, another by the owner of the land aforesaid; and the third to be chosen by the persons so appointed before proceeding in the reference; and if the two first mentioned arbitrators shall not agree to the selection of such third arbitrator within thirty days after their being nominated as aforesaid, then it shall be competent for the Supreme Court or the High Court of Griqualand West, on application made by either party to the dispute, to appoint such third arbitrator, and the award of such arbitrators, or any two of them, shall be binding upon all parties concerned.

Conditions under which he may take lands public or private.

7. The said bridge shall as regards its protection against injuries, whether malicious or through carelessness, be deemed to be in law a main road or part or portion thereof: and the tariff of tolls authorised by this Act to be taken at the said bridge, as contained in the schedule hereto annexed, is hereby declared to be legal and valid; and the provisions of the fourteenth, fifteenth, sixteenth, and eighteenth sections of the Act No. 9 of 1858,⁽¹⁾ shall

Bridge to have some protection against injury as a public road.

Tariff of tolls authorised.

¹ Repealed by Act 40, 1889.

No. 11—1881.

extend and apply to the toll-bar and tolls at or connected with the said bridge.

Power of Governor to purchase bridge at the expiration of 21 years.

8. It shall be lawful for the Governor of the Colony of the Cape of Good Hope, and he shall be entitled to buy the entire property in the said bridge, and the tolls and rights therein of the said Moritz Unger, his heirs or assigns, at any time after the period of twenty-one years shall have expired, from the day on which the said bridge shall have been first opened for public traffic, upon a notice being published in the *Government Gazette* not less than six months before the time to be fixed for such purchase, notifying the intention of the Governor to purchase the same for any sum not exceeding the capital sum, which at the rate of five pounds per centum would produce a yearly income equal to the average for the three years next before the day of publication of this notice to purchase aforesaid, of the net receipts arising from the tolls of the said bridge, after deducting therefrom the costs of repairs and maintenance of the said bridge, its approaches, toll-houses and bars, and of the collection of the said tolls, and all other necessary expenses incidental to the earning of such receipts; and upon the payment of the purchase money to be agreed upon between the Governor and the said Moritz Unger, his heirs or assigns, or, in default of such agreement, on payment of such sum as hereinbefore fixed as the maximum price, to the said Moritz Unger, his heirs or assigns, the said bridge and the tolls and rights belonging thereto by virtue of this Act, and any undertaking or agreement to be made thereunder, theretofore the property of the said Moritz Unger, his heirs or assigns, shall vest in the Governor of the said Colony, to be held by him for the benefit of Her Majesty in her Colonial Government: Provided, however, that if at the expiration of such twenty-one years no such purchase shall be made by the Governor it shall not be lawful for the said Moritz Unger, his heirs or assigns, to levy or charge any higher toll-rates at the said bridge than are by this Act authorised to be levied or charged.

Short title.

9. This Act may be cited for all purposes as "The Vaal River Bridge (Barkly) Act, 1881."

SCHEDULE.

Toll Rates payable at the Bridge over the Vaal River, constructed under the Regulations of this Act.

	£	s.	d.
Upon each loaded buck-wagon drawn by any sort of animals, not exceeding sixteen in number	0	17	6
Upon each buck-wagon carrying not more than 500lb., drawn as above	0	7	6
And upon each animal, over and above sixteen, drawing such vehicle	0	1	0

	£.	s.	d.	No. 12—1881.
Upon each loaded tent or other wagon, not being a buck-wagon, drawn by any sort of animals, not exceeding twelve in number	0	12	6	
Upon each wagon, carrying not more than 500lb., not being a buck-wagon, drawn as above	0	5	0	
And upon each animal, over and above twelve, drawing such wagon	0	1	0	
Upon each travelling cart, spider, wagon, or other conveyance, drawn by not more than two animals	0	5	0	
And upon each animal, over and above two, drawing such vehicle	0	1	0	
Upon each saddle horse	0	1	0	
Upon each loose or led horse, mule or ass, and upon each head of cattle	0	0	6	
Upon sheep or goats or other animals, for every head up to 250, one half-penny, and one farthing per head on excess.				
Upon each person of twelve years of age and upward, on foot, not engaged in driving or leading any wagon or animals upon which tolls are payable	0	0	3	

No. 12—1881.]

[June 25, 1881.]

ACT

To Amend in certain respects Act No. 23 of 1880, intituled
 “An Act for the Incorporation of the Municipality
 of East London.”⁽¹⁾

WHEREAS it is expedient to amend in certain respects the Act, No. 23 of 1880, intituled “An Act for the incorporation of the Municipality of East London”: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The eighth section of the said Act shall be read and construed as if the words, “And provided further that for the purposes of this section the owner and occupier shall not both be entitled to vote in respect of one and the same property, and that the occupier shall be entitled at all times to the vote,” at the end of the said section had not been inserted therein, but had been entirely omitted therefrom.

Interpretation of Section 8 of Act 23 of 1880.

2. The eighteenth section of the said Act shall be read and construed as if the words, “excepting in every third year, when such election shall be for six councillors, in terms of the thirtieth section of this Act,” had been inserted therein after the words, “being one for each ward.”

Of 18th Section of same.

¹ See Act 11, 1895, § 5.

- No. 12—1881.
Of 22nd Section.
3. The twenty-second section of the said Act shall be read and construed as if the word "roll" had been inserted therein, in place of the words "or assessment rolls" after the word "townsmen's."
- Of 38th Section.
4. The thirty-eighth section of the said Act shall be read and construed as if the words "by a majority" had been inserted therein after the words "and agreeing thereto," and also as if the words "the distribution of water to all such persons" had been inserted therein after the words "residing within the municipality," and also as if the words "the provisions of the sixtieth section of this Act as well as all the other provisions of this Act and" had been inserted therein after the words "for the purpose of carrying out."
- Of 43rd Section.
5. The forty-third section of the said Act shall be read and construed as if the words "not less than two-thirds of those present" had been substituted therein for the words "not less than a two-thirds of those present," also as if the words "or of any municipal rates" had been inserted therein after the words "property vested in the said council," and also as if the words "or rates" had been inserted therein after the words "upon such land or property."
- Of 44th Section.
6. The forty-fourth section of the said Act shall be read and construed as if the words "or rates" had been inserted therein after the words "debentures to be charged upon any land or property."
- Of 58th Section.
7. The fifty-eighth section of the said Act shall be read and construed as if the words "the same" had been substituted therein for the word "a" after the words "but nothing in this Act contained shall be taken to authorise the assessment of."
- Repeal of 59th Section.
8. The fifty-ninth section of the said Act is hereby repealed, and the following shall be read and substituted in its place, that is to say:—The council shall annually in the month of February make an estimate of the amount of money required for municipal purposes, and shall assess such rate or rates according as to the council shall seem fit upon either the owners or occupiers of immovable property, or one or more of such rates upon the owner or owners and one or more upon the occupier or occupiers, provided that any such occupier's rate as aforesaid shall be assessed only upon such persons as are *bonâ fide* tenants of immovable property, and not merely boarders or temporary lodgers therein: And the council shall give public notice thereof in one or more of the newspapers published in the municipality, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the year ending on the last day of February next following, make a supplementary estimate, and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council in any one year ending on the day aforesaid to levy any rate or rates
- Substitution of new Section.

amounting in the aggregate to more than threepence in the pound on the value of the immovable property subject to such rates without obtaining the consent of the majority of the townsmen present and entitled to vote according to the eighth and eleventh sections of this Act at a public meeting to be called for the purpose of authorising such rate or rates, of the object and the time and place of holding which meeting at least seven days' notice shall be given as provided in the sixty-third and sixty-fourth sections of this Act: And provided that in case of a rate being so levied as aforesaid upon the occupiers of immovable property the owners shall in all cases in which such properties shall be unoccupied or occupied by the owners thereof, be deemed to be the occupiers thereof within the meaning of this Act and liable to the payment of such rate notwithstanding the payment by them of any other rates levied upon the owner or owners in respect of the same property.

9. The sixty-first section of the said Act shall be read and construed as if the word "or" had been inserted therein in place of the word "of" after the word "suit," and also as if the words "assessed upon the owner or owners of immovable property," and the words "assessed upon either owner or occupier of immovable property," and the words "assessed upon the owner as aforesaid" had been respectively inserted therein after the words "the Town Clerk may in suing for the recovery of any rate," "become liable for any rate," and "shall have paid any such rate" respectively.

Interpretation of
61st Section

10. The sixty-fifth section of the said Act shall be read and construed as if the word "paraffin" had been inserted therein after the words "the storing of."

Interpretation of
65th Section.

11. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of the said Act or of this Act shall be subject to the provisions of the "Public Bodies Debts Act, 1867."

Moneys borrowed
subject to provisions
of "Public Bodies
Debts Act."

12. The word "municipality" used in this Act shall mean the municipality of East London as created by the said Act No. 23 of 1880, and the word "council" the Municipal Council of East London.

Interpretation.

13. This Act may be cited for all purposes as the "East London Municipality Amendment Act, 1881."

Short title.

1758 PRINCE ALBERT DIVISIONAL COUNCIL LOAN.

No. 13—1881.]

[June 25, 1881.]

ACT

To Authorise the Divisional Council of Prince Albert to borrow Money upon security of Road Rates and Tolls for the Construction of a Road over the Zwarteberg between the Village of Prince Albert and the Congo.

Preamble.

WHEREAS ON the 29th day of July, 1880, the House of Assembly resolved that "The Government should be authorised to proceed with the construction of a road over the Zwarteberg, between the village of Prince Albert and the Congo, on the pound for pound principle, the amount to be expended by the Government not to exceed £12,000": And whereas it is expedient to authorise the Divisional Council of Prince Albert to borrow money upon the security of the road rates, tolls, and other revenues of the said division, for the purpose of contributing towards the cost of constructing the said road :

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

Power to council to borrow £8,000.

1. It shall be lawful for the said Council from time to time to borrow and take up at interest such sum of money not exceeding eight thousand pounds in the whole as may be required in addition to the amount to be contributed by the Colonial Government and the Divisional Council of Oudtshoorn, for the construction of the said road over the Zwarteberg, between the village of Prince Albert and the Congo.

Rates and tolls to be security.

2. For the due payment of the money to be raised by the Divisional Council as aforesaid and the interest thereof, the rates, tolls and other revenues of the said Council are hereby charged and hypothecated.

Council to grant such acknowledgment as in schedule.

3. The Council shall grant written acknowledgments of or for such sums of money as may be borrowed as aforesaid, which acknowledgments shall be as near as is material in form annexed to this Act, and shall be signed on behalf of the said Council by one or more of its elected members thereto duly authorised by resolution of the said Council.

Sinking fund provided for.

4. As a fund for the payment of the interest upon and gradual extinction of the loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said Council as aforesaid, an annual sum equal to the interest on the whole amount of such loans, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sum shall be annually charged upon and payable out of the revenues of the said Council, so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished.

PRINCE ALBERT DIVISIONAL COUNCIL LOAN. 1759

5. Such portion of the fund charged and chargeable annually on the revenues of the said Council under the last preceding section, as shall not be required for payment of the interest for the time being due upon the loans raised under the authority of this Act, shall be paid to a separate account, to be kept in a bank to be chosen for that purpose by the Council, and shall be applied in redeeming and cancelling the obligations or acknowledgments of the said Council for money borrowed under the authority of this Act, in such manner and form as shall be provided by the terms and conditions whereon such obligations or acknowledgments shall respectively have been granted, and all moneys so paid into the bank for the purpose aforesaid shall be drawn out by cheques to be signed by some member or members thereto specially authorised by resolution of the said Council.

No. 13—:881.

After paying interest, fund to be applied in paying off capital sum.

6. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, shewing all moneys received and expended up to the 30th June and 31st December preceding.

Separate accounts to be kept of borrowed money.

7. The accounts in the last preceding section mentioned shall be audited and examined by the auditors to be from time to time appointed, under the provisions of the "Divisional Councils Act, (1) 1865," and the provisions of the eighty-third and eighty-fifth sections of the said Act shall extend and apply to all accounts, books, and papers connected with the said loan.

To be audited under the "Divisional Councils Act, 1865."

8. Every debt, liability, and obligation created by virtue of this Act shall be subject to the provisions of the "Public Bodies Debts Act, (2) 1867."

Subject to "Public Bodies Debts Act, 1867."

9. It shall be lawful for the said Council to pay the necessary costs, charges, and expenses of obtaining this Act and carrying the provisions thereof into effect, out of the money to be raised under the provisions hereof.

Expenses to be paid out of loan.

10. When and as soon as the District of Willowmore shall, by any proclamation, to be issued under the provisions of the second section of the "Fiscal Divisions Extension Act, (3) 1879," become and be a division for fiscal purposes, so much of the present division of Prince Albert, as shall be included in and form part of the division of Willowmore shall cease to be liable for any charge by this Act created upon or in respect of the said division of Prince Albert.

In case of Willowmore being created a fiscal division.

11. This Act may be cited for all purposes as the "Prince Albert Divisional Council Loan Act, 1881."

Short title.

¹ No. 4, 1865, repealed by Act 40, 1889.

² No. 11.

³ No. 36.

No. 14- 1881.

SCHEDULE.

PRINCE ALBERT DIVISIONAL COUNCIL LOAN ACT, 1881.

Acknowledgment for Loan of £

We, the undersigned members of the Divisional Council of Prince Albert, duly authorised thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Prince Albert is indebted to in the sum of for so much money borrowed for the purposes mentioned in the "Prince Albert Divisional Council Loan Act, 1881," and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided.

And we further covenant and agree in our said capacity that the principal and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say (here insert the rate of interest, times of payment, and other conditions agreed upon).

Given under our hands at Prince Albert,
this day of 188

Entered

} Members of the Divisional
Council of
Prince Albert.

Secretary.

No. 14—1881.]

[June 25, 1881.

ACT

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

Preamble.

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

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

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

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

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act cause to be constructed and equipped, either under contract for each separate line of railway or otherwise

¹ See Acts 25, 1884 ; 20, 1888 ; 28, 1889 ; 10, 1890 ; 13, 1890 ; 17, 1891.

the several railways in the preamble of this Act mentioned, and shall cause the same to be maintained and worked, and shall appoint such engineers and other officers and do and perform all such acts, matters, and things as he may deem necessary or expedient for such purposes.

No. 14—1881.

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

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

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

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

1. For the purpose of constructing and equipping the said railway from Queen's Town to Aliwal North, a sum not exceeding one million one hundred and seventy thousand pounds (£1,170,000).

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

3. For the purpose of constructing and equipping the said railway from Cradock to Colesberg, a sum not exceeding six hundred and fifty-seven thousand seven hundred and six pounds (£657,706).

4. For the purpose of constructing and equipping the said railway from Wynberg to Kalk Bay, a sum not exceeding fifty-two thousand pounds (£52,000).

5. For the purpose of constructing and equipping the said railway from a point at or near Colesberg on the Cradock Extension to a point at or near the one hundred and eightieth mile from Beaufort West on the Beaufort West Extension, a sum not exceeding five hundred and fifty thousand pounds (£550,000).

4. For the several purposes aforesaid it shall be lawful for the Governor to raise a sum of three million nine hundred and fifty-four thousand six hundred and thirty-six pounds (£3,954,636) from time to time as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock, and the costs necessarily incurred in raising the said loan, including discount, commission, and other incidental charges, shall be a first charge against the amount thereof.

Such sum to be raised by debentures or stock.

5. The sections of Act No. 19 of 1874, numbered respectively 8 and 9 (with sub-sections), 10, 11, 12, and 14, shall, *mutatis mutandis*, be deemed and taken to apply to the borrowing authorised under this Act.

Sections 8, 9, 10, 11, 12, and 14, of Act 19 of 1874 to apply.

6. This Act may be cited as the "Railway Extension Act, 1881."

Short title.

No. 15—1881.]

[June 25, 1881.]

ACT

For enabling the Commissioners of the Municipality of Beaufort West to borrow a further Sum of Money for the purpose of repaying certain Moneys already borrowed and expended in further strengthening, repairing, and otherwise improving the "Beaufort Reservoir."

Preamble.

WHEREAS by Act No. 4 of 1866-'67, intituled "An Act for enabling the Commissioners of the Municipality of Beaufort to secure a Supply of Water for the inhabitants of such Municipality," provision was made for enabling the said commissioners to secure to the Cape of Good Hope Savings Bank Society certain moneys lent and to be lent by the said Savings Bank Society to the said commissioners, not exceeding in the whole the sum of two thousand pounds, for the purpose of constructing a reservoir capable of storing such supply of water: And whereas by Act No. 5 of 1869, provision was further made for enabling the said commissioners of the municipality of Beaufort to borrow a further sum of money not exceeding in the whole the sum of two thousand pounds sterling, for the purpose of strengthening and otherwise improving the said reservoir, and for securing to the lender thereof the said further sum of two thousand pounds sterling to be borrowed by the said commissioners under the said last mentioned Act, and for rendering the said sum of two thousand pounds sterling secured by the aforesaid Act No. 4 of 1866-'67, and the interest payable thereon a first and preferent charge upon all and singular the revenues of every description which are by the the said last mentioned Act made liable to the payment thereof, and for rendering the said moneys borrowed under the said Act No. 5 of 1869, and the interest payable thereon a second preferent charge upon the said revenue: And whereas by Act 20 of 1875, intituled the "Town of Beaufort Water Loan Act of 1875," provision was further made for enabling the said commissioners of the municipality of Beaufort to borrow a further sum of money not exceeding in the whole the sum of six thousand pounds sterling, for the purpose of re-constructing, strengthening, and improving the reservoir aforesaid, and for paying off the moneys already raised under Acts No. 4 of 1866-'67 and No. 5 of 1869, and for rendering the said moneys borrowed under the said Act No. 20 of 1875, and the interest payable thereon, a third preferent charge upon the said revenue: And whereas it was thereafter found absolutely necessary to further strengthen, repair, and otherwise improve the said reservoir, and whereas the commissioners of the municipality of Beaufort West borrowed upon credit the further sum of four thousand pounds, necessary for further strengthening, repairing, and improving the said reservoir,

and expended the same in so further strengthening, repairing, and improving it: And whereas it is just and right that the sum of four thousand pounds sterling so borrowed upon credit and expended, should be repaid by the municipality of Beaufort West: And whereas to this end it is expedient to empower the commissioners of the said municipality to borrow and take up such moneys as may be required for the purpose of repaying the amount already borrowed upon credit and expended as aforesaid, but not exceeding in the whole the sum of four thousand pounds sterling:

No. 15 1881.

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

1. It shall be lawful for the commissioners of the municipality of Beaufort to borrow and take up such sum or sums of money not exceeding in the whole the sum of four thousand pounds sterling, as shall be required for repaying the moneys already borrowed and expended as aforesaid in further strengthening, repairing, and improving the Beaufort Reservoir.

Power to municipality to borrow £4000.

2. The first ten sections of the Act aforesaid, No. 4 of 1866-67, shall apply to the money to be borrowed under this Act, by whomsoever the same shall be lent, whether by the said Savings Bank Society or by some other society, or by some company or co-partnership or individual precisely as if the said sections were, *mutatis mutandis*, herein again set forth.

First 10 sections of Act 4 of 1866-67 to apply.

3. The sum of two thousand pounds secured by the Act aforesaid No. 4 of 1866-67, and the interest payable thereon, shall be a first and preferent charge upon all and singular the revenues of every description which are by the said Act made liable to the payment thereof; and the moneys borrowed and secured under the said Act No. 5 of 1869, and the interest payable thereon shall form a second preferent charge upon the said revenues; and the moneys borrowed and secured under the said Act No. 20 of 1875, and the interest payable thereon, shall form a third preferent charge upon the said revenues, until such time as the moneys secured and borrowed by the Acts aforesaid, No. 4 of 1866-67 and No. 5 of 1869, shall have been repaid and satisfied when the moneys borrowed and secured under the said Act No. 20 of 1875, and the interest payable thereon shall form a first preferent charge upon the said revenues, and the moneys to be borrowed under this Act and the interest payable thereon shall form a second preferent charge upon the said revenues.

Order of preference in loans raised under different Acts.

4. Nothing in the "Public Bodies Debts Act of 1867" shall interfere with the preference over the revenue to arise from the said reservoir, given by this and the said Acts No. 4 of 1866-'67, No. 5 of 1869, and No. 20 of 1875, nor with the powers given by the fourth to the eighth clause, inclusive, of the said Act 4 of 1866-'67 to assess a rate for payment of the money borrowed under the said Acts, in case the revenue from the said reservoir

Provisions of "Public Bodies Debts Act, 1867," not to affect such order.

No. 16—1881.

shall be unequal to the repayment thereof; but on the contrary, the provisions of the said sections shall be applicable to the money to be borrowed under this Act: Provided that if in the course of any proceedings under the "Public Bodies Debts Act of 1867," at the instance of any creditor of the municipality of Beaufort, the Supreme Court shall make an order under the fourth section of the said Act, directing the Master of the said Court to enquire whether any, and if so what, debts other than the debt then in question are due by the said municipality, then and in that case the creditors under the said Acts No. 4 of 1866-'67, No. 5 of 1869, and No. 20 of 1875, and under this Act may appear and prove their debts respectively.

Short title.

5. This Act may be cited for all purposes as the "Town of Beaufort Water Loan Act of 1881."

No. 16—1881.]

[June 25, 1881.

ACT

To Declare the Terms and Conditions applicable to Loans authorised to be raised by the Government of the Cape of Good Hope, and to provide for the creation of Cape of Good Hope Consolidated Stock.⁽¹⁾

Preamble.

WHEREAS it is expedient to define in one Act the terms and conditions applicable to all loans hereafter authorised to be raised by the Parliament of the Cape of Good Hope, and whereas it is expedient to provide for the creation of Cape of Good Hope Consolidated Stock, and to enable this Colony to take advantage of the provisions of an Act of the Imperial Parliament, intituled "The Colonial Stock Act, 1877":

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

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

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

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

3. [Repealed by Act No. 17, 1888.]

4. When borrowing shall be upon consolidated stock, such stock shall be issued in England under the provisions of the Act of the Imperial Parliament, intituled the "Colonial Stock Act, 1877,"

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

¹ See Act 21, 1878.

upon the best and most favourable terms that can be obtained, and on such other conditions, subject to the provisions of this Act, as the Governor, with the advice of the Executive Council, may, before the issue thereof, from time to time determine.

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

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

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

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

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

Cancellation of redeemed debentures.

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

Special accounts to be kept, and submitted to Parliament

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

Powers and authorities given to the Governor.

(1) [Repealed by § 1 Act No 3, 1892.]

(2) He may authorise the creation and issue of such an amount of consolidated stock in exchange for the securities held for such loans as may be necessary.

(3) He may authorise the creation and sale of any such consolidated stock for the purpose of raising money

¹ See § 5, Act No. 18, 1883.

No. 16—1881.

for redeeming any outstanding loans, and of paying any expenses in the creation of consolidated stock, and otherwise carrying out the provisions of this Act, on such conditions as he may determine.

- (4) Any conversion so authorised may be effected either by arrangement with the holders of existing securities, or by purchase thereof out of moneys raised by the sale of new consolidated stock, or partly in one way and partly in the other.

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

Capital of loan not to be increased.—
Exception.

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

Loans chargeable on the Colonial revenue.

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

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

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

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

(9) For paying off capital of loans and generally conducting all business connected with such loans.

No. 17—1881.

(10) And for the protection and remuneration of such agents, person, or persons, or bank, in respect of any such agreements.

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

Such agreements as valid as if embodied in this Act.

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

Powers the Governor may exercise.

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

(2) He may at any time remove or accept the resignation of any agent, and appoint another or others.

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

Short title.

No. 17—1881.]

[June 25, 1881.

ACT

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

WHEREAS by the Act No. 13 of 1876, power is given to the Governor to raise and take up on the terms in the said Act mentioned, the sum of £150,000, for the purposes in the said Act referred to and set forth : And whereas such sum of £150,000 is inadequate and insufficient to carry out the said purposes so far as relates to the completion of the harbour works in the said Act mentioned : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor to raise a further sum of forty thousand pounds (£40,000) from time to time as occasion may require, for the purpose of further carrying on and improving the harbour works at the Kowie and the works connected therewith.

Power to raise £40,000.

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

Short title.

¹ Further sums raised by Acts 21 of 1883, and 17 of 1884. See also Acts 23, 1864, and 8, 1865.

No. 18—1881.]

[June 25, 1881.]

ACT

To Authorise the Raising of a Further Sum of One Hundred Thousand Pounds Sterling to Improve the Harbour of East London. ⁽¹⁾

Preamble.

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

Power to raise
£100,000.

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

Short title.

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

No. 19—1881.]

[June 25, 1881.]

ACT

To Authorise the Raising of a Further Sum of Fifty-four Thousand Three Hundred and Fifty-eight Pounds for the purpose of completing certain Lines of Telegraph already authorised, and of improving in certain respects Existing Lines. ⁽²⁾

Preamble.

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

Power to raise
£54,358.

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

Short title.

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

¹ Further sums raised by Acts 21 of 1883, 17 of 1884, 38 of 1885, and 25 of 1886. See also Acts 7, 1871; 26, 1875; 12, 1876; 22, 1878.

² Further sums raised by Act 30, 1882.

RAILWAY CONSTRUCTION.

1769

No. 20—1881.

SCHEDULE.

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

No. 20—1881.]

[June 25, 1881.

ACT

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

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

Preamble.

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

1. It shall be lawful for the Governor to raise and take up a sum of money not exceeding six hundred and forty-nine thousand nine hundred and sixty pounds (£649,960), to be applied to the several purposes in the schedule to this Act annexed.

Power to raise
£649,960.

2. This Act may be cited as the "Railways Completion and Equipment Act, 1881."

Short title.

SCHEDULE.

Western Railways	£198,926
Midland and North Eastern Railways	352,772
East London and Queen's Town Railway	98,262
	<hr/>
	£649,960
	00 2

1770 KING WILLIAM'S TOWN WATER SUPPLY.

No. 21—1881.]

[June 25, 1881.]

ACT

To enable the Borough Council of King William's Town to provide the Inhabitants of that Town with Water, and for that purpose to take Water from the Buffalo River, and to acquire Government and other Lands required for the Construction of the necessary Water Works. ⁽¹⁾

Preamble.

WHEREAS the present supply of water to the town of King William's Town is very defective, and it is desirable that a good and sufficient supply should be obtained, and the Borough Council of the said town has caused surveys to be made, and are advised that the same can be obtained from the Buffalo River in the division of King William's Town: And it is expedient that the works necessary to accomplish that object should be constructed either by the said council or by a joint-stock company or co-partnership of individuals, or an individual with whom the said council may contract either for the whole or any portion of the said works, or the material therefor: And that to enable the said council to procure the necessary funds, the said council shall be empowered either under the provisions of the Act No. 8 of 1877, entitled "The Irrigation Act of 1877," Act No. 28 of 1879, entitled "An Act to assist Municipalities to carry out Irrigation Works," and the Act No. 7 of 1880, entitled "The Irrigation Amendment Act of 1880," or otherwise as the council may deem fit, to raise such sum or sums of money not exceeding in the aggregate the sum of thirty-five thousand pounds. And that in order that the said council may be enabled to pay the interest on the said loan the said council should be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest as aforesaid:

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

Power to Council
to borrow £35,000.

1. It shall be lawful for the said Council, from time to time, to borrow and to take up at interest such sum or sums of money, not exceeding in the whole thirty-five thousand pounds sterling as may be required for the purposes of this Act, and to charge the borough rates of the said borough as security for any such sum to be borrowed by the said council.

Power to take
water from Buffalo
River.

2. The said council shall be empowered to take, impound, divert, appropriate, and convey from the Buffalo River in the district of King William's Town, such a supply of water of the said river as they may require for the purposes of this Act. And for the pur-

¹ See Act No. 12, 1894, § 15.

KING WILLIAM'S TOWN WATER SUPPLY. 1771

pose of enabling them so to do, it shall and may be lawful for the Governor of this Colony, and he is hereby authorised to give and grant to the said council in full and free property on such conditions as may be agreed upon such Government land as may seem to him desirable on which the said Buffalo River takes its rise, or all such Government land as is situate at or immediately adjoining the point on the said river from whence it is intended that such supply shall be so taken, impounded, diverted, appropriated, and conveyed: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance, shall deprive any person of any water or any right of water which he may, at the time of the taking effect of this Act, possess or be entitled to in reference to the said Buffalo River, or in any way interfere with, or lessen such water, or right to water, such person shall be entitled to recompense or compensation, to be settled in case of difference, as in the eighth section of this Act provided: Provided, further, that no person to whom any Government land shall be sold or leased after the passing of this Act shall thereby acquire any water or right of water for the interference with or lessening of which by the works hereby authorised he shall be entitled to claim any recompense or compensation.

No. 21—1881.

Governor may grant certain lands to the Council.

Compensation to persons injured by diversion of water, &c.

3. The said council is hereby empowered to construct and make all such works as may, in the opinion of the said council, be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works, for securing an adequate supply of water for the inhabitants of the said town; and for such irrigation purposes, as the said council may deem necessary and expedient.

Power to make necessary works.

4. The council is hereby empowered to enter upon, occupy, enclose, take, and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart for Church purposes, commonly called "Glebe lands," and also to enter upon, occupy, enclose, take, and use any land the private property of any person or persons whomsoever, which may be required for the purposes of this Act, and may agree as hereinafter provided for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works, upon such terms and conditions as may be mutually agreed to.

Power to expropriate Crown Lands.

And lands of private owners on conditions provided for.

No. 21—1861.

Power to take
Crown and other
lands to protect
sources of the Buf-
falo River.

5. It shall be lawful for the said council to acquire and take possession in the manner hereinbefore and hereinafter provided of any land whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land belonging to private persons, that may be required for the purpose of protecting the sources of the said Buffalo River, or the sources of supply from whence the water may flow into the reservoirs, dams, places or place where the said works may take off the water of the said river.

Pipes and conduits
may be laid in
streets.

6. The said council are hereby further empowered to lay down pipes or construct conduits under or along any public road or street or under or along any ground set apart in the diagram or conditions of sale of any sale of land as a street or thoroughfare, without making or being liable to make any compensation in respect thereof.

Right of access
along line of works.

7. It shall be lawful for the said council at all times, by themselves, their engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said council acquired under the provisions of this Act, for the purpose of adding to, repairing, re-laying, or supervising the said works, or for any other purpose whatsoever that may be deemed expedient by the said council in or about carrying out the purpose of this Act: Provided, however, that such right of way shall in no case exceed a space of six feet on each side of the line of works.

Arbitration provi-
ded for where water
or land of private
owners expropriated

8. Any person or persons from whom any water or right of water, land, or any stone, gravel or other material, may be required to be taken for the purposes of this Act, such person or persons shall be bound and obliged to send in to the Mayor of the said council his, her, or their claim or claims for the purchase amount, hire, recompense or compensation which he, she, or they shall claim to be entitled to for such water or right of water, land, or any stone, gravel, or other material required, or taken, or which shall be required or taken for the purposes of this Act, within twelve months after any such taking as aforesaid, and for that purpose the necessary plans, specifications and reports in connection with the said works shall lie at the office in King William's Town of the Town Clerk of the said council, during his usual business hours for and during the period aforesaid, for the inspection of any person or persons who shall be interested therein: After which said period no further or any claim or claims, which shall not have been sent in, in manner hereinbefore provided for, shall be recognised, nor shall such claimants be entitled to recover the amount of their claims, or any portion thereof from the said council, by any means or proceeding whatever: And in case the said council shall not consent or agree to pay the amount of such or any claim or claims then the said council shall cause to be served upon the person or persons whose claim they shall reject, a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such

person or persons to state, in writing, to the said council, or to some other person by them appointed, within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice, whether he is willing to accept the sum therein mentioned or not; and if such person or persons should refuse the sum offered, or neglect to reply to the said notice, then the said council or other person aforesaid shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council or other person aforesaid, and for that purpose to transmit to the said council or other person as aforesaid, within a reasonable time to be specified in the last mentioned notice, the name of some person whom he shall select to be an arbitrator; and the said council or other person as aforesaid, upon receiving the name of the person so selected shall nominate a second arbitrator, and the said two arbitrators shall, before proceeding in the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said council or other person as aforesaid shall cause a deed of submission to be prepared, which shall be signed by the said council or other person aforesaid and by the person claiming such compensation or recompense as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said council or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in their first notice in this section mentioned, for or on account of and at the risk of such person as aforesaid who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said council or other person aforesaid, upon so lodging the said sum, shall be authorised and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said council or other person aforesaid a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

9. In case the said council or other person aforesaid shall require to take or use any water, or land, or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorised in his capacity as such guardian

Proceedings in case
water on land of
minors, absentees
and others expropri-
ated.

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or curator to treat and agree with the said council or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said council or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said council, or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorised to receive the same, and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall by way of *fidei-commissary* limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisalment shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest to draw the interest payable on the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. And in case the said council shall require to take or use any land or materials, as in the last preceding sections mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in the *Government Gazette*, and one or more local papers for four successive weeks, describing as accurately as may be, the land or materials which are required to be used or taken, and calling by name on the owner or owners of the said land or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners or any person duly authorised by him or them, for the recompense or compensation to be made by the said council for the said land and materials, and requiring

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such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said council, stating the recompense or compensation claimed, and if the owner or owners shall not apply within the said period then the like proceedings in regard to the agreement for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last two preceding sections, precisely as if the said owner or owners had from the first been in actual possession. And in case the owner or owners shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person to be approved of by the Civil Commissioner of the division to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said council to pay whatever sum such person shall have valued the land or materials in question into the Guardian's Fund to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony: And the said council upon so paying the said sum, shall be authorised and entitled to take or use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land or materials as aforesaid had been duly done and performed.

10. Any person who shall wilfully injure, damage, disturb, obstruct, or interrupt any building, erection, conduit, reservoir, dam, watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining the works contemplated by this Act, shall upon conviction, forfeit for the use of the said council a sum not exceeding one hundred pounds sterling, or be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted criminally both under this Act and any other law for or in regard to one and the same act.

11. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said municipal council, or in any stream flowing into such dam or reservoir, by means of any watercourse constructed by the council, or shall wash, throw, or cause to enter

Penalties for in-
juring, &c., the
works.Penalties for wash-
ing, bathing in, and
otherwise defiling
the streams.

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therein any dog or other animal, or who shall place or throw any rubbish, dirt, filth, or other noisome thing in any such dam, or reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, shall for every offence, on being convicted thereof, forfeit for the use of the said council a sum not exceeding five pounds sterling, and in failure of the payment of such fine the party convicted shall be liable to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

Tariff of charges for private water-leadings to be published.

12. The council are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings and for the supply to industrial establishments shall be regulated, and the payment for all private water-leadings and for the supply to industrial establishments shall be in accordance with such tariff: Provided, nevertheless, that the said council, or any person duly authorised by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

Power to frame bye-laws.

13. It shall be lawful for the said council, at any meeting at which a majority of the members shall be present, to frame from time to time such bye-laws as they shall deem necessary for regulating the system of water supply to the town, such bye-laws to be submitted for the approval of the Governor in manner provided by the Ordinance of British Kaffraria No. 9 of 1864, entitled "The King William's Town Borough Ordinance, 1864."

Rates may be levied to pay interest on loan and other expenses.

14. In order to pay the interest on the amount of the said loan and to provide for all other claims arising under this Act, the council shall be empowered and compelled to impose, levy, and collect a sufficient annual rate or assessment over and above what the said council is already empowered to impose and levy upon the immovable property within the limits of the said municipality; and every rate or assessment so imposed and made by the said council shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed under the provisions of the said Ordinance of British Kaffraria No. 9 of 1864, so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof: Provided that it shall be lawful for the said council to apply for the payment of interest or principal or interest and principal of the moneys aforesaid any funds or moneys coming to the said council from any source whatever and not specifically appropriated or required for any other object.

Provisions for proper assessment of properties.

15. The amounts for assessment entered on the tenants' assessment roll in force within the said municipality for each and every year shall be the amounts on which the rate shall be levied for the purposes of this Act so far as the properties included in such

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tenants' assessment roll are concerned, but for any or all properties not included in such tenants' assessment roll, and for all properties not liable to assessment under the said Ordinance of British Kaffraria, No. 9 of 1864, the annual value shall be made and determined annually by some competent person to be appointed by the council: Provided that such valuation shall lie open for public inspection at the office of the council for the space of one calendar month from the levying of the said annual rate, and the council shall give notice in one or more of the newspapers published within the said municipality that the same lies open for inspection, and the provisions of the 65th section of the said Ordinance No. 9 of 1864 shall apply to the hearing and deciding upon objections to such valuation.

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16. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day, to be fixed by the said council, of which day and of the amount of the rate or assessment so to become payable not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town-hall.

When rates payable.

17. As soon as any rate shall be assessed as aforesaid the council shall appoint under the corporate seal a person to collect the same, and which rate shall, on non-payment thereof, be recoverable as a separate and distinct rate at the suit of such collector by action in the Resident Magistrate's Court having jurisdiction within the said municipality, or in any Resident Magistrate's Court of the district in which such defaulter shall reside.

Collectors to be appointed.

18. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of this Act shall be subject to the Public Bodies Debts Act, 1867.

"Public Bodies Debts Act, 1867," to apply.

19. The council shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for rates imposed under the provisions of this Act, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: And the said council shall yearly and every year, so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the borough for the inspection, at all reasonable times, of any householder of the borough, an account showing the particulars aforesaid, and giving any other information which the said council shall deem necessary or expedient to impart: Provided that every such account shall be made up to the 31st December in each and every year.

Separate accounts to be kept.

Such accounts to be accessible to householders.

20. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said council out of the moneys to be so borrowed as aforesaid

Costs, &c., may be paid out of loan.

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Privileges under other Acts not to be affected by this Act.

21. Nothing in this Act contained shall be taken to deprive the said council of any rights and privileges which it may possess, or of which it may be entitled to avail itself, under the provisions of the Acts No. 8 of 1877, entitled "The Irrigation Act, 1877," Act 28 of 1879, entitled "An Act to assist Municipalities to carry out Irrigation Works," and No. 7 of 1880, entitled "The Irrigation Amendment Act, 1880," the true intent and object of this present Act being to add to and increase and in no way to derogate or detract from such rights and privileges.

Definition of terms.

22. The word "borough" in this Act shall mean the borough of King William's Town as established by the said Ordinance of British Kaffraria, No. 9 of 1864; and the word "council" the Borough Council of King William's Town.

Short title.

23. This Act may be cited as the "King William's Town Water Supply Act, 1881."

No. 22—1881.]

[June 25, 1881.]

Act to apply a further Sum of One Hundred and Fifty-six Thousand One Hundred and One Pounds Fifteen Shillings and Threepence Sterling, for the service of the Year ending 30th day of June, 1881.

[Spent.]

No. 23—1881.]

[June 25, 1881.]

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

[Spent.]

No. 24—1881.]

[June 25, 1881.]

ACT

To Incorporate the City Tramways Company, Limited. (1)

Preamble

WHEREAS by a deed, bearing date at Cape Town the 26th day of June, 1878, whereof a copy has been deposited in the office of the Clerk of the House of Assembly, certain persons did become co-partners together in a certain joint-stock company, called the "City Tramways Company, Limited," for the purpose of constructing and working certain street tramways in Cape Town and district, and from Cape Town to Green Point and Sea Point: and whereas the said company, which has been duly registered in this Colony under the provisions of the Act No. 23 of 1861, intituled an "Act to limit the Liability of Members of certain Joint-Stock Companies," is willing to undertake the construction and working of the said tramways: And whereas it is desirable to facilitate the

¹ See § 35, Act 22, 1895.

construction, working, and maintenance of the said tramways: and whereas it is expedient to incorporate the said company as constituted under the said deed, in order to carry into effect the objects of the said company: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

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1. The several persons who are, or shall become, shareholders in the said company, under the provisions of the said deed of settlement, their respective executors, administrators, successors and assigns, shall be and are hereby united into one body corporate, under the name and title of "The City Tramways Company, Limited," for the purpose of constructing, maintaining, and working by steam, or other mechanical power, or horse-power, or either of them, certain tramways by this Act authorised, with all necessary sidings, termini, buildings and appurtenances.

Corporate name provided for.

2. The company hereby incorporated by the said name of "The City Tramways Company, Limited," shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued in any competent Court, and shall have power to take, purchase, and hold lands, buildings, hereditaments, and possessions, and also all other property, chattels, or effects whatsoever, and such lands or other property subject to any engagements affecting the same, shall be vested in the company by its corporate name, and without the necessity of each individual shareholder being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

Powers and rights of Corporation, thus created.

3. The said company is hereby authorised to work and maintain, and in so far as not already constructed, to construct, the lines of tramway mentioned in a certain agreement, copy whereof is contained in the schedule hereto, executed on the 23rd day of December, 1879, before the Notary, Henry Mathew Arderne, on behalf of the Town Council of the city of Cape Town of the one part, and the City Tramways Company, Limited, of the other part, save and except the single line of tramway set out in paragraph two of the schedule referred to in this Act which shall not come under the operation of the same, and subject to all the terms and conditions in the said agreement expressed and declared.

What line of tramway to be maintained and constructed.

4. The said company is also authorised to construct, work, and maintain the following continuations of the said lines of tramway beyond the limits of the municipality of Cape Town,—that is to say:

Further construction authorised.

- a. From Three Anchor Bay along the sea beach, over land vested in the municipality of Green Point and Sea Point, to a spot near the boundary wall of the property formerly belonging to C. Lind, Esq., at Sea Point, according to the route laid down in the plan of the proposed tramways, deposited in the office of the Clerk of the Legislative Council: Provided that it shall be lawful for the said

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company, with the consent of the commissioners of the municipality of Green Point and Sea Point first obtained, to extend, deviate from, and vary the said line.

b. From the terminal point of the line already completed near the dock gates, within the docks, and to and along the east quay.

Roadway between rails to be kept in repair by the company.

5. The roadway between the rails of the said tramway within the limits of the municipality of Green Point and Sea Point shall be maintained in good and efficient repair at the costs and charges of the said company; and all damage done to the main road aforesaid, or to the streets, bridges, sewerage and property of the said municipality by reason of any work or works performed and executed by the said company, shall in like manner, as soon as practicable, be made good at the costs and charges of the said company.

Terms and conditions which are to apply to the part of the line passing over land under management of the Harbour Commission.

6. The terms and conditions contained in sub-sections 5^o, 6^o, 7^o, 8^o, and 11^o, of the third section of the schedule to this Act attached, shall, in as far as they are applicable, apply, *mutatis mutandis*, to such portions of the line as may pass over the property under the management and control of the Table Bay Breakwater and Dock Management Commission, as if an agreement to that effect had been entered into and had been attached to this Act, and as if the commissioners appointed under Act 6 of 1860 had been therein named, instead of the Town Council. And if at any time it shall be found that the said tramways, or any part thereof, passing over the property mentioned in this clause shall interfere with, or be prejudicial to the proper working and management of the docks, or interfere with the carrying out of any alterations that may be made in the construction of the said docks, the aforesaid commissioners may give notice to the Tramway Company to take up the line or such portion of the line as aforesaid, and upon the expiry of three months after such notice shall have been given, the Tramway Company shall take up the line or portion of the line in question, or in case the company shall not do so, the said commissioners shall be entitled to perform the work and charge the expense thereof to the company.

Penalty for obstructing the line.

7. If any person or persons shall drive or lead any wagon, cart, carriage, or other vehicle, or any horse or other animal upon the line of the said tramway in such manner as to improperly obstruct and hinder any car or conveyance belonging to the said company, or shall refuse to remove such obstruction, it shall be lawful for any officer of the said company, or any person whom he may call to his assistance, to remove such obstruction; and any person who shall be guilty of such hindrance or obstruction shall for every such offence be liable to a penalty not exceeding forty shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month, unless such fine be sooner paid.

8. Nothing in this Act contained shall authorise the said company in any manner to obstruct or hinder the safe passage or crossing of the ordinary traffic on any roads and streets in which such tramway shall have been made, but in all cases a sufficient space shall be left at least on one of the sides of the said roads or streets, to allow all carriages, cattle, and passengers to pass the carriages on the said tramway in a safe and convenient manner; Provided, always, that all reasonable rights and facilities shall at all times be enjoyed by the company for their carriages to pass, without obstruction or hindrance, along the several lines of the company; and upon due and sufficient notice being given, by whistle, by the driver or conductor or other person in charge of the said carriages, of the approach thereof, all persons and vehicles upon or near the lines of rails shall as soon as practicable remove, so as to allow the carriages of the company to pass along the said line freely and without obstruction.

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Ordinary traffic of roads and streets not to be interrupted.

9. Any person who shall wilfully obstruct the officers or servants of the company, or any contractors with the company, in the lawful exercise of their powers in setting out, or making, laying down, repairing or working the tramways authorised by this Act, or who shall be guilty of the obstruction or hindrance in the eighth section of this Act mentioned, shall for every such offence be liable to a penalty not exceeding forty shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month, unless such fine be sooner paid.

Penalty for obstruction of Company's officers in execution of their duty.

10. Any person who, without lawful excuse, shall wilfully do any of the following things, namely:

Penalty for certain offences.

Interfere with, remove or alter, any part of the tramway, or of the works connected therewith;

Place or throw any stones, wood, or other material on any part of the rails;

Do or cause to be done anything in such a manner as to obstruct any carriage using the tramway or the horses drawing the same, or to endanger the safety of persons therein or thereon;

Or knowingly aid or assist in the doing of any such thing; shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which such person may be subject) to pay a penalty not exceeding forty shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month, unless such fine be sooner paid.

11. The tolls and rates of charge to be taken and made for passengers and goods conveyed on the tramway, shall not exceed the tolls and rates of charge specified in schedule (B) to this Act.

Tolls as in Schedule B.

12. All such tolls, fares, or rates for passengers or goods shall be at all times charged, equally to all persons and after the same

Tolls to be charged equally to all persons.

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rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods of the same description, and no reduction or advance in any such tolls, fares, or rates of charge shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the said tramway.

Tariff of fares to be exhibited in cars and published.

13. The tariff of rates of charge agreed to by the company shall be exhibited in a conspicuous place in each car used for carrying passengers or goods, and shall not be increased except after public notice given in the *Government Gazette* and two or more of the newspapers published in Cape Town.

Penalties for attempting to evade proper fare.

14. If any person travelling in any carriage on the tramway shall avoid or attempt to avoid payment of the fare, or if any person having paid the fare for a certain distance, shall knowingly and wilfully proceed in any such carriage beyond such distance, and refuse to pay the additional fare for the additional distance, or attempt to avoid payment thereof, or if any person shall knowingly and wilfully refuse or neglect, on arriving at the point to which such person has paid the fare, to quit such carriage, such person shall for every such offence be liable to a penalty not exceeding ten shillings, and in default of payment to imprisonment with or without hard labour for any term not exceeding three days unless such fine be sooner paid.

How recoverable.

15. All such penalties shall be recoverable in the Court of the Resident Magistrate of Cape Town, at the suit and for the benefit of the said company.

In case steam used on line no greater speed than 8 miles an hour.

16. In the event of all the said tramways or any part thereof being worked by steam or any other power it shall not be lawful for the carriages thereon to proceed at a greater rate of speed than eight miles an hour.

List of authorised tolls to be published.

17. A list of all the tolls authorised by this Act to be taken, and which shall be exacted by the Company, shall be published by the same being painted upon one toll board or more in distinct black letters on a white ground, white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations of the company, and the company shall have the right to recover, by legal process, in the Court of the Resident Magistrate aforesaid, all such charges from passengers and from the owners of goods, articles, or things conveyed by the company, and shall, moreover, have the right of retaining such goods, articles, or things until the charges appertaining to the same have been duly paid: Provided, always, that such tariff of charges may from time to time be altered by the company.

Act to be a public Act.

18. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, without being specially pleaded.

19. This Act may be cited for all purposes as the "City Tramways Company (Limited) Incorporation Act."

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Short title.

THE SCHEDULE REFERRED TO.

Know all men whom it may concern,—That on this the twenty-third day of December, in the year one thousand eight hundred and seventy-nine : Before me, Henry Matthew Arderne, notary public, by lawful authority, duly admitted and sworn, residing and practising at Cape Town in the Colony of the Cape of Good Hope, and in the presence of the subscribed witnesses, personally came and appeared John Anthony Roos as acting for and on behalf of the Town Council of the city of Cape Town, specially nominated, appointed, and authorised to appear and declare as after set forth by minute of meeting of said Town Council, held on the tenth day of December, one thousand eight hundred and seventy-nine (a copy whereof is hereunto appended) of the first part, and John Philip and David Mudie, trustees of and as acting for and on behalf of the City Tramway Company (Limited), and specially authorised and appointed to appear and declare as after set forth by a minute of meeting of the directors of the said company, held at Cape Town on the fifteenth day of September, one thousand eight hundred and seventy-nine (a copy whereof is hereunto annexed) of the second part.

And these appearers, acting on behalf of their respective constituents, did jointly and severally declare,—

That whereas the said City Tramways Company (Limited) has been constituted for the purpose of laying down certain lines of tramways in certain streets and roads, in and about Cape Town, and of carrying passengers to and fro thereon : And whereas, in order thereto, the said company on the twelfth day of April, one thousand eight hundred and seventy-eight, applied to the Town Council for liberty to lay down, make, and work by horse or steam power certain lines of tramway within the municipal limits of the city of Cape Town :

And whereas the said Town Council acceded to that application on certain terms and conditions, which were signified to the said company by letter dated the fifth June, one thousand eight hundred and seventy-eight : And whereas, relying on the said concession and with the permission of the said Town Council, the said company have commenced to lay down, and have made and are now working certain portions of the said line of tramway :

Now, therefore this agreement witnesseth that it has been contracted and agreed as the said appearers acting for and on behalf of their respective constituents, declared jointly and severally to contract and agree, that in consideration of the payment of the yearly sums, and the performance of the stipulations hereinafter mentioned, the said City Tramways Company Limited should be permitted and allowed to maintain and work so far as made, and to continue to make and lay down the following lines of tramway, viz. :

1. A single line of tramway with the necessary sidings and stations from Alfred-street by way of the dock road, Adderley-street, Darling-street, and Sir Lowry road to the toll-bar on Sir Lowry road, as shewn upon the plan hereunto annexed marked A.

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2. A single line of tramway from the corner of Adderley-street and Darling-street, by way of Adderley-street, Wale-street, Long-street, Orange-street, Annandale-street, Mill-street, and Buitenkant-street, back to Darling-street, the sides of the streets where the rails are to be laid down and the sites of the sidings and stations to be hereafter determined upon by the Town Council.

3. A single line of tramway with the necessary sidings and stations from the bottom of Bree-street by way of the new street reserved in the sub-division of the town and recently sold, and thence across the commonage to the sea side of the beach road, and thence to Three Anchor Bay.

And that the said company shall be permitted to maintain, uphold, and work the said several lines of tramway sidings and stations for the profit of the said company, upon the following terms and conditions, viz. :

1°. That the said tramways shall be constructed and maintained by the said company in a good and sufficient manner on a level with the streets, and shall be ballasted between the rails with good iron stone or other approved gravel, and at such crossings as may be considered necessary by the Town Council, paved with stone; and that a stone pavement eighteen inches wide shall be formed on the outside of each rail, and that the whole work shall be executed and maintained in good order and repair to the satisfaction of the Town Council or any competent person whom it may appoint to inspect the same.

2°. That the Tramway Company shall be guided by the Town Council in laying down said tramways as regards whether the same shall be laid down in the centre or on either side of the streets and roads traversed: Provided, however, that no route shall be selected which shall necessitate a curve of less than forty feet radius.

3°. That in carrying the said tramway across the Castle Moat, the company shall construct a trestle or other sufficient bridge on ground belonging to the War Department, so as not in any way to interfere with the present Castle Bridge.

4°. That the Tramway Company shall pay or cause to be paid to the Town Treasurer for the time being, for the benefit of the city funds as the consideration for being allowed to use the said streets for their tramways, the following sums, viz. :

1. The annual sum of fifty pounds sterling as and for the yearly rent of the lines of tramway Nos. I and II above specified, said rent to be reckoned from the first day of October last (1879), and paid in equal half-yearly instalments on the first day of October and the first day of April in each and every succeeding year, during the time for which this agreement shall endure.

2. The annual sum of twenty-five pounds sterling as and for the yearly rent of the line of tramway No. III above specified, said rent to be reckoned from the day on which this line shall be opened for passenger traffic, and to be payable thereafter half-yearly throughout the term of this agreement.

5°. That all expenses which may be incurred in the removal and replacement of the rails after the same shall have been laid down, either for constructing or repairing sewers, laying down water-pipes, and generally all additional expenses which may have to be incurred

by the council or municipal works, caused by the concession to the company, shall be borne by the company.

6°. That all damage that may be done to the streets, roads, sewers, water-pipes, or any other town property, by the construction, maintenance, or working of the tramways shall be made good by and at the expense of the company, and should the company fail to do so within a reasonable time to be named by the council in giving notice of what damage is to be made good, the work shall be done by the council forthwith at the expense of the company.

7°. That in case the tramways be so constructed, or any part of the same shall be unused for the purpose of traffic by the Tramway Company for a period of six consecutive months, the company shall be bound at its expense to remove the rails and restore the streets or roads to the condition in which they were before the tramways were made: or otherwise the said Town Council shall, after giving the company six months' notice of their intention to do so, be entitled to remove the rails and restore the streets or roads as aforesaid, and charge the expense of so doing to the said Tramway Company.

8°. Unless the whole lines of tramway shall be completed and in working order within three years from the date of these presents, this concession shall be null and void in respect of whatever portion may then remain unmade.

9°. With regard to the line of tramway from the bottom of Bree-street to Three Anchor Bay, where the same passes the Gallows Hill, it shall be kept outside the land applied for by the Harbour Board, and as close as possible to the Ordnance beacon on the north-east side of the said hill.

10°. The said Town Council for the time being shall have the right to run wagons or trucks over the line from the bottom of Bree-street to Three Anchor Bay, for the purpose of removing town refuse on such terms and at such times as may be arranged between it and the Tramway Company, and failing the council and company agreeing thereon, the same shall be fixed by three arbitrators, one of whom shall be appointed by the Town Council, one by the City Tramways Company, and a third by the two arbitrators first appointed, and on the award of the said arbitrators or a majority of them, shall be binding and conclusive on the parties hereto.

11°. That no deviation of the route of any of the lines mutually agreed upon between the council and the company shall vitiate this agreement or any portion of it.

12°. Further, with regard to the said line of tramway from the bottom of Bree-street to Three Anchor Bay, the said Tramway Company shall at its own cost and expense form a roadway twenty feet wide on the land side of the tramway from Alfred-street to where it reaches the Beach Road.

13. That if at any time it shall be found that the said tramways or any portion thereof interfere with and prejudice the rights and safety of the public, the Town Council may give notice to the Tramway Company to take up the line or a portion thereof so objected to, and on the expiry of twelve months after such notice shall have been given, the Tramway Company shall take up the line or portion of line in question, or in case the company shall not do so, the Town Council

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shall be entitled to perform the work and charge the expense thereof to the company.

Thus done and passed at Cape Town aforesaid, the day, month, and year first above written, in presence of the subscribed witnesses.

JNO. A. ROOS,
JOHN PHILIP,
DAVID MUDIE.

As witnesses :

GEO. B. WRIGHT,

W. ANDERSON.

Quod Attestor,

H. M. ARDERNE,

Notary Public.

L.S.

SCHEDULE B.

Maximum Tolls and Rates of Charge.

PASSENGERS.

1. The maximum rates of charge to be made by the owners of the City Tramway Company for the conveyance of passengers thereon, shall be not exceeding the following, viz. :

Between the toll-bar on Sir Lowry Road and corner of Adderley-street and Darling-street, or over any portion of the said distance, sixpence.

Between the corner of Adderley-street and Darling-street, and the terminus within the Docks, or over any portion of the said distance, sixpence.

Between the corner of Adderley-street and Darling-street, and the terminus of Green Point, or over any portion of the said distance, eightpence.

2. The foregoing restriction shall not extend to any special carriage or car that may be required to run on the tramway, but shall apply only to express and ordinary carriages or cars appointed from time to time by the owners for the conveyance of passengers and goods on the tramway.

3. Every passenger travelling on the tramway may take with him his ordinary luggage, not exceeding twenty pounds in weight, without any charge being made for carriage thereof. Any excess over the above, if allowed, may be charged for at the usual parcel rates.

GOODS.

4. The tolls to be taken by the owners of the tramway in respect of small parcels for carriage thereof on the whole or any part of the line shall not exceed :

For any parcel not exceeding twenty pounds in weight, threepence.

For any parcel not exceeding thirty-five pounds in weight, fourpence.

For any parcel not exceeding fifty pounds in weight, sixpence.

For any parcel not exceeding seventy-five pounds in weight, ninepence.

For any parcel not exceeding one hundred pounds in weight, one shilling.

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Parcels exceeding one hundred pounds in weight, such reasonable sum as the owners of the tramway may think fit to charge after notice given.

5. It shall be lawful for the owners of the tramway to demand and take, in addition to the tolls and rates of charge hereinbefore authorised, a reasonable sum for delivery and collection of goods and other services incidental to the business of a carrier, where such services respectively shall be performed by the owners of the tramway otherwise than on the premises of the tramway.

Nothing herein contained shall be held to bind the owners of the said tramway to carry goods in carriages on the tramway, until they have given public notice in one or more newspapers in Cape Town of their intention so to do.

No. 25—1881.]

[June 25, 1881.

Act for Applying a Sum not exceeding Three Hundred and Fifty-one Thousand Eight Hundred and Eighty-nine Pounds Six Shillings and Twopence, for the purpose of meeting and covering certain Unauthorised Expenditure, and for meeting and covering certain Deficits on Votes and Appropriations for the Service of the Financial Year ended 30th June, 1880.

[Spent.]

No. 26—1881.]

[June 25, 1881.

ACT

For the Management of the Docks and Breakwater of Table Bay. (1)

WHEREAS it is desirable to provide for the better management of the docks and breakwater of Table Bay: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The second, third, fourth, and fifth sections of Act No. 22 of 1872, and so much of any other sections of the said Act, or of any other Act of Parliament, Ordinance, or other statutory enactment having the force of law, as may be inconsistent with, or repugnant to, the provisions of this Act are hereby repealed, so far as such inconsistency or repugnance may exist, but not otherwise.

Certain sections of previous Acts repealed.

2. The commissioners appointed under the provisions of the said Act No. 22 of 1872, who shall be in office at the time of the taking effect of this Act, shall remain in office and exercise all powers and perform all duties now exercised and performed by them, until the first meeting of the Board of Commissioners appointed and elected under the provisions of this Act.

Present Commissioners to act till new ones appointed.

¹ Amended by Act No. 11, 1890. See also Acts 37, 1887, and 9, 1893.

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Management of
Docks and Break-
water vested in board
to be appointed un-
der this Act.

Constitution of the
Board.

List to be made of
persons paying Dock
Dues.

When such list
complete a voters'
list to be framed.

Complaints against
such list to be in-
vestigated by Collector
of Customs.

List when settled
to be list of voters
for Commissioners.

3. The management of the docks and breakwater in Table Bay as well as of any further works of construction or maintenance, shall be vested in a Board of Commissioners to be appointed and elected under this Act, from and after the date of the first meeting of such board.

4. The Board of Commissioners, in the last preceding section mentioned, shall consist of seven persons, of whom four shall be appointed by the Governor by proclamation: Provided that the persons so appointed by the Governor may be removed as in the sixth section of the said Act No. 22 of 1872 is provided, and that not more than two of such persons shall be officers holding office of profit under Her Majesty the Queen; and three shall be elected by the constituency, and in the manner hereinafter provided.

5. The existing Board of Commissioners shall, as soon as may be after the thirtieth day of June next, and the board by this Act constituted shall as soon as may be after the thirtieth day of June in every succeeding year, cause a true list to be made, in alphabetical order, of all persons being inhabitants of or having their places of business in Cape Town, who shall during the last preceding twelve months have paid such dock dues as are provided by the thirteenth section of the said Act No. 22 of 1872, and setting forth the christian and surname of such person at full length, or the name of the firm (in case the said dock dues shall have been paid by a firm and not by a single individual), the place of his or their business, and the amount of such dock dues which such person or such firm shall have paid during the period aforesaid, and such person or persons shall be entitled to vote in proportion to the amount of dock dues paid by them severally according to the schedule to this Act.

6. As soon as the list in the last preceding section shall be complete the said board shall cause the same to be transmitted to the Collector of Customs, who shall cause copies thereof to be posted in some convenient place, heading such list with the words "List of persons and firms entitled to vote at the election of commissioners of the Table Bay Harbour Board."

7. In case within one month after the posting of such list, as in the last preceding section mentioned, any complaint shall be made to the Collector of Customs of the omission therefrom of the name of any person or firm whose name ought to have appeared upon such list, or of the insertion therein of the name of any person or firm which name ought to be expunged from such list, it shall be the duty of the said Collector of Customs to investigate such complaint, and to add, or remove, any such name to or from such list as to him may seem just.

8. The persons and firms named in such list, after the additions to or alterations of the same (if any) have been made by the said Collector of Customs as aforesaid, shall be the voters entitled to vote at the election of the commissioners as hereinafter provided, and as

often as a firm shall be named in such list of voters, such firm shall be entitled to vote by one member thereof, and no more, or may by an authority in writing appoint some person to appear and vote for such firm.

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9. Every person being a voter, as in the last preceding section provided, and whether he be so individually or as a member of a firm, shall be qualified to be elected a commissioner of the said Harbour Board: Provided, however, that no such voter shall be competent to be a candidate for the said office unless he shall have received and accepted a requisition to become such candidate signed by not less than five duly qualified voters, and shall have transmitted such requisition, with his acceptance thereof, to the Collector of Customs at least ten days before any election is appointed to take place.

Every voter qualified to be Commissioner.

On Requisition.

10. The Collector of Customs shall at least seven days before the day appointed for the election cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisitions, to be published in the *Government Gazette* and one or more newspapers published in Cape Town.

Names of Candidates to be published.

11. Every election under this Act shall take place before the Collector of Customs, who shall be the returning officer for that purpose, on such day and at such place as he shall appoint, and the poll shall be kept open from nine o'clock a.m. until one o'clock p.m.

Election to be before Collector of Customs.

12. The poll shall be taken by some officer to be appointed for that purpose by the Collector of Customs, and the voting at such poll shall be by voting papers.

Polling Officer.

13. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

14. At the close of the election the returning officer shall ascertain the number of votes given for each candidate; and so many candidates being equal to the number to be chosen as shall have the greatest number of votes shall be declared by the returning officer to be duly elected.

Returning Officer to declare result of election.

15. At the first election of commissioners under this Act, the voters shall elect, in manner by this Act provided, three commissioners, who shall be deemed to enter upon their office on the first Monday following, in conjunction with the four other commissioners appointed by the Governor.⁽¹⁾

Three Commissioners to be elected.

16. Of the persons so elected as in the last preceding section, the commissioner who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the date of entering upon his office; and in case from any cause it shall be uncertain which of them shall vacate his seat, the returning officer shall cause such question to be determined by lot;

Rotation of retirement of Commissioners.

¹ See Act 11, 1890.

No. 26—1881.

and the remaining two elected commissioners shall vacate their seats in like manner at the expiration of two years and three years respectively; and upon the retirement from office of such commissioners respectively, they shall be succeeded by commissioners who shall be elected as hereinbefore provided, so that at every annual election after the first there shall be elected one commissioner who shall enter upon his office on the first Monday after his election, and continue therein for three years, and every retiring commissioner shall be eligible for re-election.

How office to become vacant.

17. If any elected commissioner shall die, resign, become insolvent, or assign his estate for the benefit of his creditors, or shall be absent from the ordinary meetings of the board for a period of three calendar months, his office shall become vacant and a commissioner shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the commissioner who has vacated office and whom he shall succeed would otherwise have remained in office.

Provision in case of equality of votes.

18. In case of an equality of votes at any election of a commissioner under this Act, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.

Chairman to be chosen annually.

19. The commissioners present at the first meeting of the board constituted under the provisions of this Act, and at the first meeting held after every annual election respectively, shall elect from amongst themselves a chairman who shall hold such office for the space of one year and who shall, when present, preside at all the meetings of the board: Provided that if at any meeting such chairman shall not be present, the members attending such meeting shall elect from among themselves a chairman to preside at such meeting: And provided also that in case at any election of a chairman under the provisions of this section any two or more commissioners shall have an equal number of votes, it shall be decided by lot which of such commissioners shall be the chairman.

Quorum.

20. At every meeting of the board three commissioners shall form a quorum; and in case the votes of the commissioners upon any question before them shall be equally divided, the presiding member shall, in addition to his original or deliberative vote, have a casting vote: Provided, however, that no commissioner shall vote on any question in which he shall have any personal or pecuniary interest, directly or indirectly, under a penalty not exceeding one hundred pounds sterling, to be sued for by the Attorney-General.

None to vote who have interest at stake

Payment of Commissioners.

21. Every commissioner appointed or elected under the provisions of this Act shall be entitled to receive the sum of twenty shillings for each attendance at the meetings of the board: Provided, however, that no commissioner shall receive more than one hundred pounds sterling in any one year in respect of such attendances.

22. All the rights, powers, duties, privileges and authority conferred upon, assigned to, and at present enjoyed or received by, the existing board of commissioners for the management of the dock and breakwater of Table Bay by virtue of any Ordinance, Act of Parliament or other statutory enactment having the force of law, and not repugnant to or inconsistent with the provisions of this Act, shall be, and the same are hereby, conferred upon, assigned to, and continued in, the board of commissioners to be appointed and elected under this Act; and such commissioners shall be designated the "Table Bay Harbour Board," and may by such title sue and be sued and be described in all legal proceedings.

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Rights, powers, &c of present Commissioners conferred on new Board.

23. In addition to all such existing rights, powers, duties, privileges and authority, it shall be lawful for the board of commissioners under this Act to land, warehouse, and deliver goods and merchandize by themselves or by their duly constituted agents in that behalf; and for the purposes of such landing, warehousing and delivery to construct or hire such railways, tramways, sheds, or warehouses as they may deem necessary, and to enter into contracts or make arrangements with any public company or private individuals for any such construction or hiring.

Board may land, warehouse, and deliver goods.

24. The words "dock" or "docks" in this or any other Act relating to the harbour of Table Bay shall be taken to mean the docks, basins, and other works connected therewith, which the Governor shall from time to time by proclamation declare to be a dock for the purposes of such Act.

Interpretation of "Dock" or "Docks."

25. This Act may be cited for all purposes as the "Table Bay Harbour Board Act, 1881."

Short title.

SCHEDULE TO THIS ACT.

VOTES ACCORDING TO DUES PAID IN RESPECT OF EVERY COMMISSIONER TO BE ELECTED.

Not less than £10, and not exceeding £100,	One Vote.
Exceeding £100, " "	£200, Two Votes.
" £200, " "	£300, Three "
" £300, " "	£400, Four "
" £400, " "	£500, Five "
" £500, " "	£600, Six "
" £600, " "	£700, Seven "
" £700, " "	£800, Eight "
" £800, " "	£900, Nine "
" £900, and upwards	Ten "

No. 27—1881.]

[June 25, 1881.]

Act to apply a Sum of Money for the Service of the year ending the 30th day of June, 1882.

[Spent.]

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DERELICT LANDS.

No. 28—1881.]

[June 25, 1881.]

ACT

To Provide for the Registration of Title in certain cases,
and for the Disposal of certain Derelict Lands. (1)

Preamble.

WHEREAS it is expedient to repeal the Ordinance No. 97, intituled “ An Ordinance for enabling certain persons having respectively the just, lawful and undisputed right to certain lands and houses, to procure the same to be enregistered as their property in the Land Register,” and to make other provisions in lieu thereof and to make provision for the registration of title to certain lands acquired under powers granted by the Legislature to certain persons and public bodies : And whereas it is further expedient to provide for the disposal of certain derelict lands whereon rents, rates, and assessments are due and unpaid for a number of years, and for the speedy and inexpensive recovery of such rents, rates, and assessments : Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Repugnant laws repealed.

1. The said Ordinance No. 97 and “ The Ordinance No. 97 Perpetuation Act, 1865,” and so much of any other Law or Ordinance as may be repugnant to or inconsistent with the provisions of this Act shall be, and the same are hereby, repealed.

Persons having acquired title to derelict lands may petition Supreme Court to order registration of such title.

2. Any person who shall, by prescription, or by virtue of any contract or transaction, or in any other manner, have acquired the just and lawful right to the ownership of any immovable property in this Colony, registered in the name of any other person and cannot procure the enregisterment of such property in his name in the Land Register in the manner and according to the forms for that purpose by law provided, by reason of the death, mental incapacity, insolvency, or absence from the Colony, of the person in whose name such property stands enregistered as aforesaid, or of any person or persons through or from whom such right shall have been mediately or immediately derived, or owing to any other cause, may apply to the Supreme Court by petition to order the registration of the title to such property in his name in the Land Register of the Colony.

Also persons entitled to expropriate land and unable to obtain title in ordinary way.

3. As often as by any law now or hereafter to be in force in this Colony any person or body corporate or incorporate shall have acquired the right to any immovable property by expropriation and shall be entitled to obtain registration of title to such property, but cannot from any cause obtain such registration in the manner and according to the forms by law provided, such person or body may apply to the Supreme Court to order registration of title.

¹ Extended by Proclamation No. 93 of 1884 to Griqualand East, and by Proclamation No. 108 of 1894 to Transkei, Tembuland and Port St. John's.

4. Whenever there shall remain due and unpaid for the space of five⁽¹⁾ years, any quitrent or reservation in the nature of quitrent payable to any person or body corporate or incorporate (other than the Colonial Government) or any rate or assessment payable to any Municipality, Municipal Corporation, Divisional Council, or other public body, upon any immovable property in this Colony, and such property shall be abandoned, deserted and left derelict, and the owner thereof cannot be found, it shall be lawful for the person or body claiming such quitrent, rate or assessment to apply to the Supreme Court by petition stating the amount claimed to be due and the grounds for applying for relief under the provisions of this Act.
5. Every petition to the Supreme Court under the provisions of this Act shall be lodged with the Registrar of the said Court, and the allegations contained in such petition shall be supported by affidavit and such documents in proof as the petitioner may be able to adduce.
6. Every such petition shall be laid before one of the Judges in Chambers, who shall make such order thereon as to him shall seem fit, and any such Judge may order that any matter arising upon any such petition shall be argued before and determined by the full Court.
7. Upon considering any petition for registration of title, the Court or Judge may, if such Court or Judge shall deem it expedient to do so, grant a rule setting forth the description of the property mentioned in such petition, and calling upon all persons having or pretending to have any right or title to such property to appear and establish their claims to the same upon some day to be named in the rule, or be for ever barred therefrom, and may direct the mode of service or publication of such rule.
8. Upon considering any such petition for registration of title, the Court or Judge may, and upon the return of any such rule granted as aforesaid, and no cause being shewn to the contrary, the Court may order the Registrar of Deeds to enregister the property mentioned in such order as the property of the person therein named, subject to such terms and conditions as may be therein mentioned.
9. In case any person should appear to shew cause against any rule so granted as in the last preceding section mentioned the Court may, if it shall see fit to do so, and without the issue of any summons, require any issue of fact to be tried upon pleadings or may make such order as will in the most speedy and inexpensive manner determine the matter in controversy.
10. Upon considering any petition for the sale of immovable property abandoned and left derelict, to satisfy any such claim as is referred to in the fourth section of this Act, the Judge before whom such petition is laid, or the Court, should such Judge, by order or rule granted, refer such petition to the Court, may order

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Persons having claim on derelict land may petition Supreme Court for relief.

Petitions to be filed and supported by affidavits.

Petition to be laid before Judge in Chambers.

Rule nisi to be granted by Court or judge.

Power of Court or judge to order registration of title as prayed.

In case of objection, Court or judge may direct trial of issues without pleadings.

Judge or Court may order property to be attached or sold to satisfy claims.

¹ Printed as amended by Act 24, 1887 and § 274 Act 40, 1889. See Act 3, 1879.

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that the property mentioned in the petition be attached and sold to satisfy such claims as aforesaid thereon.

Subject to such order conventional mortgages not to be affected.

11. Subject to the terms of any such order for registration of title as aforesaid, any conventional hypothecation over any immovable property so registered which shall be in existence at the date of such registry shall attach to and upon the said property precisely as it then exists, and all usual and proper entries and endorsements upon or in regard to any deed of transfer issued by the Registrar of Deeds in obedience to such order shall be made in the Deeds Registry before such deed shall be delivered to the person entitled thereto.

Effect of registration of title under this Act.

12. Every registration of immovable property made in favour of any person in pursuance of any order granted under the provisions of this Act shall have the effect of vesting such person with a title and right to such property which shall and shall not respectively be liable to be annulled, set aside, limited and affected on every ground and by reason of every and any cause, matter or thing by reason of which the title and right of such person to such property would or would not have been liable to be annulled, set aside, limited or affected if such property had been regularly transferred to and in favour of such person and to and in favour successively of every person through or from whom his right was derived or acquired.

Liability of persons to whom title given under this Act to pay taxes, duties, &c., incurred.

13. When any order shall have been made under the provisions of this Act directing the Registrar of Deeds to enregister any property in the name of any person, such person shall be liable to pay such taxes, duties, or stamps in respect of such registration as he would have been liable to pay if such property had been transferred to him directly from the person last enregistered as the proprietor thereof in due form of law, and shall not be liable or required to pay, nor shall the registration directed to be made in his favour be suspended or stayed by reason of the non-payment of any tax, duty, quitrent, or fine, which the person last enregistered as such proprietor, or any other person through or from whom he has mediately or immediately derived his right to such property may have become liable for or incurred, unless he shall by some contract or agreement have specially bound himself to pay such tax, duty, quitrent, or fine: Provided that any person who may have become liable for, or incurred such tax, duty, quitrent, or fine shall be and continue personally liable for the same notwithstanding that such property shall, by virtue of such order, have been registered as the property of the person therein named.

Previous owner to remain personally liable.

Registrar of Deeds to comply with order made under this Act.

14. Upon production to the Registrar of Deeds of any order granted under the provisions of this Act, and of a certificate of the proper officer of the due payment of the transfer duty, if any, which the person named in the order is liable to pay, the said Registrar shall enregister the immovable property as by the said order may be directed, in the form as nearly as is material

contained in the schedule to this Act, subject to such conditions and stipulations as would have been contained in a deed of transfer passed in due and customary form to such person from the person last enregistered as the proprietor of such property, and to such other conditions as the said order may direct.

15. Whenever the Court or a Judge shall have ordered the attachment and sale of any derelict property under the tenth section of this Act the Registrar of the Court shall issue a writ for the attachment of the property mentioned in such order.

Registrar of Court to issue attachment under section 10.

16. The Sheriff or his deputy shall attach the property by the writ directed to be attached by giving notice thereof to the Registrar of Deeds, and upon such notice being lodged with the said Registrar the said property shall be deemed to be duly attached and no other proceedings shall be necessary, anything in the twelfth or any other section of Ordinance No. 37 regulating the duties of Sheriff, or any rule of court to the contrary notwithstanding.

Sheriff to attach.

17. Upon such attachment being made as aforesaid the like proceedings shall be had and taken as are by the existing rules of court provided in the case of immovable property attached in execution of any judgment of the Court save and except that it shall not be necessary to cause a valuation of the property to be made as provided by rule 110, nor affix a reserve price as by rule 113 is provided.

Rules of Court in cases of ordinary attachment to apply.

18. At the meeting to be held pursuant to rule 105 it shall be lawful for any person or body other than the petitioner at whose instance the property has been attached to appear and prove by affidavit any claim for quitrent or rates due upon or in respect of the same property.

Claims to be proved under rule of Court 105.

19. In case the amount realized by the sale of the property attached shall be insufficient, after the payment of the hypothecations on or affecting the same (if any), to pay the claims of the petitioner and others proved as aforesaid, the costs allowed to the petitioner shall first be paid thereout and the balance rateably divided between or amongst the petitioner and the said claimants.

Petitioners' costs to be first paid out of proceeds of sale.

20. Any sum of money which the Court or Judge making any order under the provisions of this Act shall find to be due by the person in whose favour such order is made to any other person, and any sum of money which shall remain in the hands of the Sheriff as the proceeds of any immovable property attached and sold under any such order, after payment of all claims allowed against such proceeds and all costs allowed and ordered to be paid thereout shall, in case the person to whom such money shall be payable shall be absent from the Colony, unknown, or a minor, be paid into the guardian's fund to credit of such person or persons as may be entitled to the same or otherwise as may be ordered by such Court or Judge.

Surplus of proceeds after payment of all claims to be paid into Guardian's fund.

21. The Court or Judge, as the case may be, making any order under the provisions of this Act may make such order as to costs,

Costs of order under this Act to be in discretion of Court or Judge.

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and to and by whom the same shall be paid, as to such Court or Judge shall seem meet.

Jurisdiction of Eastern Districts and Griqualand West Courts.

22. As often as by this Act jurisdiction is given to the Supreme Court, the Court of the Eastern Districts and the High Court of Griqualand West, shall respectively have jurisdiction concurrently with that of the Supreme Court in regard to all immovable property lying and being within the area over which such Courts respectively have jurisdiction.

Supreme Court may make rules under this Act.

23. The Judges of the Supreme Court, acting in pursuance of any Act for the time being regulating the making of general rules of court, may from time to time make such rules concerning the form and mode of proceeding under this Act by the Court or a Judge in Chambers as to such Judges shall seem meet.

Memorials under Ordinance No. 97 not reported upon.

24. All memorials lodged with the secretary of the committee appointed under the provisions of the said Ordinance No. 97, and not reported upon prior to the taking effect of this Act, may be laid before one of the Judges in Chambers, and shall thereupon be proceeded with precisely as if every such memorial were a petition referred to in this Act.

Short title.

25. This Act may be cited for all purposes as the "Titles Registration and Derelict Lands Act, 1881."

SCHEDULE.

DEED OF TRANSFER.

Know all men whom it may concern,

That in obedience to an order of the Supreme Court [or of the Court of the Eastern Districts, or of the Honourable Mr. Justice in Chambers, as the case may be] under the provisions of the "Titles Registration and Derelict Lands Act, 1881," I, the Registrar of Deeds, do hereby cede and transfer in full and free property to and on behalf of, his heirs, executors, administrators, and assigns certain (here describe the property) and that by virtue of these presents the said....., his heirs, executors, administrators and assigns now is and henceforth shall be entitled thereto, conformably to local custom, Government however reserving its right.

In witness whereof I the said Registrar, have subscribed to these presents and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds, in Cape Town, Cape of Good Hope, on theday of the month of, in the year of our Lord one thousand eight hundred and

"A.B.," Registrar of Deeds.

No. 29—1881.]⁽¹⁾

[June 25, 1881.]

ACT

To Provide for the Management of Villages and other Communities, not being Municipalities.

WHEREAS it is expedient to provide for the better government of certain Towns, Villages, and Communities not being Municipal Corporations: Be it therefore enacted by the Governor, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Act No. 10 of 1870, and every other Ordinance, Act, or other statutory enactment in conflict with, or repugnant to, the provisions of this Act, are hereby repealed so far as such conflict or repugnancy may exist, but not further or otherwise.

Repugnant laws repealed.

2. The provisions of this Act shall apply to all such communities not being municipalities as the Governor may, by any proclamation in that behalf, published in the *Government Gazette*, declare to be subject thereto.

Act to apply to communities proclaimed by Governor.

3. Every such proclamation as in the last preceding section mentioned shall fix and determine the local limits within which the provisions of this Act shall be in force, and such limits may from time to time be altered by the Governor by proclamation published as aforesaid.

Proclamation to fix limits of communities.

4. As soon as any such proclamation as aforesaid shall have been issued, the Resident Magistrate of the division in which the locality named in such proclamation shall be situate shall from the list of registered voters of the division, frame a list of all such voters as shall be resident within the limits defined by such proclamation, and shall thereafter as often as any fresh registration of voters within the said division shall take place, frame from the new list of such voters a revised list of such voters who are resident as aforesaid.

Resident Magistrate to frame list of voters.

5. ⁽²⁾As soon as possible after the promulgation of this Act, and the issuing of the proclamation in the second section hereinbefore mentioned, the Resident Magistrate shall issue a notice, by publishing the same in some local newspaper (if any) and by affixing the same to the door of the Court-house and such other public place or places within the limits aforesaid, as he shall deem convenient, calling, at some specified date, within a reasonable time to be mentioned in such notice, a public meeting of the registered voters enrolled upon the list framed by him, as hereinbefore provided, at some place within the limits aforesaid, to be also mentioned in the said notice, for the purpose of electing a

And to call meeting of voters to elect Board of Managers.

¹ Extended by Proclamation No. 23 of 1892 to Tembuland and to districts of Kentani and Willowvale in Transkei, and by Proclamation No. 456 of 1894 to Griqualand East. See Acts Nos. 28, 1882; 7, 1884; 21, 1889; 26, 1889; 27, 1892; 7, 1894; 21, 1894; 30, 1894; 29, 1895; 30, 1895.

² See Act 27, 1892.

No. 29—1881.

Board of Management for the community: and in each succeeding year after the year in which the notice aforesaid shall have been given, the said Magistrate shall give a similar notice, published in a similar manner, calling a meeting of the registered voters aforesaid, to be held on the first Wednesday of the month of July in every such year or such other day, not being a Sunday, in the first week of the said month, as the said Magistrate may by such notice annually appoint ⁽¹⁾ for the purpose of electing a new Board of Management for the twelve months commencing from the first day of August after the date of such meeting.

Magistrate to preside at meeting.

6. ⁽²⁾ At every such meeting as in the last preceding section mentioned, the said Resident Magistrate shall attend at the time and place named in the notice thereof, and shall preside at such meeting.

Qualification of members of board.

7. It shall be lawful for any such registered voter enrolled as aforesaid present at such meeting to nominate some person who shall be ⁽³⁾ either such registered voter resident within the said limits, or duly qualified to be such, ⁽³⁾ and every such nomination shall, before it is submitted to the meeting, be seconded by some other such registered voter present. From the persons so nominated and seconded such meeting shall elect three who shall form and be called the "board of management" for the community resident within the said limits. In case three persons only shall be so nominated and seconded, such three persons shall be declared to be duly elected as such board of management; but in case more than three persons shall be so nominated and seconded, the said Resident Magistrate shall then and there proceed to take a poll of the registered voters present enrolled as aforesaid (either by ballot or by open voting, as he may decide), and such three persons duly nominated and seconded as shall gain the greatest number of votes at such poll shall then be declared to be duly elected, and shall form the board of management of the community: Provided that if two or more persons who have received the greatest number of votes, and who cannot be both or all elected shall each have received the same number of votes, then the question between such persons shall be decided by lot, to be drawn in presence of the Resident Magistrate; and provided, further, that every registered voter shall be entitled to give one vote for each of any number of candidates not exceeding the number to be elected.

How to be elected.

Magistrate to publish names of persons elected.

8. The Resident Magistrate shall, as soon as may be after such election, publish in the *Government Gazette* the names of the persons so elected, and such persons shall form the board of manage-

¹ Printed as amended by Act 13, 1894.

² See § 2 Act 28, 1882 and § 4, Act 7, 1884.

³ As to the division of Stockenström, these words substituted "either the owner of a whole erf within the said limits or the lessee of such erf under a written lease of not less than five years." See § 3 Act 30, 1894.

ment of the community until a new board shall be elected in like manner as in the last preceding section provided, on the first Wednesday in the month of July in the following year.

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9. In case any member of the said board shall resign his seat on the Board, or (†) shall leave the limits of the community for the space of three calendar months, or shall fail to attend three consecutive meetings of the board or shall become insolvent or assign his estate for the benefit of his creditors, or die or be incapacitated from acting by reason of mental or bodily disease, such member's seat shall be *ipso facto* vacated; and it shall be the duty of the remaining members of the said board to report such vacancy to the Resident Magistrate, who shall forthwith call a meeting of the registered voters aforesaid, for the purpose of electing another member of the said board; and the proceedings at such meeting shall *mutatis mutandis*, be the same as those provided for in the seventh section of this Act.

In case member becomes disqualified, fresh election.

10. If the voters aforesaid shall at any time fail or neglect or refuse to elect such board of management, or to elect a sufficient number of members to form such board, it shall be lawful for the Governor by proclamation to appoint from among the persons qualified to be elected to sit upon such board as aforesaid, three members to constitute such board, or such member or members as shall, together with any members or member duly elected as hereinbefore provided, make up the full number of members of such board; and any board or members so appointed shall be invested with the same powers and be in all respects in the same position as if such board or such members had been duly elected under the provisions of this Act.

Governor may appoint members if voters fail to elect.

11. Such board of management shall meet as soon as practicable after election, and shall continue to meet from time to time, not being less than once a month, at such time and place as they shall determine.

Meetings of the board.

12. At the first meeting of the said board the members shall elect a chairman, who shall preside at the meetings of the board (of which two members shall form a quorum) if he be present, and in case of his absence the other two members shall either agree or decide by lot which of them shall, at and with respect to such meeting, perform the duties of chairman.

Chairman to be chosen.

Quorum.

13. The proceedings at the meetings of the said board shall be public, and all questions coming before the meeting shall be decided by the majority of votes of the members present, which votes shall be given openly. But in case two members only shall be present at any meeting and they shall not agree in the decision of any question before them, such question shall stand over until there shall be a full meeting of the said board to decide the same

Questions to be decided by a majority of those present.

- No. 29—1881.
Minutes to be kept.
14. Minutes of the proceedings of every meeting of such board shall be regularly entered in a book to be kept for that purpose, and shall be read and confirmed at the next succeeding meeting and signed by the person presiding thereat. All such minutes, shall be deemed and taken to be original minutes, and such book shall and may be produced and read as *primâ facie* evidence of all the proceedings therein recorded, in any Court, civil or criminal.
- Officers to be appointed.
15. The said board of management shall appoint, during pleasure, such fit and proper officers as it shall find necessary for carrying out the purposes of this Act, and shall pay to them such salaries and assign to them such duties as they may think fit.
- Divisional Council to levy rate at the request of board.
16. It shall be lawful for the Divisional Council of the division in which such community is situated, and such Divisional Council is hereby required, upon the application in writing of the chairman of the board of management, to levy a rate upon all the rateable property within the limits of such community, but no such rate shall exceed threepence in the pound sterling for any one year; and such rate shall be levied and collected by the said Divisional Council in all respects as if it were a rate lawfully levied by such council for its own purposes; and the proceeds of the rate so levied after deducting ten per cent. for the expenses of levying and collecting such rate shall be paid over as soon as may be after collection thereof at the end of each month by such council to the chairman of the said board of management, who shall grant a receipt for the same; and the amount so received shall be held by the said board of management and devoted to the carrying out of the purposes of this Act.
- Limit of rate.
- Application of rates.
17. Every board of management shall cause proper accounts to be kept of all moneys received and expended under the provisions of this Act, which accounts shall be open, at all reasonable times, to the inspection of all persons interested therein: and at the end of his term of office the chairman of the board shall render to the Resident Magistrate of the district a statement of the accounts of the board, which statement shall be certified as correct by a solemn declaration of such chairman made before a Justice of the Peace; and all the assets, accounts, books, and other property of the said board shall be handed over to the new board so soon as such new board shall have been elected.
- Accounts to be kept and rendered to Magistrate.
18. No member of any board of management shall receive any salary, fee, or reward of any kind for the performance of the duties of his office, and any member contravening this provision shall, *ipso facto*, vacate his seat on such board; and no member of any board shall contract with such board to perform any of the services which such board may require to be done, and any member so contracting shall, *ipso facto*, vacate his seat on such board; but nothing herein contained shall be construed so as to prevent any member of the board from gratuitously rendering any service, or doing any work which the said board may require to be done.
- Members of the board to receive no pay.
- Nor to be contractors.

19. It shall and may be lawful for every board of management to cause all public streets, roads, and places within the limits before-mentioned to be at all times kept in good and sufficient order and repair; and to make all necessary furrows, watercourses, drains, sewers, culverts, and bridges within the said limits; and to construct such works and take such lawful measures as to them shall appear necessary for the purpose of providing a proper supply of water for the inhabitants residing within such limits; and it shall further be lawful for such board to frame such regulations as may be required in order to prevent the obstruction of any road, street, highway, or other public place within the said limits; or to prevent vehicles from being kept in any such road, street, or other public place for an unreasonable time; or to prevent any inconvenience to the public from animals being allowed to wander about within such limits; or to provide for the isolation of persons or animals suffering from any dangerous contagious disease, and for the prevention or suppression of such disease; or to provide for the removal and disposal of all night soil, stable litter, excrement, and other refuse and filth from public and private premises and from all streets, roads and thoroughfares; or to prevent the dangerous or mischievous use of gunpowder or other combustibles within the said limits; or to prevent the making of noises in any street or public place with trumpets or drums, or whips, or by other means; or to prevent or impose restrictions upon the keeping of ferocious or troublesome dogs or other animals within the said limits⁽¹⁾; or to prevent any building or other structure within the said limits from being kept in a condition dangerous to the public or to the personal safety of any individual; or to provide against the pollution of any water which the inhabitants living within the said limits have a right to use; or to provide for the distribution of water among such inhabitants for purposes of irrigation or for domestic use or otherwise; or to provide for the prevention and extinguishing of fires within such limits; or to provide for the granting of licences or permits for the making of bricks, or the digging or getting of clay or gravel, or the quarrying of stone, or the cutting of firewood, brushwood, or grass upon the common lands, and for the payment of reasonable fees or dues for such licences or permits; or to provide for the management and protection of all common pasture lands and the preservation of all vegetation thereon, and the fixing of the number and description of live-stock any inhabitant shall be allowed to keep and depasture thereon or on any part thereof; or to provide for the granting of temporary grazing rights over the said lands to travellers or carriers or other persons frequenting or passing through the said locality, and for the payment of reasonable dues in consideration thereof; or to provide for the impounding of all animals trespassing

No. 29—1881.
Duties of the
board.

¹ See §§ 226 and 231 of Act No. 40, 1889.

No. 29 of 1881.

on such common lands; or to prevent damage to any property to which the said inhabitants may have a common right, or to recover compensation for such damage; or to provide for the prevention, removal, or abatement of all nuisances within the said limits which may tend either to injure the health, destroy the comfort, or affect the rights of the said inhabitants at large.

Regulations under this Act to be submitted to Governor.

20. All regulations framed under the provisions of this Act shall be submitted to the Governor for approval, or alteration or amendment, and shall together with such alterations or amendments, as the Governor may have seen fit to make therein be published in the *Government Gazette*, and shall thenceforth have the force of law: Provided, however, that it shall be competent for any such board from time to time to alter or amend any regulation made and published as aforesaid, and thereupon such amended regulations shall be transmitted to the Governor, who may deal with the same in manner hereinbefore in this section mentioned, and such amended regulations after the same shall have been published in the *Government Gazette*, shall also have the force of law.

Penalty for contravention of regulations.

21. Any person contravening any of the regulations made and published as in the two last preceding sections mentioned, shall be liable to pay a fine not exceeding five pounds or to be imprisoned with or without hard labour for a period not exceeding thirty days, unless such fine be sooner paid: And all prosecutions for any such contravention may be instituted in the Court of the Resident Magistrate of the district in which the offence was committed, or before any Special Justice of the Peace in respect of any contravention within his jurisdiction, provided that no fine imposed, and no term of imprisonment awarded by any Special Justice shall exceed the amount and term respectively mentioned in the second section of the Act No. 10 of 1876. And all fines which shall be recovered by means of any such prosecution together with all moneys which shall become payable under and by virtue of the regulations duly framed under the authority of this Act, shall be paid to the said board of management and be applied by them in carrying out the purposes of this Act.

Prosecutions under this Act.

Board to enforce regulations.

22. It shall be the duty of every board of management to enforce all regulations made under the authority of this Act and to prosecute all breaches and contraventions of the same, and to use all diligence in carrying out the several provisions and objects of this Act generally.

Board may enter into necessary contracts.

23. It shall be lawful for every board of management to enter into contracts, and to employ labour for the purpose of carrying out any work required to be done, or for doing anything which such board is, by the provisions of this Act, authorised to undertake or to do.

How board to sue and be sued.

24. In any action or suit, civil or criminal, which may be brought by or against any such board as aforesaid, it shall be sufficient to describe such board as "The Board of Management

STELLENBOSCH MUNICIPAL LOAN.

1803

of _____," without mentioning the names of any of the members comprising such board.

No. 2—1882.

25. All necessary costs, charges and expenses incurred in the carrying out of the provisions of this Act and the regulations made thereunder, may be lawfully paid out of any of the funds which shall come into the possession of the board of management.

Expenses incurred under the Act to be paid out of board's funds.

26. (1) As often as any town, village, or community to which this Act has been made applicable (by any such proclamation as in the second section mentioned) shall become a municipality, then this Act and any regulations made in pursuance thereof shall continue to apply only until the first set of municipal regulations for such municipality shall be promulgated and no longer.

Provision in case any community becomes a municipality.

27. This Act may be cited as the "Villages Management Act, 1881."

Short title.

No. 1—1882.]

[May 25, 1882.

ACT

To Amend the Constitution Ordinance.

WHEREAS it is expedient to amend the Ordinance enacted on the third day of April, 1852, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, intituled "An Ordinance for Constituting a Parliament for the said Colony": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of the eighty-ninth section of the said Ordinance as is repugnant to or inconsistent with the provisions of this Act shall be and the same is hereby repealed.

Section 89 of Constitution Ordinance amended.

2. From and after the passing of this Act, all debates and discussions in the Legislative Council and House of Assembly may be conducted either in English or Dutch, but in no other language.

Dutch Language may be used in Parliament.

3. This Act may be cited as "The Constitution Ordinance Amendment Act, 1882."

Short title.

No. 2—1882.]

[May 25, 1882.

ACT

For enabling the Commissioners of the Municipality of Stellenbosch to borrow Funds wherewith to increase the Water Supply of the said Municipality.

WHEREAS it is desirable to extend and otherwise improve the waterworks of the municipality of Stellenbosch, by making a new and large reservoir and cleaning and renewing the existing water pipes: and whereas it is desirable that the commissioners of the

Preamble.

¹ See Act 7, 1884.

No. 2-1882.

said municipality should be empowered to borrow for such purpose an amount of money which shall not exceed in the whole the sum of three thousand pounds sterling : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

Sums not exceeding altogether £3,000 may be borrowed on security of rates.

1. It shall be lawful for the commissioners of the municipality of Stellenbosch to borrow from time to time such sum or sums of money, not exceeding in the whole the sum of three thousand pounds sterling, for the purpose of improving the water supply of the said village, and in order to provide for the payment of the interest or principal of the moneys so to be borrowed, to impose rates upon the immovable property situate within the municipality and liable to be rated for municipal purposes ; and every rate so imposed by the said commissioners shall be of the same force and effect, and be levied in the same manner, as if it had been a rate imposed under the provisions of Ordinance No. 9 of 1836, and the several Acts amending the same.

Borrowed sums charged on the rates.

2. The sum aforesaid of three thousand pounds sterling, or such lesser sum as shall have been borrowed for the purpose aforesaid by the said commissioners, is hereby charged upon and made payable out of all and singular the rates in the last preceding section mentioned, and the revenues presently arising from the existing waterworks of the said municipality : Provided that it shall be lawful for the said commissioners to apply to the payment of the interest or principal of the said debt any funds or moneys coming to them from any source whatever, and not specifically appropriated or required for any other object : Provided, also, that nothing in this section contained shall be construed so as to impair or affect the provisions of any of the next succeeding sections.

Receipt to be given as in schedule.

3. The commissioners aforesaid shall grant to the party or parties, or company, society, or co-partnership, from whom they shall borrow such money as aforesaid, a written acknowledgment of or for the moneys borrowed by the said commissioners for the purpose aforesaid, which acknowledgment shall in substance be in the form contained in the schedule annexed to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being.

"Public Bodies Debts Act, 1867," to apply.

4. All moneys borrowed for the purpose of this Act shall be borrowed under the provisions of the "Public Bodies Debts Act, 1867."

Special accounts to be kept of moneys borrowed.

5. The commissioners shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for private service pipes from sums received from rates imposed under the first section of this Act ; and of all moneys expended upon the construction and maintenance of the

waterworks contemplated by this Act: and the said commissioners shall yearly, as long as any part of any debt contracted under the authority of this Act shall be in existence, prepare and deposit in their office for the inspection, at all reasonable times, of any resident householder of the municipality, an account shewing the particulars aforesaid and made up to the 31st day of December in each year.

No. 3—1882

6. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the money or moneys so to be borrowed as aforesaid.

Expenses may be paid out of borrowed moneys.

7. This Act may be cited for all purposes as "The Municipality of Stellenbosch Water Act, 1882."

Short title.

SCHEDULE.

We, the undersigned, commissioners of the municipality of Stellenbosch, do hereby acknowledge that the said commissioners in their said capacity are indebted to _____ the sum of _____ for so much money borrowed by the said commissioners for the purposes set forth in "The Municipality of Stellenbosch Water Act, 1882," and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided.

And we further covenant and engage, for and on behalf of the said commissioners, that the interest and principal of the said debt shall be payable and paid in manner following, that is to say (here insert as agreed upon, the rate of interest and times of payment thereof, and the date or dates or other conditions upon which the principal shall become payable.)

Given under our hands at Stellenbosch, this _____ day of _____, 188—.

A. B.	} Commissioners of Municipality.
C. D.	
E. F.	

Witnesses:

G. H.
I. J.

No. 3—1882.]

[May 31, 1882.

ACT

To Authorise the Construction of a Railway from Imvani on the East London and Queen's Town Railway to the Indwe Coal Mines, by a Company or an Individual. (1)

WHEREAS the House of Assembly did on the 23rd day of June, 1881, resolve as follows:—That this House, in consideration of the advantages that would result to the country from the construction of a railway, either from the Imvani to the Indwe Coal Fields, or

Preamble.

¹ Amended by Acts 11, 1886; 26, 1887, and 39, 1892.

No. 3—1882.

from the said Coal Fields to a point at or near Putter's Kraal, or both such lines, and from the opening and working of the Coal Fields, recommends the grant to any company or individual who shall within two years engage to construct a railway at a gauge and on a gradient to be approved of by the Government, the following that is to say a sum of money equal to one-fifth of the cost, according to an estimate to be approved of by the Government, of the construction of the said railway line or lines, together with a right to the said company or individual to select, prospect, and work exclusively a coal-bearing section of land in the vicinity of the Indwe, being Crown lands of not more than five hundred acres, subject to a royalty of sixpence per ton : provided that such contribution shall only become due and payable on the completion of the said railway to the satisfaction of the Government ; and provided, further, that when the earnings of the said railway are sufficient, after defraying working expenses, to pay the proprietors interest or dividend at the rate of five per cent. per annum, the surplus shall be distributed *pro rata* between the proprietors and the Government : And whereas it is expedient to empower the Governor to carry out the said resolution with certain alterations as hereafter mentioned : Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

Governor may contract with persons to construct railway mentioned in preamble.

1. It shall be lawful for the Governor to contract and agree with any individual or individuals or joint-stock company willing to construct the railway in the preamble to this Act mentioned at his or their own expense and hereinafter in this Act styled the contractor ⁽¹⁾ to pay or grant, as the case may be, to the contractor upon the completion of the said railways within the term of five years from the entering into of any such contract, to the satisfaction of Government—

£50,000 to be paid on completion.

a. A sum of money not exceeding fifty thousand pounds sterling.

Area of 1,000 acres of coal-bearing land may be granted.

b. An area of not more than one thousand acres of coal-bearing land at the Indwe aforesaid, the site of which shall be settled by mutual agreement between the Governor and the contractor.

25,000 morgen of land may be granted in lieu of the £50,000.

c. ⁽²⁾ In lieu of one moiety of the said sum of money in subsection A of this clause mentioned, at the option of the contractor, an area not exceeding twenty-five thousand morgen of land at such place or places contiguous to the said line of railway from Imvani aforesaid to the said Indwe Coal Fields as may be agreed upon between the Governor and the contractor.

¹ See Act 26, 1887, §§ 1 and 3.

² See Act 39, 1892 § 1.

2. The contractor, upon the completion of such contract with the Governor, shall be and is hereby authorised and empowered to construct, work, (and possess and hold in full and free property subject to the provisions of this Act) a railway between Imvani aforesaid and the said Indwe Coal Fields or any portion or portions of the said Coal Fields according to plans to be submitted to the Governor and referred to in such contract, and construct and work as also possess and hold a telegraph, along the said line subject to the provisions of the Act No. 20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

No. 3—1882.

Powers to construct and work given to contractor.

3. The contractor may himself or by any person or persons duly authorised in writing by the contractor, for the purpose of constructing the said railway, or preparing therefor, enter upon any land, and inspect, survey, bore and probe, the same, making full compensation to the occupier of the said land, for any damage thereby occasioned, the same to be recoverable by action in any competent Court within three months from the date upon which such damage is alleged to have been committed.

Power of entry on land.

4. The contractor may, subject to any limitation contained in the contract with the Government, enter upon, and take possession of, and hold and retain for the purposes of this Act, free of charge so much of any Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also enter upon any Crown land lying convenient to the said railway, and dig for, excavate and carry away, all stones, clay or other material required for the purposes of the said railway, free of charge; provided that nothing in this Act contained shall establish any servitude in favour of the contractor upon any such land, not being land reasonably required for the actual working of the said railway, which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Power to take Crown lands.

5 All and singular the powers which are by the Public Roads Act No. 9, 1858, (1) bestowed upon the Commissioners of Roads in regard to taking and acquiring land and materials necessary for the making or repairing of any such main road, as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the contractor precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided that if any lands or materials belonging to any person who shall be absent from the Colony or whose place of residence shall be unknown to such contractor shall be required for the making or maintaining of the said railway, then it shall not be necessary to serve the several notices required by the eleventh and twelfth sections of the said Act No. 9, 1858, upon such proprietor, but the publication of any such notice in the

Power given by Public Roads Act, 1858, conferred on contractor.

† Repealed by Act No. 40, 1889.

No. 3-1882.

Government Gazette shall be deemed and taken to be a sufficient notice to such proprietor: Provided also that it shall not be necessary before the exercise of any such powers as aforesaid that any proceedings shall be taken to settle the amount of compensation or recompense to be paid for or in respect of such land or materials, but it shall be lawful for such contractor to enter upon, take possession of, and use any land or materials which may be required for the purpose of the said railway, leaving all questions as to the recompense or compensation to be paid for or in respect of such land or materials to be settled afterwards in manner provided by the twelfth and thirteenth sections of the said Act No. 9, 1858: Provided, further, that no brick-field, garden, orchard, plantation, or ground ornamentally planted shall be used for the purpose of depositing or excavating soil without the consent of the owner thereof; and, provided lastly, that the extent of the land taken for the railway shall not exceed in width thirty feet for the formation line, and sufficient additional required for the slopes, drainage, fencing, and stations, and approach-roads thereto, and that in so doing as little damage as possible shall be done to such lands as aforesaid.

Provisions of 56th and 57th sections of Public Roads Act to apply to these works¹

6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858, (¹) relative to injuries done, whether wilfully or carelessly, to the main roads of the Colony, and to any buildings and works connected therewith, shall, *mutatis mutandis*, extend and apply to injuries done to the said railway and any buildings connected therewith.

Crossings of roads, bridges, viaducts, &c., to be made.

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the contractor to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road; and such contractor shall be bound to make all such crossings, embankments, and approaches, with all such culverts and drains, and all such repairs as may be requisite to make good the street or road across or over or under the said railway at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains as aforesaid.

Streets may be made crossing line of railway.

8. Nothing in this Act contained shall prevent any street or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places, provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings.

Line to be fenced.

9. The contractor shall be bound as soon as the proposed line of railway or any portion thereof is ready for public traffic when

¹ Repealed by Act No. 40, 1889.

required by the proprietors of lands adjoining such portion to fence the same in a proper manner, and to erect and maintain in order proper swing gates at each side of the line where there is a reasonable necessity that a passage across the line should be left to such proprietors and where public roads cross the line.

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10. The provisions of the Act No. 37 of 1879 (¹) shall apply, *mutatis mutandis*, to opening the said gates or leaving the same unclosed or unfastened whether the same be done by the owners or occupiers of land adjoining the railway mentioned in the last section or by any other person.

Act 37 of 1879 to apply to this line.

11. It shall be lawful for the contractor to exercise all and singular the powers by this Act conferred upon such contractor, by or through an agent in this Colony duly appointed; provided that notice of every appointment of any such agent, and of his name and address in this Colony shall from time to time be published in the *Government Gazette* and in one or more newspapers published in King William's Town, East London and Queen's Town.

Contractor may exercise powers given through duly appointed agent

12. The said railway shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers, and the cost of obtaining such certificate shall be borne by the contractor.

Government officer to certify completion of line.

13. Upon the completion of the said railway, the contractor shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861," save and except the 29th and 30th sections thereof, which shall not apply in the premises.

Privileges and conditions of Act 19 of 1861 to attach to contractor.

14. The contractor shall have the full right to excavate and mine for, and to work and remove coal and clays in, upon, and from the said coal-bearing land, and shall be bound to pay to the Government the sum of sixpence sterling upon and for every ton of coal taken from the said coal-bearing land, and for the purpose of this Act a ton shall be taken to mean 2,352 lbs. weight.

Right of contractor to excavate.

Royalty payable on coal.

15. The payments aforesaid shall be made quarterly to the Civil Commissioner of the division in which the said coal-bearing land is situated, or to such other person as the Governor shall from time to time nominate and appoint; and the manager, agent, or other person in charge of, or superintending, the works upon such coal-bearing land, shall, within fourteen days after the expiration of each quarter, make and deliver to such Civil Commissioner, or other person, a solemn declaration, in the form as nearly as is material in the schedule to this Act, stating the quantity of coal raised from the said land during the then previous quarter.

Payments of royalty to be made quarterly.

16. The contractor shall be bound to keep a book or books in which shall be duly entered the true quantity of coal which shall

Books to be kept by contractor of coal findings.

¹ Repealed by Act No. 40, 1889.

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be taken from the said coal-bearing land for the purpose of reckoning the amount to be paid to Government quarterly as aforesaid, and such books shall be open to inspection by the said Civil Commissioner or any person authorised by him or by the Governor, in writing, to inspect the same at all reasonable times, and for every contravention of the provisions of this section or any of them by the contractor or his servants, and for every declaration delivered by any officer or servant of the contractor to any Civil Commissioner or other person as in the last preceding section mentioned, which shall contain any false statement as to the quantity of coal taken from such land, the contractor shall be liable to forfeit to the Colonial Government the sum of one hundred pounds sterling to be recovered in any competent Court at suit of the Treasurer-General of the Colony, together with the amount of loss which the Colonial Government shall have sustained by reason of such default, but the payment of such penalty by the contractor shall not be deemed to exempt the person making any such declaration from prosecution for any wilfully false statement therein contained.

17. [Repealed by Act 39, 1892.]

Reference to arbitration in case of difference as to average income of railway.

18. In case the Colonial Government and the contractor shall not agree upon a sum as truly representing the net average income during the last three preceding years in the last section of this Act mentioned, the question in dispute between them in reference thereto, shall be submitted to three arbitrators, one to be nominated by the said Government, one by the said contractor, and the third to be selected by the two arbitrators so nominated, and the said contractor shall be bound to give such arbitrators full access to all books, accounts and documents of every kind in his possession, power or custody in any way relating to the before-mentioned receipts, profits and expenses during the said three years, and if the said two first mentioned arbitrators shall not agree upon the selection of the third arbitrator, then it shall be competent for the Supreme Court, or the Court of the Eastern Districts, on application made by either party to the dispute, to appoint such third arbitrator, and the award of such arbitrators, or the majority of them, on all questions submitted to them shall be final and conclusive, and shall be made a rule or order of the Supreme Court or Eastern Districts Court: Provided that the said Government shall not purchase the said railway or take any proceedings under the last preceding section of this Act, without the consent of both Houses of Parliament first had and obtained.

19. [Repealed by Act No. 26, 1887.]

Short title.

20. This Act may be cited as the "Imvani and Indwe Railway and Coal Mines Act, 1882."

POST OFFICE.

1811

SCHEDULE.

No. 4—1882.

I, A. B., [state the capacity of declarant], do solemnly and sincerely declare that the quantity of coal raised from the land worked by [state name or designation of contractor or company] under the provisions of the "Imvani and Indwø Railway and Coal Mines Act, 1882," during the quarter ended on the _____ day of _____ 18 is _____ tons and no more, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6, 1845, intituled "An Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits."

Declared at
this _____ day of _____
Before me _____

No. 4—1882.]

[June 7, 1882.

ACT

To Amend the Law relating to the Post Office. (1)

WHEREAS it is expedient to amend and consolidate the law relating to the Post Office: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The several laws mentioned in the first schedule to this Act, and so much of any other law or ordinance as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except as to any things done, appointments, orders, regulations and contracts made, offences committed, penalties incurred or proceedings instituted previously to the commencement of this Act.

Repeal of repugnant laws.

2. All letters, post cards, packets, and newspapers received at any Post Office for delivery in this Colony shall be deemed inland letters, post cards, packets, and newspapers; and all letters, post cards, packets, and newspapers received from any place beyond the limits of this Colony, or received at any Post Office for delivery beyond the limits of this Colony, shall be deemed to be Foreign letter, post cards, packets, and newspapers

What are "inland" letters.

What are "foreign" letters.

3. In the interpretation of this Act, the term "this Colony" shall include all territories under the administration of the Government of the Cape of Good Hope; and in case of doubt the Governor may declare any (2) territory or dependency to be within this Colony for the purposes of this Act; and the words "Post Office" shall include any pillar-box, or wall-box, or other place set apart for the reception of letters, post cards, packets, or newspapers, under the authority of the Postmaster-General.

Interpretation of word "Colony."

Of words "Post office."

¹ See Acts 6, 1883; 4, 1885; 4, 1886; 7, 1887; 5, 1889; 35, 1892; 17, 1895.

² Provisions of this Act extended to Transkei and Griqualand East by Proclamation No. 98 of 1st July, 1882; To St. John's River Territory by Proclamation No. 99, and to Tembuland, Emigrant Tambookieland, Bomvanaland, and Galekaland by Proclamation No. 100, dated 1st July, 1882.

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Governor empowered to make regulations for purposes mentioned in the sub-sections.

4. The Governor may from time to time make, alter, and repeal regulations for all or any of the purposes following :

- (1) For the establishment and management of Post Offices.
- (2) For the receipt, registration, dispatch, carriage, and delivery of letters, post cards, packets, and newspapers.
- (3) For the conduct and guidance of all Postmasters and other officers and servants of the Post Office.
- (4) For the charges to be made for the use of private boxes and private bags.
- (5) For the making, issuing, sale, and respecting the use of post cards.
- (6) For providing that certain letters upon the service of Her Majesty the Queen, civil or military, shall be forwarded and received free of postage.
- (7) For regulating the issue of money orders and postal orders ; the rate of commission to be received in respect of such money orders and postal orders ; the persons by or through whom, and the places where, and the times when, and the manner and form in which, money orders and postal orders shall be granted ; and the persons in favour of whom, and the places where, and the times when, and the manner and form in which, money orders and postal orders respectively shall be paid ; and the length of time during which money orders and postal orders shall be current, and after which they shall become void ; and the mode of forwarding advices of transmitting moneys ; and as to every other matter or thing necessary to be regulated or done for enabling the public promptly and safely to remit small sums of money through the Post Office.
- (8) For conveying small parcels from place to place within this Colony ; for limiting the weight of such parcels ; for regulating the rates to be paid in respect of the conveyance of such parcels not being more than three-pence for every four ounces, or fraction of four ounces, and generally for regulating and controlling the receipt, registration, and delivery of such parcels.
- (9) For the making, issuing, and sale of such postage or impressed or embossed stamps, as may from time to time be deemed necessary for the purposes of this Act ; and for authorising the making and use of such office stamps as may be necessary in the General or any other Post Office.

And by such regulations may impose any penalty not exceeding ten pounds for any offence against any of the same.

5. Except when otherwise specially provided in this or by any Act now or hereafter in force, postage upon, and fees for registration of, every inland and foreign letter, post card, packet, and

Postage payable according to rates mentioned in schedule 2.

newspaper respectively shall be levied according to the scale and at the rate set forth in and by the second schedule ⁽¹⁾ to this Act; but every letter, post card, packet, and newspaper sent by post from any place beyond the limits of this Colony shall be transmitted and delivered free of additional charge within this Colony; except as hereinafter mentioned, and except in cases where it is necessary to collect the postage under any arrangement or convention to be made as hereinafter mentioned, in which case the same and all fees and charges upon such letter, post card, packet, or newspaper may be collected on or before the delivery thereof respectively: ⁽²⁾

6. Inland and Foreign letters not exceeding one half ounce in weight addressed to or forwarded by any writer or schoolmaster, or any seaman on actual service in Her Majesty's navy, or by any bandmaster, army schoolmaster or schoolmistress, sergeant, corporal, drummer, trumpeter, fifer, or private soldier on actual service in Her Majesty's Imperial or Colonial Forces or Royal Marines, shall be charged the sum of one penny in lieu of the postage in the said second schedule mentioned, exclusive of postage (if any) payable in respect of the transmission of any such letter through any Foreign territory. But no such letter shall be transmitted or delivered unless such letter relates exclusively to the private concerns of such seaman or soldier, and unless (in case of a letter forwarded as aforesaid) there shall be on the face thereof the name of the writer and his class or description in the vessel, regiment, corps, or detachment to which he belongs, and the signature of the officer having command of such vessel, regiment, corps or detachment, nor unless (in the case of a letter addressed as aforesaid) there shall be specified on the superscription thereof the vessel, regiment, corps or detachment to which the person to whom it is addressed belongs. This section shall not apply to letters addressed to or forwarded by any commissioned or warrant officer whether in the Imperial or Colonial Forces or in the Navy or midshipman in the Navy.

Certain letters charged with 1d. postage only.

7. The Governor may from time to time, by notice published in the *Government Gazette*, direct what packets may be sent by post as inland and foreign packets within the meaning of this Act, and upon what terms and conditions the same may be sent; and until such order be made the following, and no others, may be sent by post as inland and foreign packets within the meaning of this Act:

Postal packets defined.

- (1) "COMMERCIAL PAPERS" (in covers open at the ends or sides), under which are comprised all papers or documents written or drawn wholly or partly by hand (except letters or communications in the nature of letters, or

¹ Second Schedule repealed by Act 35, 1892. See first Schedule to that Act for rates of postage.

² Printed as amended by Act 35, 1892.

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- other papers or documents having the character of an actual and personal correspondence), documents of legal procedure, deeds drawn up by public functionaries, copies of or extracts from deeds under private seal (and whether written or printed on stamped or unstamped paper), way bills, bills of lading, invoices, and other documents of a mercantile character, documents of insurance and other public companies, all kinds of manuscript music, the manuscript of books and other literary works, and other papers of a similar description;
- (2) "PRINTED PAPERS" (in covers open at the ends or sides), including periodical works, books (stitched or bound), pamphlets, sheets of music (printed), visiting cards, address cards, proofs of printing (with or without the manuscript relating thereto), engravings, photographs (when not on glass or in frames containing glass), drawings, plans, maps, catalogues, prospectuses, announcements, and notices of various kinds, whether printed, engraved, or lithographed, and in general all impressions or copies obtained upon paper, parchment, or card-board by means of printing, lithographing, or any other mechanical process easy to recognize, except the copying press, and anything usually attached or appurtenant to any of the before-mentioned articles in the way of binding, mounting, or otherwise, and anything convenient for their safe transmission by post which shall be contained in the same packet; also printed, engraved, or lithographed circulars, notwithstanding that such circulars may be letters or communications in the nature of a letter;
- (3) Packets (in covers open at the ends or sides), containing patterns or samples of merchandize not having a value of their own apart from their mere use as patterns or samples, and either unenclosed or enclosed in bags tied, so as to be easily loosened and refastened.

Definition of a
"newspaper."

8. For the purposes of this Act, any publication coming within the following description shall be deemed a newspaper (that is to say): Any publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, and with or without engravings, prints, or lithographs illustrative of articles in such newspaper, subject to these conditions:

That it be published in numbers or parts at intervals of not more than seven days.

That it be printed on a sheet or sheets unstitched.

That it have the full title and date of publication printed at the top of the first page, and the whole or part of the title and the date of publication printed at the top of every subsequent page.

And the following shall be deemed a supplement to a newspaper: A publication consisting wholly or in great part of matter like that of a newspaper, or of advertisements, such publication being in every case published for the first time with the issue of the newspaper of which it purports to be a supplement, and having the title and date of publication of such newspaper: Notwithstanding anything in this section, all literary publications, printed and published in this Colony, shall, when posted for transmission to any place within the same be considered to be newspapers within the meaning of this section.

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Newspaper supplements.

9. Every inland or foreign newspaper shall be sent without a cover, or in a cover open at both ends; and there shall not be in or upon any such newspaper or the cover thereof any communication, character, figure, letter, or number (other than the words "newspaper only" or the printed title of such newspaper, the printed names, occupation, and places of business of the printer, publisher, or vendor thereof, the name, occupation, and address of the person to whom it is sent, and the words aforesaid), nor shall anything be enclosed in or with or accompany such newspaper or cover; otherwise, there shall be charged upon every such newspaper postage at the rate for the time being chargeable upon letters.

How newspapers to be addressed and posted.

10. The *Government Gazette*, when enclosed in a cover, open at both ends, and with the words "On Her Majesty's Service" printed thereon, together with its title and the imprint of the printer, shall if received at the General Post Office from the office of the printer, but not otherwise, be exempt from postage.

Government Gazette exempt from postage if sent by Government printer.

11. All petitions to Parliament, addressed to a member of either House, and with or without a letter enclosed therein, shall be exempt from postage. Every such petition shall be enclosed in a cover open at both ends or sides, and marked on the outside "Petition to Parliament"; and every such letter shall refer exclusively to the subject of the said petition.

Petitions to Parliament free.

12. Every Postmaster may refuse to transmit by post any packet exceeding five pounds in weight, or of inconvenient form or dimensions, or containing or suspected to contain articles likely to injure the other portions of the mail, or the person of any officer or servant of the Post Office.

What packets may be refused transmission.

13. Except in the cases in this Act or in any regulations made under the authority of this Act expressly mentioned, the postage upon every inland and foreign letter, packet, and newspaper, and upon every parcel, and all fees (if any) upon such letter, packet, newspaper, or parcel, shall be prepaid by affixing thereon postage stamps not obliterated or defaced, and not being embossed or impressed stamps cut out of or separated from the paper, card, or other material upon which such stamps were embossed or impressed, although not previously used; and in default thereof, there shall be chargeable upon every such letter, packet, or parcel, double the ordinary rate of postage for the time being payable thereon respec-

Adhesive stamps to be used.

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tively: and every such newspaper may be destroyed: Provided that postage on loose letters received from masters of vessels may be collected in money on delivery.

When postage may be paid in money.

14. In case any Postmaster shall not have any postage stamps of the requisite value for sale, the postage and fees (if any) upon any letter, packet, newspaper, or parcel, may be prepaid in money, and shall be acknowledged by such Postmaster on the face or cover of such letter, packet, newspaper, or parcel, anything to the contrary in the last preceding section notwithstanding.

Double postage payable on letters, &c., not prepaid.

15. Any inland letter, inland packet, or inland newspaper, or any parcel posted with an unobliterated postage stamp of any denomination shall be regularly transmitted and delivered although the stamp be insufficient, but before delivery in this Colony there shall be paid in money double the amount of postage omitted to be prepaid, and the sum so to be paid shall be written or stamped on such letter, packet, newspaper, or parcel, by the Postmaster who transmits or delivers the same.

Postmasters to see that letters, &c., properly stamped.

16. Except in the cases expressly mentioned in this Act or in any such regulations as aforesaid, every Postmaster shall see that every post card and every inland and foreign letter, packet and newspaper, and every parcel, bear either postage stamps or a proper acknowledgment for money respectively equal in value or amount to the postage due thereon.

17. [Repealed by Act 17, 1895.]

Registration of letters, &c.

18. Any person who shall send any letter, post card, packet, newspaper, or parcel by post shall be entitled to have the same registered at the Post Office at which the same shall be posted upon payment of the proper registration fee; but such registration shall not be deemed to render the Government or the Postmaster-General, or any officer of the Post Office, liable for the loss of any such letter, post card, packet, newspaper, or parcel; and all letters, post cards, packets, newspapers, and parcels shall be put into the Post Office, and also be delivered, at or between such hours in the day and under such regulations as the Postmaster-General shall from time to time appoint.

Double registration fee to be charged in certain cases.

19. In any case where it shall come to the knowledge of any Postmaster, or officer of the Post Office, or where any Postmaster or officer of the Post Office has reasonable cause to believe, that any inland or foreign letter or packet not registered under this Act contains any money or other valuable enclosure, such Postmaster or officer may register such letter or packet, and charge thereon double the proper fee for registration; and such fee shall be paid in money by the person to whom it is addressed before delivery, unless such person shall before or upon such delivery open the letter or packet in the presence of some Postmaster or officer of the Post Office and it shall be found not to contain money or other valuable enclosure, in which case such fee shall be remitted.

20. Except in the cases in this Act expressly mentioned, no letter, post card, packet, newspaper, or parcel shall be destroyed or returned to the writer or sender thereof without either the consent in writing of the person to whom the same is addressed, or the direction of the Postmaster-General; and no letter, post card, packet, newspaper, or parcel shall be delivered to any person not named in the address thereof without such consent or direction as aforesaid.

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How letters may be destroyed or returned.

How delivered to third parties.

21. Every Postmaster or other officer of the Post Office shall transmit to the Returned Letter Branch of the General Post Office without delay any letter, post card, packet, or parcel, which

What letters, &c., must be returned to General Post Office.

- (1) Shall have anything blasphemous, obscene, offensive or libellous written or drawn on the outside thereof.
- (2) Shall have no address or no legible or intelligible address.
- (3) The person to whom it is addressed shall refuse to receive or to pay for when postage is payable.
- (4) Shall be known or reasonably suspected to be posted, or to contain an enclosure, in fraud or violation of this Act, or any regulation thereunder, or of any Customs Act, or to contain any obscene enclosure.

And every letter, post card, packet, or parcel as aforesaid, posted at the General Post Office, may be there retained and dealt with as if it had been transmitted as aforesaid.

22. Any Postmaster may (notwithstanding anything in the last preceding section contained) open or unfasten any packet or parcel which he has reasonable ground to suspect to be posted in fraud or violation of this Act or any regulation thereunder, and shall close or refasten any packet or parcel so opened which he shall find not to have been so posted, and shall mark on the cover of every such packet or parcel that the same has been opened, and sign his name thereon.

Power to open packet or parcel suspected of being posted in fraud of this Act.

23. Every letter, post card, packet, newspaper, and parcel (other than those directed to be transmitted to the General Post Office without delay), which shall remain undelivered at the Post Office to which the same shall have been transmitted for delivery, shall be kept thereat for delivery during not less than two months, and after the expiration of such period the Postmaster at every such Post Office shall (subject to the directions of the Postmaster-General) transmit to the Returned Letter Branch of the General Post Office every unclaimed letter, post card, packet, and parcel, which shall have been kept as aforesaid, and all newspapers undelivered or unclaimed during such period of two months may be destroyed.

Time of detention of returned letters.

24. On the receipt at the General Post Office of any unclaimed letter, packet, or parcel originally posted in this Colony, or of any letter, packet, or parcel posted, or reasonably suspected to have been posted, or to contain any enclosure, in fraud or violation of this Act, or of any Act relating to the Customs, or of any regulation

What letters, &c., may be opened at General Post Office.

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or order made under the authority of this Act, such letter, packet, or parcel may be opened in the General Post Office in the manner hereinafter provided.

Foreign unclaimed letters.

25. Every such unclaimed letter or packet originally posted elsewhere than in this Colony shall be transmitted by the Postmaster-General to the proper authorities in the country in which such letter or packet was posted.

Who to open letters at General Post Office.

26. All letters, packets, or parcels which shall be opened under the authority of this Act (except as in the twenty-second section is provided), shall be opened in the presence of the Postmaster-General, or by or in the presence of an officer of the Post Office specially nominated for that purpose by the Postmaster-General.

Unclaimed letters.

27. Every unclaimed letter, packet, and parcel which shall be opened under the provisions of this Act (unless such letter, packet, or parcel contains any valuable or saleable enclosure, or shall have been posted, or shall contain any enclosure in fraud or violation of this Act, or of any Act relating to the Customs, or of any regulation or order made under the authority of this Act, or with intent to evade payment of the postage properly chargeable thereon), shall be returned to the writer or sender thereof if the name or address of such writer or sender can be ascertained by examination of such letter, packet, or parcel, but if such writer or sender shall refuse to receive such letter, packet, or parcel, or if his name and address cannot be ascertained, the same may be destroyed.

Letters containing valuables.

28. Every letter, packet, or parcel, opened under the provisions of this Act, which shall contain any valuable or saleable enclosure, shall be safely kept, and a list of its contents shall be made and preserved; and the Postmaster-General (unless such contents shall have been posted or shall be in fraud or violation of this Act, or of any Act relating to the Customs or of any regulation or order made under the authority of this Act, or with intent to evade payment of postage properly chargeable on the letter, packet, or parcel containing them), shall cause notice of such letter, packet, or parcel, and of the said contents to be sent to the person to whom the same is addressed if he be known, or otherwise to the writer thereof if he be known, and upon demand by the person to whom such notice shall have been sent, such letter, packet, or parcel and its contents shall be delivered upon payment of the postage or fees (if any) due thereon. But if neither of such persons can be found or shall make such demand within three months after the sending of such notice as aforesaid, or if the contents shall have been posted or shall be in fraud or violation of this or any Act, regulation, or order, as aforesaid, or with intent to evade payment of postage as aforesaid, the said letter or packet shall be destroyed, and its contents forfeited, unless the Colonial Secretary shall direct the said contents to be restored to the writer or sender. And if the contents aforesaid shall not be money, or a security or order

for money payable to bearer, the same may be destroyed, sold or converted into money in such manner as the Postmaster-General may direct, and the proceeds paid into the Treasury.

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29. The sender of any letter, packet, or parcel, which shall be opened under the provisions of this Act, shall on demand pay the postage and fees respectively (if any) due thereon; and in case of refusal shall upon conviction pay a penalty not exceeding twenty shillings, and in any proceeding for the recovery of the said penalty the person from whom such letter, packet, or parcel, shall purport to have come, shall be deemed to be the sender thereof, unless the person proceeded against shall prove that such letter, packet, or parcel was not sent by him.

Sender of opened letter to pay postage.

Penalty for refusal.

30. The Governor may from time to time make and alter arrangements or postal conventions with the Postmaster-General of the United Kingdom, or with the proper authorities of any British possession or Foreign country for any or either of the purposes following :

Power to Governor to make postal conventions

- (1) For the issue and payment by means of the Post Office of money orders between this Colony and Great Britain, or any British possessions or Foreign country.
- (2) For the transmission to any place out of this Colony of letters, post cards, packets, and newspapers, posted in this Colony or received in mails or loose, from masters of vessels on which no postage or insufficient postage shall have been paid, free of postage, or upon such terms as to the amount of postage or fine to be paid on delivery, and as to the application thereof as may be agreed upon.
- (3) For determining the amount and collection of postage and fees or other charges upon letters, post cards, packets, and newspapers conveyed between this Colony and such kingdom, possession or country.
- (4) For the division and mutual accounting for and payment of the money collected under any arrangement.
- (5) For the purposes abovementioned in sub-sections (3) and (4) in the case of letters, post cards, packets, and newspapers transmitted through this Colony or the said kingdom, possession or country to or from any part of the world.
- (6) For the prepayment (in full or otherwise) of the postage due on any letters, packets, and newspapers.

31. So soon as any arrangement or postal convention shall have been made under the authority of this Act, the Governor may from time to time issue a proclamation defining a time for such arrangement or convention to come into operation, and from and after such time the rates of postage and regulations therein set forth shall be imposed, paid, and observed.

How convention to be promulgated.

32. Copies of all arrangements or conventions made between the Government of this Colony and the Postmaster-General of the

Conventions so made to be laid before Parliament.

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United Kingdom, or the proper authorities of any British possession or Foreign country, and copies of all regulations or orders made by the Governor under the provisions of this Act, shall from time to time be laid before both Houses of Parliament within thirty days after the making thereof, respectively, if Parliament be in session, and if Parliament be not then in session after the commencement of the next session.

Money orders and postal orders.

33. Subject to such regulations as may be made by the Governor under the provisions of this Act, the Postmaster-General may authorise his officers or any of them to issue money orders for sums not exceeding ten pounds, and postal orders for sums not exceeding one pound, and all regulations made by the Governor relating to such money orders, and postal orders shall be binding and conclusive upon all officers of the Post Office, and upon the persons to whom such money orders and postal orders, respectively, shall be granted or issued, and the payees thereof and all persons interested through or claiming under them, and upon all other persons whomsoever, and such regulations shall have the same force and effect in all respects as if contained in this Act.

Restrictions as to mode of conveying letters.

34. No letter shall be carried for hire or reward otherwise than by post, and no letter shall be conveyed by any vehicle used for the public conveyance of passengers unless in any Post Office bag which may be thereby conveyed. Any person who shall send or convey any letter by any such vehicle, or otherwise than by post, or who shall for hire take charge of the same, for such conveyance shall upon conviction be liable to pay a penalty not exceeding ten pounds for every such letter. And every such letter sent, conveyed, or taken charge of to be conveyed, otherwise than by post, shall be deemed to have been so sent, conveyed, or taken charge of for hire or reward unless the contrary be shown by the accused. But nothing herein contained shall extend to any letter concerning goods sent and to be delivered therewith, or containing process of or proceedings or pleadings in any Court of Justice, or affidavits, or depositions; nor to any letter sent by any person concerning his private affairs, nor to any letter sent or carried to or from any Post Office.

Penalties.

Penalties for removing stamps from letters posted.

35. If any person shall with intent to defraud remove from any letter, packet, newspaper, or parcel respectively sent by post any stamp which shall have been affixed thereon, or wilfully remove from any stamp which shall have been previously used, any mark which shall have been made thereon at any Post Office, or shall knowingly put off or use any such stamp, he shall upon conviction be liable to a penalty not exceeding forty pounds, or to be imprisoned with or without hard labour for any period not exceeding six months; or to both such fine and such imprisonment.

Penalties for sending dangerous substances by post.

36. If any person shall enclose in or with any letter, packet, newspaper, or parcel, or shall put into any Post Office, pillar-box, or wall-box for the receipt of letters, any explosive, dangerous, or

destructive substance, or any matter or thing likely to injure any letter, packet, newspaper or parcel, or the person of any officer or servant of the Post Office, such person shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding five years.

37. Any person who shall be guilty of any of the following acts or offences shall, upon conviction, be liable to a penalty not exceeding twenty pounds, or to imprisonment with or without hard labour for any period not exceeding six months; or to both such fine and such imprisonment :

List of offences and penalties.

- (1) If he shall, contrary to the provisions of this Act or with intent to defraud, put into any Post Office anything purporting to be a letter, packet, or newspaper, within any of the exemptions by this Act allowed, or any letter purporting to belong to a class in which lower rate of postage is chargeable.
- (2) If he shall put into any Post Office any packet or parcel in or upon which or the cover whereof, there shall be any letter, communication, or intelligence not allowed by law or shall wilfully subscribe on the outside of any packet a false statement of the contents thereof.
- (3) If he shall put into any Post Office any newspaper in or upon which or upon the cover whereof, there shall be any communication, character, figure, letter, or number (other than is excepted by the tenth section of this Act) or in or with which anything shall be enclosed, or which anything shall accompany.
- (4) If he shall put into any Post Office any letter, post card, packet, newspaper, or parcel bearing an obscene, profane, or libellous address or signature.
- (5) If he shall wilfully deface, break or injure any pillar-box or wall-box for the receipt of letters, or place in any such box for the receipt of letters any substance likely to deface any letter, post card, packet, or newspaper.
- (6) If he shall detain, secrete, or keep any letter, post card, packet, newspaper, or parcel which ought to have been delivered to any other person, or any mail bag, mail box, mail parcel, letter, post card, packet, or newspaper, which shall have been found by the person detaining, secreting, or keeping the same, or by any other person.
- (7) If he shall by any false pretence or misstatement induce any Postmaster or any officer or servant of the Post Office to deliver to him any letter, post card, packet, newspaper, or parcel sent by post and not addressed to him.
- (8) If (being a Postmaster, master of a vessel, or other person authorised to receive, sort, dispatch, carry, or deliver mail letters, post cards, packets, newspapers, or

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parcels sent by post) he shall negligently lose, or wilfully omit or delay to dispatch or deliver any such mail, letter, packet, newspaper, or parcel, whether the same shall or shall not afterwards be recovered or delivered (as the case may be).

- (9) If (being the driver of any vehicle used for the conveyance of any mail, or the guard or person in charge of a mail, whether conveyed by such vehicle or on horseback or on foot) he shall become intoxicated, or shall loiter on the road, or wilfully misspend or lose time so as to retard the arrival of the mail at its proper destination within the time limited for its arrival.

Letters arriving by ship to be delivered to Post Office.

38. (1) All mails and every loose letter, post card, packet, or newspaper which at the time of the arrival of any vessel in any port of this Colony shall be on board thereof directed to any person in this Colony, shall be delivered on demand to any Postmaster or port officer of such port or to any person duly authorised in their behalf by writing under the hand of the Postmaster-General or officer in immediate charge of the Post Office, except letters concerning goods on board such vessel and to be delivered with such goods, or sent by way of introduction only, or concerning the bearer's private affairs. And any person who shall knowingly or negligently detain, or keep in his possession, or shall neglect or refuse to deliver any mail bag, mail box, or mail parcel, or any letter, post card, packet, or newspaper (except as aforesaid) after such demand made as aforesaid, shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

Penalties for omitting to make such delivery

Masters of ships to sign declaration in schedule 33.

39. The master or person in charge of any vessel arriving at any port in this Colony shall, as soon as practicable after such arrival, sign in the presence of the Postmaster or other officer appointed by the Postmaster-General to receive the same at such port or the town or place nearest thereto, a declaration in the form set forth in the third schedule to this Act, and thereupon such Postmaster or officer shall grant a certificate under his hand of the making thereof; and until such certificate shall have been delivered to the proper officer of Customs at such port he shall not permit such vessel to report. And any master or person in charge as aforesaid who shall fail or refuse to make such declaration or who shall make a false declaration shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

Payments for conveyance of letters by ship.

40. Every master or person in charge of every vessel about to depart from any port in this Colony who shall receive on board thereof any mail bag, mail box, or mail parcel, for the purpose of conveying the same according to the direction thereof, shall be entitled to demand or receive for the carriage thereof

¹ See also § 20, Act No. 16, 1857.

For every foreign letter and packet contained therein the sum of one penny;

For every inland letter and packet contained therein the sum of one half-penny;

For every newspaper, one farthing;

such master or person giving a receipt for the amount so received by him. But nothing herein contained shall entitle the master or person in charge of any vessel under contract for the conveyance of mails to receive payment for the same as aforesaid.

41. Every master or person in charge of any vessel not carrying mails under contract for the carriage thereof, and being about to depart from any port in this Colony, shall, before the clearance of such vessel, give to the Postmaster or officer in charge of the Post Office at the port from which such vessel shall be about to depart, notice, in writing, of the intended time of departure of such vessel. Such notice, in case the destination of the vessel be to any port or place beyond the limits of the Colony shall not be less than twenty-four hours, and in case the destination be to any other port or place within the Colony shall be not less than six hours. And every such notice shall expire between the hours of nine o'clock in the forenoon and three o'clock in the afternoon. And every such master or person in charge shall from time to time give notice of any postponement of such time of departure. And such Postmaster or other officer of the Post Office shall, upon receiving such notice, grant a certificate to such master or person, and until such certificate shall have been given the vessel shall not be cleared. Every master or person in charge who shall omit to give such notice as aforesaid, or who shall depart from the port before the time mentioned in such notice, shall upon conviction be liable to pay a penalty not exceeding fifty pounds.

Shipmasters to give notice to Postmaster of intended departure.

42. If any master or person in charge of any vessel about to depart from any port in this Colony, to any port or place within or beyond the same, shall (after being thereto required by any officer of the Post Office, or by any port officer, or by any person duly authorised in writing in that behalf by the Postmaster at such port), refuse or neglect to receive on board such vessel any mail bag, mail box, or mail parcel, or to give a receipt for the same being thereto required by the person tendering or delivering such bag, box, or parcel, or shall refuse or neglect safely to convey the same upon her then intended voyage, such master or person shall for every such offence be liable upon conviction to pay a penalty not exceeding one hundred pounds.

Penalties for refusing to receive mails on board ship.

43. As often as the master or person in charge of any vessel shall have received any mail bag, mail box, or mail parcel for carriage on board such vessel, and such vessel shall not depart on her voyage according to the time fixed for the departure thereof, such master or person as aforesaid shall on demand return to the Postmaster, port officer, or other person duly authorised in that

Master not sailing as notified to return mails and gratuity.

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behalf, in writing, or to the officer in charge of the Post Office, such mails, and also any gratuity which may have been paid for the carriage of the same; and in default of so doing, shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

Solemn declaration to be made before J.P. by each postal officer.

44. Every Postmaster and other Post Officer shall, before the exercise by him of the duties of his office, take and subscribe before a Justice of the Peace a solemn declaration, which every Justice of the Peace is hereby authorised and required to administer, in the form in the fourth schedule ⁽¹⁾ to this Act.

Penalty on postal officers, shipmasters & others for breach of provisions of this Act or regulations thereunder.

45. Any Postmaster or other officer employed in the Post Office, or any master of a vessel or other person employed by or under any Postmaster, or employed or authorised to receive, sort, carry, or deliver mails, or letters, post cards, packets, newspapers, or parcels sent by post or otherwise employed in the business of the Post Office, who shall offend against or wilfully neglect or omit to comply with any of the arrangements or regulations to be made under the provisions of this Act, or with any of the provisions of this Act (for breach or neglect of which no other penalty is by this Act or by law provided) shall upon conviction be liable to a penalty not exceeding fifty pounds.

Offences and penalties.

46. If any person shall be convicted of any of the offences following, he shall be liable to be imprisoned and kept at hard labour for any period not exceeding seven years

- (1) If he shall forge, alter, or imitate, or assist in forging, altering, or imitating, any stamp, envelope, or cover, or any money order or postal order, used or made under, the authority, or for the purposes of this Act, or shall use, offer, utter, or dispose of any forgery or imitation of any such stamp, envelope, or cover, or any money order or postal order, knowing it to be forged, or with a fraudulent intent;
- (2) If he shall engrave, or in anywise make upon any plate or material whatever, any stamp used for the purposes of this Act, without the authority of the Executive Government (the proof of which authority shall lie upon the person accused);
- (3) If he shall make, or cause to be made, or assist in making or have in his custody, or possession, without lawful excuse (the proof whereof shall lie on the person accused) any mould, frame, or other instrument, having thereon any words, letters, figures, marks, lines, or devices, peculiar to paper provided, or used for postage stamps, money orders or postal orders; or if any person shall make or procure to be made, or assist in making, or have in his custody or possession, without lawful excuse (the

¹ Fourth Schedule repealed by Act, 35, 1892 § 2 and Schedule 2 of latter Act substituted.

proof whereof shall lie on the person accused), any paper, in the substance of which shall appear visible any words, letters, figures, marks, lines, or devices, peculiar to paper provided for postage stamps, money orders, or postal orders, and intended to imitate or pass for the same ;

- (4) If he shall, without lawful excuse (the proof whereof shall lie on the person accused), sell, purchase, dispose of, or receive, or take, or have in his custody or possession, any paper provided for the purpose of being used for postage stamps, money orders, or postal orders, before the same shall have been issued for public use ;
- (5) If he shall, for his own gain or purposes, or with intent to defraud, make use of any stamp, die, or plate, provided by any person charged with the duty of providing stamps, dies, or plates, for the purposes of this Act.

47. In any prosecution for any crime, or offence committed upon or in respect of any mail bag, mail box, or mail parcel, or any letter, post card, packet, parcel or newspaper, sent by post, or any property, moneys, money order, or postal order, under the management or control of the Postmaster-General, or when any matter or thing shall have been done or committed with any malicious, injurious, or fraudulent design, intent or purpose, relating to or concerning the Post Office, of any such property, moneys, money order, or postal order, it shall be sufficient to allege the property to belong to, or be in the lawful possession of the Postmaster-General, and any such act, deed, matter, or thing to have been done or committed, with intent to injure or defraud the Postmaster-General, without setting forth his name.

Property in letters posted to vest in Postmaster-General.

48. The Courts of the Resident Magistrates, respectively, shall have jurisdiction for the trial of any offence created by this Act in respect whereof the penalty which may be imposed shall not exceed twenty pounds or the period of imprisonment which may be awarded shall not exceed six months.

Jurisdiction of Resident Magistrates.

49. No action or suit shall be capable of being brought against the Colonial Government or against the Postmaster-General by reason of any default, delay, omission or loss in respect of any letter, post card, packet, newspaper, or parcel posted or received for transmission under the provisions of this Act ; or for or by reason, or in consequence of payment of the amount of any money order or postal order being delayed.

No actions against Government for delay in transmission of letters, &c.

50. The Postmaster-General may, by any notice, to be published in the *Government Gazette* from time to time, define or alter the limits of any city, town, or village within which letters, packets, parcels and newspapers are to be delivered from the Post Office.

Limits of delivery from Post Offices to be defined.

51. Whenever any penalty shall have been imposed under the provisions of the thirty-eighth, thirty-ninth, forty-first, forty-second, forty-third, and forty-fifth sections, respectively, of this Act, and the person convicted shall not forthwith pay the same,

Power to order imprisonment, &c., in case fines not paid.

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the Court before which such person is convicted may direct that such person be imprisoned with or without hard labour for any period not exceeding twelve months, and such person shall be detained and kept to hard labour accordingly, unless the penalty be sooner paid.

Short title.

52. This Act shall come into operation on the first day of July, 1882, and may be cited for all purposes as the "Post Office Act, 1882."

SCHEDULES.—FIRST SCHEDULE.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
1. Ord. No. 1, 1846.	Ordinance for the Regulation of the Post Office and Postage.	So much as has not been already repealed.
2. Ord. No. 23, 1847.	Ordinance for reducing the Postage upon Religious Publications of or under a certain weight.	The whole.
3. Act No. 23, 1856.	Act for empowering the Governor to Regulate the Postage of Letters transmitted to and from Countries beyond the Colony.	So much as has not been already repealed.
4. Act No. 21, 1857.	Act to amend the Ordinance No. 1, 1846, entitled "Ordinance for the Regulation of the Post Office and Postage."	The whole.
5. Act No. 15, 1858.	Act for Amending the Act No. 21 of 1857, entitled "An Act to Amend the Ordinance No. 1, 1846, entitled 'Ordinance for the Regulation of the Post Office and Postage.'"	So much as has not been already repealed.
6. Act No. 2, 1859.	Act for Amending the Act No. 15 of 1858, entitled "An Act for Amending the Act No. 21, 1857, entitled 'An Act to Amend the Ordinance No. 1, 1846,' entitled 'Ordinance for Regulation of the Post Office and Postage.'"	The whole.

FIRST SCHEDULE —(continued).

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Number and Year.	Title.	Extent of Repeal.
7. Act No. 2, 1862.	Act for Amending in certain respects the Regulations of the Post Office and Postage.	The whole.
8. Act No. 3, 1862.	Act to facilitate the transmission of Books by means of the Post Office.	So much as has not been already repealed.
9. Act No. 30, 1864.	Act for Amending the Law relating to the Post Office and Postage.	Ditto.
10. Act No. 6, 1868.	Act for Altering and Regulating certain Rates of Postage.	The whole.
11. Act No. 7, 1868.	Act to Amend and Alter in certain respects the Regulations of the Post Office.	Ditto.
12. Act No. 9, 1874.	Act to Amend the Law relating to the Post Office and Postage.	Ditto.
13. Act No. 14, 1877.	Act to Regulate the Postage payable in this Colony upon Letters and other matters arriving from certain other places.	Ditto.
14. Act No. 25, 1879.	Act to Alter certain Rates of Postage payable in this Colony.	Ditto.
15. Proclamation No. 55, dated 14th Oct., 1872, issued by the local Commissioners of Griqualand West.	Proclamation defining Postal Route between Barkly and Hope Town.	The whole.
16. Ordinance No. 11 of 1874 of the Province of Griqualand West.	Ordinance to regulate the Conveyance of Mails and the establishment of Post Offices in the Province of Griqualand West, and also for other purposes.	The whole.
17.	All Proclamations issued under the provisions of Section 5 of the last-mentioned Ordinance.	

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SECOND SCHEDULE. [REPEALED BY ACT 35, 1892.]

THIRD SCHEDULE.

I, _____, do hereby declare that I have to the best of my knowledge, delivered to _____ every mail bag, mail box, mail parcel, letter, packet, and newspaper that were on board the (name of vessel) at the time of her arrival at the port of _____, except such letters as are exempt by law from such delivery.

Signed in my presence }
 on the _____ day of _____ }
 (S 5.)

FOURTH SCHEDULE. [REPEALED BY ACT 35, 1892.]

No. 5—1882.]

[June 14, 1882.

Act to Authorise the Extension of certain Lines of Telegraph.
 [Spent.]

No. 6—1882.]

[June 14, 1882.

ACT

For Consolidating in one Act certain Provisions generally contained in Acts authorising the taking of Lands for Public and other Works, and settling Compensation by Arbitration.

Preamble.

WHEREAS it is expedient to embody in one Act sundry provisions generally contained in Acts of Parliament authorising the taking of lands and materials for public and other works, and for settling the amount of any compensation to be paid, or any matter in difference, by arbitration: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Provisions to apply to cases where authority is given to take materials for the purpose of any work.

1. As often as by any Act passed during the present or any future session of Parliament authority is given for the purposes of any work by such Act authorised to be undertaken or constructed, to take and use any land or to dig, get, or carry away any materials belonging to any person who may be entitled to demand compensation for such land or materials as the case may be (such person being in this Act designated "the owner") the following provisions shall apply:—

- (1) In case such land or materials shall be required to be taken by the Government, the Responsible Minister charged with the execution of the work, or some person authorised by him in writing in that behalf, or in case of any corporate body or person, such corporate body or person or the representative of such body or person, may treat and

agree with the owner of such land or materials for the purchase or hire, as the case may be, of any such land or materials, and may enter into any contract relative to the obtaining of such land or materials, and for compensation for the use or taking thereof, upon such terms and conditions as may seem expedient.

- (2) If the parties, respectively, shall not agree upon the purchase money, hire or other recompense to be respectively given and accepted, the Minister, corporate body, or person acting therein as aforesaid, shall cause to be served upon the owner of the land or materials required to be taken or used a written notice, offering as recompense or compensation, whatever sum shall be deemed sufficient, and requiring such owner to state in writing within a limited time to be specified in such notice not being less than fourteen days after the date of service thereof, whether he is willing to accept the sum offered or not.
- (3) If such owner should refuse to accept the sum offered, or neglect to reply to such notice within the time specified therein, the matter in difference shall be determined by arbitration under the provisions of this Act.
- (4) In case any land or materials belonging to any owner who shall be absent from the Colony, or whose place of residence, agent, or representative, shall be unknown to the Minister, corporate body or person as aforesaid, shall be required for any work authorised by any such Act as aforesaid, then it shall not be necessary to serve the several notices by this Act prescribed upon such owner, but the publication of any such notice in the *Government Gazette* shall be deemed and taken to be sufficient notice to such owner.
- (5) It shall not be necessary before the exercise of any of the powers conferred by any such Act as aforesaid, that any proceedings shall be taken to settle the amount of compensation or recompense to be paid for, or in respect of the land or materials authorised to be taken, and which may be required for any such work, but it shall be lawful for the Minister, corporate body, or person, as aforesaid, as the case may be, to enter upon, take possession of, and use any such land or materials, leaving all questions as to the recompense or compensation to be paid for or in respect of such land or materials to be settled afterwards in the manner by this Act provided.

2. As often as by any Act passed in the present or any future Session of Parliament, the amount of any compensation to be paid, or any other matter, is directed to be awarded, or settled by arbitration, then (except where other provision is specially made),

How arbitrators to be appointed.

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unless both parties concur in the appointment of a single arbitrator, each party shall be entitled to appoint an arbitrator to whom the matter shall be referred.

Provisions in regard to cases submitted to arbitration

3. With respect to arbitrations under this Act the following provisions shall apply :

- (1) Every appointment of an arbitrator shall be in writing, and signed by the party making the same, or when made by any public or corporate body shall be executed in such manner as such body is or may be authorised to execute any act or instrument, or as such body may by any lawful resolution direct.
- (2) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same.
- (3) After the making of any such appointment, the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation.
- (4) If for the space of twenty-one days after any matter authorised or directed by any act to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by, and shall act on behalf of, both parties.
- (5) If before the determination of any matter so referred, any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails to do so for the space of ten days after notice in writing from the other party the remaining arbitrator may proceed as sole arbitrator.
- (6) If a single arbitrator dies or becomes incapable to act before making his award, or fails to make his award within thirty days after his appointment, or in the case of more arbitrators than one if such arbitrators fail to make their award within thirty days after the date on which the last of them was appointed or within such extended time (if any) as may have been duly appointed by him or them respectively, for that purpose, the matter referred shall be again referred to arbitration under the provisions of this Act as if no former reference had been made.
- (7) When there is more than one arbitrator, the arbitrators shall before they enter upon the reference appoint, in writing a third arbitrator, and if the person so appointed,

dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint a third arbitrator within fourteen days after being requested so to do by any party to the arbitration, then it shall be competent for any judge in chambers on the application of any such party to appoint such third arbitrator.

- (8) The time for making an award shall not in any case be extended beyond three months from the date of the appointment of the last arbitrator, or in the case of a single arbitrator, the appointment of such arbitrator, unless by consent of the parties to the arbitration.
- (9) Any arbitrator or arbitrators appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he or they may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath.
- (10) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators.
- (11) Any submission to arbitration under the provisions of this Act, or any award made thereunder, may be made a rule of any Court having jurisdiction on the application of any party thereto.
- (12) The award of any single arbitrator or of a majority of three arbitrators, as the case may be, shall be final and binding on all parties to the reference.
- (13) It shall be lawful for any Judge of the Supreme Court, by rule or order to be made for that purpose, to command the attendance and examination of any person as a witness or the production of any documents to be mentioned in such rule or order: and disobedience to any such rule or order shall be deemed to be a contempt of Court, if, in addition to the service of any such rule or order an appointment of the time and place of attendance in obedience thereto, signed by the arbitrator, or one of the arbitrators before whom the attendance is required shall also be served either together with or after the service of such rule or order: Provided that every person whose attendance shall be so required shall be entitled to payment for expenses and loss of time, as for and upon attendance at any trial in the Supreme Court: Provided also that no person shall be compelled to produce under any such rule or order, any writing or other document which such person would not be compelled to produce at a trial.
- (14) In any case where reference shall be made to arbitration any competent Court to which application shall be made shall have power at any time, and from time to time,

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to remit the matters referred, or any of them to the re-consideration and re-determination of the arbitrator or arbitrators, upon such terms as to costs and otherwise, as to such Court may seem proper.

In cases of minors and persons under curatorship.

4. As often as any of the persons interested or concerned in any arbitration under this Act shall be a minor or person under curatorship the following provisions shall apply :

- (1) All notices required to be given to such minor or other person shall be given to the guardian or curator of such minor or person as the case may be.
- (2) Every such guardian or curator shall have and exercise all the powers, and do and perform all acts, matters and things which the person under disability would, if capable of acting in his own behalf, have and exercise, or be liable to do and perform.
- (3) All moneys which shall in pursuance of any award be payable to any such minor or other person shall be paid to the Master of the Supreme Court administering the Guardian's Fund, who shall receive and administer the same on behalf of such minor or other person, subject to any order in respect thereof made by the Supreme Court.
- (4) If in any case any person of full age shall by way of fidei commissary limitation, or any limitation of a like nature be entitled to a life or other limited interest in any land the subject of any such arbitration in which any such minor or other person shall also be interested in remainder or expectancy, then the whole compensation as fixed by the award of arbitrators shall be paid to the Master of the Supreme Court in his said capacity, and the person who was entitled to the life or other limited interest in the land shall be entitled for life, or for the other limited period, to draw the interest payable upon the sum so paid in : subject, however, to any order, in respect thereof, which the Supreme Court may, upon the application of any person having an interest see fit to make.

Short title.

5. This Act may be cited for all purposes as "The Lands and Arbitrations Clauses Act, 1882."

No. 7—1882.]

[June 14, 1882.]

Act for the Encouragement and Protection of Friendly Societies.

[Repealed by Act 5, 1892.]

No. 8—1882.]

[June 14, 1882.]

Act to Provide for the Election of a Divisional Council for the Division of Simon's Town, and for other purposes.

[Repealed by Act 33, 1886.]

No. 9—1882.]

[June 14, 1882.

ACT

To Regulate the Issue of Licences for the Solemnization of Marriages, and to abolish Matrimonial Courts. ⁽¹⁾

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

Preamble.

1. The fourth and fifth sections of the Ordinance No 89, promulgated on the sixth day of February, 1832, the fourth section of the Act No. 11, 1860, the Government Notice dated the sixteenth day of April, 1839, and so much of any other law or ordinance as may be repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Repeal of repugnant laws.

2. The several powers and duties which are by certain clauses of the schedule marked A to the "Marriage Act, 1860," directed to be exercised and performed by the Matrimonial Court of any district shall be exercised and performed by the several Resident Magistrates within the limits of their respective districts, and the said schedule shall be read and construed as if the words "Resident Magistrate's Court" had been inserted in every clause wherein the words "Matrimonial Court" occur.

Courts of Resident Magistrates substituted for "Matrimonial Courts."

3. The Resident Magistrate of every district is hereby authorised, subject to the provisions of this Act, to grant special licences for the solemnization of marriage at any time and at any place within the Colony and every such licence shall be duly stamped with stamps denoting the duty by law payable, and shall be as nearly as is material in the form contained in the first schedule.

Magistrates may grant marriage licences.

4. Unless a marriage shall be solemnized in pursuance of any licence obtained and issued under the provisions of this Act within three months after the grant of such licence, such licence shall be of no effect, and no marriage shall be solemnized in pursuance thereof; nor shall any person having taken out a marriage licence be entitled to a refund of the amount paid for such licence, in case the marriage shall not be solemnized.

Licence to be void after 3 months.

5. No such licence shall be granted by any Resident Magistrate unless or until the intended husband and intended wife shall have made before such Magistrate, or before some Justice of the Peace, solemn declarations, in the form and to the effect set forth in the second schedule, and all such declarations shall be preserved of record in the offices of the Resident Magistrates respectively.

Intending spouses to make declaration in schedule 2.

6. No such licence shall be granted by any Resident Magistrate for the marriage of any widower or widow having minor children of a former marriage unless such Resident Magistrate shall be

Provisions in case of marriage of widowers and widows.

¹ Extended by Proclamation No. 145 of 1887 to Transkei, Tembuland and Griqualand East; by Proclamation No. 178 of 1892 to Port St. John's, and by Proclamation No. 340 of 1894 to East and West Pondoland. See Order in Council 7th Sep. 1838, and notes.

No. 11—1882.

Interpretation
clause.

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

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

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

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

For what purposes
Governor may grant
loans to local author-
ities.

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

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

¹ See § 1, Act 29, 1885, and § 54 Act 25, 1894.

² See § 5, Act 14, 1895.

³ Printed as amended by Act 14, 1895; see also § 2, Act 29, 1885.

3. Every application for a loan under the provisions of this Act shall be in writing addressed to the Commissioner, and shall distinctly state the purpose and object of the proposed loan. No 11—1882.
Purpose of loan to be stated.
4. The Commissioner may, upon receipt of any such application, call for such estimates, plans, specifications, reports, returns, and other information, and may cause such inspection to be made as he shall deem necessary for the purpose of determining whether the loan applied for is one proper to be granted: and if in any case the local authority shall not have given notice of their intention to apply for the loan, the Commissioner may require such notice to be given as he may deem necessary. Estimates, plans, &c., may be called for.
5. (1) The Commissioner shall, if satisfied that the loan applied for is one proper to be granted, issue his certificate to the effect that in his opinion the requisite conditions prescribed by this Act have been complied with, and that no objection exists to the granting of such loan, and may state therein whether the proposed loan should be advanced in one sum or several sums, and the time or times of such payments respectively. Commissioner may give certificate in favour of loan.
6. No application for a loan under this Act shall be submitted to the Governor until the Commissioner shall have enquired into such application and certified as aforesaid. No uncertified application to be submitted to Governor.
7. Every loan advanced to any local authority shall, notwithstanding anything to the contrary contained in any Act or Ordinance under which such local authority is authorised to raise money be subject to the conditions prescribed by this Act, and whenever the word "interest" is used in respect of any loan so authorised to be raised, such word shall be taken to mean and include the half-yearly sums required by this Act, to be paid according to the schedule hereto, as interest upon and in liquidation of such loan. Loans subject to conditions prescribed by this Act.
8. Every loan advanced to any local authority shall, subject to any prior charge or hypothecation, be a charge upon the rates, revenues, and land, of such local authority. Loan to be a charge on rates, property, &c.
9. The term of any loan advanced under the provisions of this Act shall not exceed forty years, and shall at or before the granting thereof be determined by the Governor. No loan for a greater period than forty years.
10. Every such loan shall be liquidated by payment to the Treasurer by the local authority on the first days of January and July, respectively, in every year of one moiety of the annual payment required to redeem such loan, according to the scale prescribed in the schedule hereto, and such sum shall continue to be payable until all moneys advanced from time to time by the Treasurer, together with the interest accruing thereon, shall be paid: Provided that the term of such loan shall be deemed to begin on such date, not more than five years after the authorisation of the same, as the Governor shall prescribe, but interest calculated at five per centum per annum shall be payable on any sum advanced by the Treasurer from the date on which it is advanced. How loans to be redeemed.

¹ See Act 14, 1895, § 2.

No. 11—1882.

Appropriation of money paid in redemption of loans.

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

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

Statement of loans to be published in *Government Gazette*.

12. The Treasurer shall half-yearly, after the first days of January and July respectively, cause to be published in the *Government Gazette* a detailed statement of all loans at the time so advanced to and not repaid by all such local authorities under the provisions of this Act.

How payments may be enforced.

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

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

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

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

incidental to the taking and holding possession and of the sale thereof, and the balance shall be applied to or towards the sum then due by the local authority to the Colonial Treasury for interest and principal in respect of such loan: And if there be any surplus such surplus shall be paid over to the local authority.

No. 11—1882.

- (4) In case any such property shall be sold as aforesaid, the Treasurer is hereby invested with the power and authority to pass transfer in due and customary form to the purchaser thereof: and shall for such purpose be, and be deemed to be, a trustee for such local authority.

15. Notwithstanding anything in this Act contained, the local authority shall in respect of any loan advanced under the provisions hereof be subject to the provisions of the "Public Bodies Debts Acts, (1) 1867."

Public Bodies' Debts Act, 1867, to apply.

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

Short title.

SCHEDULE (2)

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

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

¹ No 11.² This schedule to apply to Acts 7, 1880 : 8, 1877 : 28, 1879. See 10, 1893.

No. 12—1882.]

[June 21, 1882.

ACT

For the Organization and Regulation of a Police Force.⁽¹⁾

Preamble.

FOR the purpose of providing for the Organization and Regulation of a Police Force in this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

“Police Districts”
to be defined and
officers appointed.

1. The Governor may from time to time define certain portions of the Colony to be known as “Police Districts,” and may appoint so many commissioners of police, inspectors, sub-inspectors, and other officers of different grades, and so many sergeants of police as may be deemed necessary, and may also from time to time suspend, reduce, discharge, or dismiss any such commissioner, officer, or sergeant.

Commissioners of
Police to superintend
the force.

2. The commissioners shall, in their respective districts, and subject to the directions of the Governor, have the superintendence and control of the force, and all officers of police shall have the superintendence and control of that portion of the force which may be placed under their charge, subject to the authority by this Act conferred upon the commissioners and to the regulations to be made by the Governor, as is hereinafter provided.

Governor may ap-
point Acting Com-
missioner.

3. The Governor may, when circumstances so require, appoint a person to act in the place of any commissioner, and every such acting commissioner shall have all the powers conferred, and shall discharge all the duties imposed by this Act upon a commissioner.

Commissioners to
appoint and dismiss
policemen.

4. The commissioners may in their respective districts, from time to time, appoint so many fit persons to be policemen of different grades as the Governor may deem necessary, and the Governor may disallow any such appointment. Such commissioners may from time to time discharge or dismiss any policeman.

Powers and duties
of policemen.

5. Every policeman shall in any district of the Colony have such powers, and shall perform all such duties, as any constable or policeman now has or hereafter may have by virtue of any Law, Ordinance or Act now or hereafter to be in force in this Colony.

Force may be armed
or partly armed or
not.

6. The force so to be raised may be armed and mounted, or partly armed and partly not armed, partly mounted and partly unmounted, as to the Governor shall seem fit, and such force shall serve as a police force for preserving the peace and preventing crimes, and apprehending offenders, and perform such other duties as by this Act or any rule or regulation to be made by the Governor may be required.

In case of war force
may be employed in
defence of Colony.

7. The Governor may in case of any war or other emergency, employ the force raised under the provisions of this Act, or any part thereof, for the purpose of assisting in the defence of the

¹ See Acts 12, 1874; 27, 1882; 13, 1886 §§ 1-3; 21, 1894: 32, 1895 § 50.

Colony, either within or beyond the borders thereof, and may place such force, or part thereof as aforesaid, under the orders and directions of such person as he may appoint in that behalf; and while so employed such force shall be subject to the provisions of the "Colonial Forces Discipline Act, 1880," or any Act hereafter to be passed for the discipline of colonial forces.

8. No member of the force other than a commissioner shall be at liberty to resign his office, or to withdraw himself from the duties thereof, notwithstanding that the period of his engagement shall have expired, unless expressly authorised in writing so to do by the commissioner of the district, or unless he shall give to such commissioner three months' notice of his intention to resign or withdraw; and no commissioner shall be at liberty to resign or withdraw as aforesaid, without the consent of the Governor.

Commissioners alone allowed to resign without permission.

9. When any member of the force shall be discharged or dismissed from, or shall otherwise cease to hold and exercise his office, all powers, and authorities vested in him, as a member of the force, shall immediately cease.

Powers, &c., conferred, cease on dismissal or discharge.

10. The Governor may, from time to time, make rules and regulations for defining the duties of the members of the force, and respecting the training, arms, and accoutrements, clothing and equipment of such force, and as to all matters necessary for making the force efficient for the discharge of their respective duties and may vary, alter, and repeal any such rules and regulations; and also when it shall appear necessary, may direct the employment and distribution of the said force beyond the limits of the respective police districts, and also within or beyond the colonial boundary.

Power of Governor to make rules and regulations.

11. Any member of the force, not being a commissioner or inspector who shall be guilty of any neglect or violation of duty, or of contravening any of the rules and regulations made by the Governor, shall, upon conviction, be liable to a penalty not exceeding ten pounds.

Penalty for contravention of rules, &c.

12. Every sub-inspector, sergeant, and policeman shall obey and execute all lawful summonses, warrants, executions, and other process of any Court or Justice of the Peace, to him directed or delivered, and any summons, warrant or other process directed or given to any member of the force shall and may be executed and enforced by any other member of the same or any other force, and every such last-mentioned member shall have the same rights, powers, and authorities for and in the execution of such summons, warrant and other process, as if the same had been originally directed to him expressly by name.

Duty of serving summonses, &c.

13. Any member of the force who has served for a period of not less than ten years, and has attained the full age of fifty years, may, at the discretion of the Governor, be superannuated, and shall on retirement receive, at his option, either a gratuity of one month's pay for each year's service, or a yearly pension according to the following scale:—After ten years' service ten-

Members of the force at 50 and after ten years service may be superannuated.

No. 12—1882.

fiftieths of the pay received by him during the year preceding his retirement, and an increase of one-fiftieth for each additional year's service completed, not exceeding thirty.

If under 50 and after 10 years' service may be superannuated on medical certificate.

14. Where any member of the force has served for ten years and has not attained the full age of fifty years, if a certificate to the effect set forth in the schedule to this Act signed by two medical practitioners, to be first approved of by the commissioner of the district, be forwarded to the Governor by such commissioner, the Governor may superannuate such member, and he shall thereupon be entitled to receive, at his option, the gratuity or pension provided by the last preceding section for members of the force who have attained the full age of fifty years.

In case of incapacity through bodily injury.

15. When any member of the force has served for a less period than ten years, if without his own default, and in the discharge of his duty he receive such bodily injury as to incapacitate him for active service, he may retire from the force, and the Governor may grant to such member a gratuity not exceeding one month's pay for each year's service, or a yearly pension not exceeding half the pay received by him during the year preceding his retirement, or in the event of his death before so retiring such gratuity may be granted to his widow and children, or partly to his widow and partly to his children, as the Governor may deem fit.

Discharge and gratuity in certain cases.

16. When any member of the force has served for a less period than ten years, if a certificate to the effect set forth in the said schedule shall be granted by two medical practitioners, to be first approved of by the commissioner of the district, such member shall be entitled to his discharge, and to receive a gratuity of one month's pay for each year of service at his then rate of pay.

Conditions of grant of pension.

17. No pension shall be granted to members of the force except upon condition that it is liable to be forfeited, and may be withdrawn by the Governor in any of the following cases:

1. On conviction of the grantee of any crime or offence
2. On his knowingly associating with suspected persons, thieves, or other offenders.
3. On his refusing to resume his duties in his former office when required to do so by the Governor, in accordance with any regulations made under this Act.
4. If he shall make use of the fact of his former employment in the force, in a manner which the Governor considers to be improper.

40 years of age and 20 years service entitle to pension.

18. Any member of the force who has attained the age of forty years, and who has served with diligence and fidelity for not less than twenty years, shall be entitled to retire upon a gratuity at the rate of one month's pay for every year of service.

What pension to widows and children.

19. Should any member of the force lose his life in the discharge of his duty, a gratuity or pension equal to what he would have been entitled to if he had reached the age of fifty years, shall be paid to his widow and children, or partly to his widow and partly to his children, as the Governor may determine.

20. Any member of the force who has been discharged or dismissed therefrom for misconduct, shall not be entitled to any pension, gratuity or allowance.

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Discharge for misconduct bars claim to pension.

21. The Governor may permit the period of service of any member of an existing police force, who shall be appointed to serve in the force by this Act constituted to be reckoned for the computation of pension or gratuity under this Act.

Members of existing police forces entitled to benefits of this Act.

22. The Governor may pay out of the public revenue such sums of money by way of reward to members of the force as shall by extraordinary service have merited the same: Provided that a return showing the amounts and particulars of such payments shall be laid upon the table of both Houses at the next ensuing Session of Parliament.

Rewards for extraordinary services.

23. Any commissioner or inspector may examine on oath into any charge of insubordination or misconduct against the discipline of the force preferred against any sergeant, and the evidence taken by any inspector shall be referred to the decision of the commissioner of the district, who may, if he considers the charge satisfactorily proved, impose a penalty not exceeding five pounds, and may recommend such sergeant for reduction, discharge, or dismissal by the Governor.

How cases of misconduct to be inquired into in cases of sergeants.

24. Any commissioner or inspector may examine on oath into any charge of insubordination or misconduct against the discipline of the force preferred against any policeman, and on conviction thereof may sentence such policeman to pay a penalty not exceeding two pounds, and every such sentence, if by an inspector, shall be subject to the approval of the commissioner of the district.

How in cases of misconduct of policemen.

25. Any commissioner, inspector, or other officer or person appointed by the Governor may issue summonses requiring any persons named therein to appear at a time and place to be therein appointed to give evidence on oath as to all matters and things known to them respecting any charge or complaint preferred against any member of the force as to any neglect or violation of duty, and any person duly summoned as aforesaid who shall not attend in obedience to such summons, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or to answer all such questions as such person may lawfully be required to answer, shall incur and be liable to pay for each offence such penalty, not exceeding five pounds, as such commissioner, inspector, officer, or other person holding such enquiry may direct and adjudge.

Power to issue subpoenas to give evidence at such enquiries.

26. Any penalty imposed under the three last preceding sections of this Act, or for breach of any regulation made by the Governor, may be recovered, in the case of a member of the force by stoppage from the pay of the offender, and may in any case be recovered in manner and form as provided by the Ordinance No. 6, 1839.

Penalties to be recoverable under Ordinance 6 of 1839.

27. When an inspector, sub-inspector, or officer above the rank of a sergeant, is accused of a breach of duty, or of any conduct

Proceedings in case of alleged misconduct of officers above rank of sergeant.

No. 12—1882.

rendering it unfit that he should remain in the force, if he deny the truth of such accusation, and if the Governor is of opinion that sufficient cause has been shown for further proceedings, the Governor may appoint three or more fit and proper persons, of whom one only may be a member of the force, to enquire as to the truth of such charge; and such persons shall have authority to hear, receive, and examine evidence on oath, and shall after fully hearing the case, report to the Governor their opinion thereon.

In what cases members of the force may be reduced in rank or dismissed.

28. If any member of the force shall be convicted of any crime or offence, or shall become a hired servant, or shall keep a house for the sale of wine, beer, or spirituous liquors, either in his own or any other name, or shall be directly or indirectly interested in any such house, he may be reduced or dismissed from the force, and if dismissed shall forfeit all pay, gratuity, or pension to which he may be entitled at the time of such dismissal.

Officers, &c., resigning without permission.

29. Any officer, sergeant, or policeman who shall resign his office or withdraw himself from the duties thereof without the previous permission or notice required by this Act, shall upon conviction be liable for every such offence, to pay a penalty not exceeding forty pounds.

Penalties for taking bribes.

30. Any member of the force who shall take any bribe, pecuniary or otherwise, either directly or indirectly, to forego his duty, or who shall in any manner aid or connive at the escape, or attempt to escape, of any prisoner in lawful custody, or who shall desert his post or assault his superior in rank in the force, or shall neglect or refuse to obey or execute any process by this Act directed to be by him executed, or shall be guilty of any act of insubordination or misconduct against the discipline of the force, or of any contravention of any rule or regulation made by the Governor, under the provisions of this Act, shall incur and be liable to a penalty not exceeding forty pounds; but nothing herein contained shall exempt such offender from any higher or other punishment to which he may be subject by any other law in force in the Colony.

Penalties for members of force not giving up articles so supplied to them when retiring or being dismissed.

31. If any person who having been a member of the force had been dismissed or who has otherwise ceased to be a member of the force, shall not forthwith deliver up everything which may have been supplied to him for the execution of his office, or which may be in his custody by virtue thereof to such person as may be appointed by any order issued by any commissioner, such first mentioned ⁽¹⁾ person shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months; and any Justice of the Peace may and shall issue his warrant to search for and seize any arms, ammunition, accoutrements, horses, saddles, bridles, clothing, and other things whatsoever which shall not be so delivered wherever the same shall be found.

¹ Printed as amended by § 6, Act 31, 1883.

32. If any member of the force shall, during the period for which he shall have engaged to serve, and not being duly discharged from the same, desert, or refuse to serve, or absent himself from duty without lawful cause or reasonable excuse, the proof of which shall lie upon him, every such offender shall be liable upon conviction for every such offence to a penalty not exceeding forty pounds.

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Desertion or refusal to serve.

33. Any person who shall, by false certificates or any false representations, obtain admission into the force, or who having been dismissed therefrom shall, by concealing the fact of such dismissal, receive any pay, gratuity, or pension, shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months.

Obtaining admission to force by false certificates.

34. The holder of any licence to sell wine, beer, or spirituous liquors, who shall by himself or his servants knowingly permit any policeman to become intoxicated on his premises or to be supplied with liquors while intoxicated, shall for every such offence be liable upon conviction to pay a penalty not exceeding twenty pounds.

Licensed victuallers allowing policemen to get intoxicated.

35. If any person not being a member of the force shall have in his possession any arms or ammunition, or any clothing, accoutrements, or other thing supplied to any member of the force, and shall not be able satisfactorily to account for his possession thereof, or shall put on or assume the dress, name, designation, or description of any member of the force, or shall give or promise to give any bribe, pecuniary or otherwise, or shall make any agreement with any member of the force to induce him in any way to forego his duty, or shall concert or connive at any act whereby any rule or regulation made under this Act in relation to the force may be evaded, every such person shall in addition to any other punishment to which he may be liable for such offence, upon conviction incur and be liable to a penalty not exceeding forty pounds.

Persons found in possession of arms, &c., supplied to members of the force.

36. No member of the said force shall, without permission of the commissioner of the district first had and obtained, sell, pledge, or otherwise dispose of any horse, saddle, bridle, gun, clothing, ammunition, or other article or equipment which, by the regulations of the said force for the time being, he shall be required to keep and possess; and every sale, pledge, or other disposition of any of the matters aforesaid shall be null and void; and any member of the said force who shall make or attempt to make any sale, pledge, or other disposition as aforesaid, in contravention of this section, shall incur and be liable to a penalty not exceeding twenty pounds sterling.

Horses, accoutrements, &c., not to be sold or pledged without leave.

37. If any person shall, in consequence of any sale, pledge, or other disposition made by any member of the said force in contravention of the last preceding section, knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds sterling.

Fine for receiving such horses, &c.

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Articles forbidden to be sold cannot be seized in execution.

38. No animal, article, matter, or thing mentioned in the thirty-sixth section of this Act, and therein forbidden to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the said force, nor shall the same pass by or under any order made for the sequestration of the estate of any such member.

Exemption from tolls.

39. Every member of the said force, when in uniform, whose duty it shall be, in proceeding to or from any place, to pass through any toll-bar, or over any ferry, at or in respect of which the payment of toll shall now be or may hereafter be lawfully demanded, shall be exempted from the payment of any such toll in respect of himself, and of any animal and vehicle that may be required for the performance of the duty on which he may be employed.

Penalty for exacting tolls.

40. If any person duly authorised to collect tolls in respect of any ferry shall wilfully subject any member of the said force to unreasonable delay or detention in respect to the passage over such ferry, then such person shall be liable on conviction to a penalty not exceeding five pounds, and in default of payment thereof shall be liable to be imprisoned with or without hard labour for any period not exceeding one month.

Imprisonment with hard labour may be substituted for fines.

41. Except where otherwise specially provided, imprisonment with hard labour may in the discretion of the Court be substituted in lieu of any pecuniary penalty for any of the offences mentioned in this Act, other than such as are mentioned in the twenty-third, twenty-fourth, and twenty-fifth sections respectively, provided that such imprisonment shall not exceed one month, in case the penalty which may be imposed shall not exceed five pounds, or three months when such penalty exceeds five pounds, and shall not exceed twenty pounds, or six months when such penalty exceeds twenty pounds. Whenever any penalty shall have been imposed under the provisions of this Act and the person convicted shall not forthwith pay the same, the Court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds or not exceeding three months if the penalty be above five pounds and not exceeding twenty pounds, and for a period not exceeding six months if the penalty be above twenty pounds, and such person shall be detained and kept, with or without hard labour as the case may be, unless he shall sooner pay the penalty.

Time of imprisonment not to count as service.

42. No imprisonment or confinement of any member of the force shall be deemed to be part of any period for which he shall have engaged to serve in the force.

Resident Magistrates to have jurisdiction.

43. All offences created by this Act, and all fines and penalties to be inflicted under or by virtue of this Act, or for breach of any regulations made by the Governor, may be prosecuted before, and imposed by, any Resident Magistrate, whether the offence be

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committed within the local limits of his jurisdiction or not, or within or beyond the Colony; and in case any such offence shall be committed within the limits of the district from time to time defined by virtue of the first section of the "Border Protection Act, 1868," the officer appointed to exercise jurisdiction under the said Act shall have and exercise in respect to such offence, jurisdiction concurrently with any Resident Magistrate.

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44. If any action shall be brought against any member of the force for any act done in obedience to the warrant of any Magistrate or Justice of the Peace, such member shall not be liable for any irregularity in the issuing of such warrant, or for want of jurisdiction in the person issuing the same; and upon producing such warrant and proving that the signature thereto is the handwriting of the person whose name is subscribed thereto, and that such person is reputed to be and acts as a Magistrate or Justice of the Peace, and that the acts complained of were done in obedience to such warrant, judgment shall be given against the plaintiff and the defendant shall recover his full costs of suit.

Exemption of members from liability to acts done under Magistrate's warrant.

45. All costs and charges for carrying out this Act shall be paid out of such moneys as Parliament shall provide for the purpose.

Costs provided for.

46. In the interpretation of this Act the term "the force" shall mean officers and men of the police force constituted under this Act, whether employed upon land or upon water, and the term "member of the force" shall apply to every person employed in the force.

Interpretation clause.

47. This Act may be cited for all purposes as "The Police Regulation Act, 1882."

Short title.

SCHEDULE.

We certify that on the _____ day of _____ 18____ we examined _____ a member of the police force constituted under the "Police Regulation Act, 1882," and that we believe he is incapable of discharging his duties as a member of the force, from infirmity (of mind or body) and that we believe such infirmity is likely to be permanent, and has not been occasioned by any excess or misconduct on his part.

No. 13—1882.]

[June 21, 1882.]

ACT

To Grant Increased Representation in the House of Assembly to the Electoral Division of Kimberley.

WHEREAS it is desirable to amend Act No. 39 of 1877, known as "The Griqualand West Annexation Act, 1877," by making provision for an increase in the number of the representatives now returned to the House of Assembly for the Electoral Division of

Preamble.

1848

EAST LONDON WATER SUPPLY.

No. 15—1882.

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

Repeal of repugnant laws.

1. So much of the fifth section of Act No. 39 of 1877, known as "The Griqualand West Annexation Act, 1877," as may be repugnant to or inconsistent with this Act, is hereby repealed.

Kimberley to elect 4 members to Assembly.

2. At the next ensuing general election, and thereafter, the Electoral Division of Kimberley shall be entitled to return to the House of Assembly of the Cape of Good Hope four members.

Short title.

3. This Act may be cited as "The Kimberley Increased Representation Act, 1882."

No. 14—1882.]

[June 21, 1882.

Act to Alter and Amend the Laws relating to the Pensions of the Widows of Civil Servants.

[Repealed by Act 32, 1895.]

No. 15—1882.]

[June 21, 1882.

ACT

To Enable the Municipal Council of East London to provide the Inhabitants of the Town of East London with Water, and for that purpose to take Water from the Amalinda River and tributaries thereof, and to acquire Government and other Lands required for the Construction of the necessary Water Works.⁽¹⁾

Preamble.

WHEREAS it is desirable that the inhabitants of the town of East London should be supplied with good water, and the Municipal Council thereof have caused surveys to be made and are advised that the same can be obtained by the erection and construction of a reservoir with other necessary works in the Amalinda Valley, in the division of East London.

And whereas it is expedient that the works, necessary to accomplish that object should be constructed by the said council or by a joint-stock company or co-partnership of individuals or an individual with whom the said council may contract either for the whole or any portion of the said works or the material therefor. And that to enable the said council to procure the necessary funds the said council should be empowered, by the issue of debentures from time to time, or otherwise, as the council may deem fit, to raise such a sum or sums of money as may be required, not exceeding in the aggregate the sum of twenty-five thousand pounds. And that, in order that the said council may be enabled to pay the interest on each sum or sums of money so raised as well

¹ See § 5 Act 11, 1895.

as to contribute annually a sum not less than one pound per cent. on the said capital by way of a sinking fund, in order to enable the said council to pay off the said loan, the said council shall be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest and contribution as aforesaid.

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

1. It shall be lawful for the said council from time to time to borrow and to take up by the issue of debentures or otherwise at interest, such sum or sums of money not exceeding in the whole twenty-five thousand pounds sterling as may be required for the purposes of this Act, and to charge the municipal rates of the said municipality as security for any such sum so to be borrowed by the said council.

Power to Council
to borrow £25,000.

2. The said council shall be empowered to take, impound, divert, appropriate, and convey from the Amalinda River and its tributaries, in the division of East London, and from surface area, the drainage from which shall flow into the said Amalinda River or any of its tributaries, such a supply of water as they may require for the purposes of this Act. And for the purpose of enabling them to do so it shall and may be lawful for the Governor of this Colony, and he is hereby authorised to give and grant to the said council, in full and free property, on such conditions as may be agreed upon, such Government land as may seem to him desirable on which the said Amalinda River or any of its tributaries take their rise, or all such Government land as is situate at or immediately adjoining the point or points on the said river or any of its tributaries, or which may form part of the drainage area from whence it is intended that such supply shall be so taken, impounded, diverted, appropriated, and conveyed: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance shall deprive any person of any water or any right of water which he may at the time of the taking effect of this Act possess or be entitled to in reference to the said Amalinda River or any of its tributaries, or in any way interfere with or lessen such water or right of water, such person shall be entitled to recompense or compensation to be settled in case of difference as in the eighth section of this Act provided: Provided further that no person, to whom any Government land shall be sold or leased after the passing of this Act shall thereby acquire any water or right of water for the interference with or lessening of which by the works hereby authorised he shall be entitled to claim any recompense or compensation.

Power to impound
water from Amalinda
River and its
tributaries.

3. The said Council is hereby empowered to construct and make, or cause to be constructed and made, all such works as may

Power to construct
works for carrying
out purposes of the
Act.

No. 15—1882.

in the opinion of the said council be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works for securing an adequate supply of water for the inhabitants of the said town of East London and for the shipping visiting that port, as well as for such irrigation purposes as the said council may deem necessary and expedient.

Powers of entry on lands

4. The said council is hereby empowered to enter upon, occupy, enclose, take, and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart as commonage lands for any place or village not being a municipality at the time of the passing of this Act, and also to enter upon, occupy, enclose, take, and use any land, the private property of any person or persons whomsoever, which may be required for the construction or maintenance of any works aforesaid, for the obtaining of the necessary drainage area or for any of the purposes of this Act, and may agree, as hereinafter provided, for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe, or pipes, or other works, and may either compensate the owners of such lands as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works upon such terms and conditions as may be mutually agreed to.

Power to acquire Crown Lands, commonage, &c.

5. It shall be lawful for the said council to acquire and take possession, in the manner hereinbefore and hereinafter provided, of any land, whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land set apart as commonage as aforesaid, or land belonging to private persons that may be required for the purpose of protecting the sources of the said Amalinda River or any of its tributaries, the drainage area required for the collection of water or the sources of supply from whence the water may flow into the reservoirs, dams, places, or place where the said works may take off the water of the said river or any of its tributaries.

To lay down pipes and conduits.

6. The said council are hereby further empowered to lay down pipes or construct conduits under or along any public road or street, or under or along any ground set apart in the diagram or conditions of sale of any land as a street or thoroughfare, without making, or being liable to make any compensation in respect thereof.

Rights of way and access.

7. It shall be lawful for the said council, at all times by themselves, their engineers, contractors, or workmen, and with carts or

carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said council acquired or to be acquired under the provisions of this Act, for the purpose of adding to, repairing, relaying, or supervising the said works or for any other purpose whatsoever, that may be deemed expedient by the said council in or about carrying out the purposes of this Act: Provided, however, that such right of way shall in no case exceed a space of ten feet on each side of the line of works.

8. Any person or persons from whom any water or right of water, land, or right of way, or any stone, gravel, or other material may be required to be taken for the purposes of this Act, shall be bound and obliged to send in to the Town Clerk his, her, or their claim or claims for the purchase amount, hire, recompense or compensation which he, she, or they shall claim to be entitled to for such water or right of water, land, or right of way, or any stone, gravel or other material required or taken or which shall be required or taken for the purpose of this Act within twelve months after such taking as aforesaid, and for that purpose the necessary plans, specifications, and reports in connection with the said works shall lie at the office in East London of the Town Clerk during his usual business hours for and during the period aforesaid, for the inspection of any person or persons who shall be interested therein. After which said period no further or any claim or claims which shall not have been sent in in manner hereinbefore provided for shall be recognized nor shall such claimants be entitled to recover the amount of their claims or any portion thereof from the said council by any means or proceeding whatever. And in case the said council shall not consent or agree to pay the amount of such or any claim or claims then the said council shall cause to be served upon the person or persons whose claims they shall reject a written notice offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such persons to state in writing to the said council or to some other person by them appointed within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice whether he is willing to accept the sum therein mentioned or not; and if such person or persons should refuse the sum offered or neglect to reply to the said notice then the said council or other person aforesaid, shall by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said council or other person aforesaid, and for that purpose to transmit to the said council or other person aforesaid, within a reasonable time to be specified in the last mentioned notice the name of some person whom he or they shall select to be an arbitrator; and the said council or other person as aforesaid, upon receiving the name of the

Arbitration clause

No. 15 1882.

person so selected shall nominate a second arbitrator, and the said two arbitrators shall before proceeding in the arbitration choose a third arbitrator, the said three arbitrators to sit together, and the said council or other person aforesaid, shall cause a deed of submission to be prepared which shall be signed by or on behalf of the said council or other person aforesaid, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said council or other person as aforesaid, may lodge in some joint-stock bank in East London the sum of money offered by them as aforesaid in their first notice in this section mentioned for or on account of and at the risk of such person, as aforesaid who shall at all times be entitled to draw the same out of said bank as his absolute property; and the said council or other person aforesaid upon so lodging the said sum shall be authorised and entitled to take and use the land or materials in question, without being subject to pay or make any further recompense or compensation whatever in respect thereof, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or which had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said council, or other person aforesaid a sufficient title to the use of, or property in the land or materials aforesaid had been duly done and approved.

9. In case the said council or other person aforesaid shall require to take or use any water or right of water, land, or right of way, or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorised in his capacity as such guardian or curator, to treat and agree with the said council or other person aforesaid for the purchase or hire of the land, rights, or materials required, and to execute any contract that may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said council or other person aforesaid, for or on account of any land or materials in this section mentioned, shall be paid by the said council or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorised to receive the same

In case the lands, &c., of minors and persons under curatorship required to be taken

and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall, by way of *fidei commissary* limitation, or any limitation of a like nature be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid under guardianship or curatorship, shall be also interested in remainder or expectancy, when the whole value of the lands as fixed by contract, or by appraisement, or by arbitration, shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest therein shall be entitled to draw the interest payable on the sum so paid in; provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability are therein administered, subject however at all times to such orders as the Supreme Court aforesaid may upon motion of any person having an interest see fit to make in regard to such money. And in case the said council shall require to take or use any land or materials as in the last preceding sections mentioned of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said council, and it is hereby authorised to cause a notice to be inserted in the *Government Gazette*, and in one or more local papers for four or more successive weeks, describing as accurately as may be the land or materials which are required to be used or taken, and calling on the owner or owners of the said land or materials, if known, to take notice that the said council is ready and willing to treat with the owner or owners, or any person duly authorised by him or them for the recompense or compensation to be made by the said council for the said land or materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its first publication, to the said council stating the recompense or compensation claimed, and if the owner or owners shall not apply, within the said period, then the like proceedings in regard to the agreement for, or otherwise determining the recompense or compensation to be respectively given and received, shall in all respects be had and taken which are prescribed in the last two preceding sections precisely as if the said owner or owners had been from the first in actual possession; and in case the owner or owners shall not apply to the said council

No. 15—1882.

within the said period, then it shall be lawful for the said council to appoint some competent person to be approved of by the Civil Commissioner of the division of East London to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said council to pay whatever sum such person shall have valued the land or materials in question at, into the Guardian's Fund to the credit of the party or parties entitled thereto subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony, and the said council upon so paying the said sum shall be authorised and entitled to take or use the land or materials in question without being subject to pay or make any further recompense or compensation whatever in respect thereof, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of, or property in the land or materials as aforesaid had been duly done and performed.

Penalties for injuries to the works.

10. Any person who shall wilfully injure, damage, obstruct, or interrupt any building, erection, conduit, reservoir, dam or water-course, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining the works contemplated by this Act or any of them, shall upon conviction, be liable to forfeit for the use of the said council, for each offence, a sum not exceeding one hundred pounds sterling, or to be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment, provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid Acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted criminally, both under this Act and any other law for, or in regard to one and the same Act.

Penalties for bathing, washing, &c., in dams or water-courses.

11. Any person who shall bathe or wash himself in any dam or reservoir, belonging to the said council, or in any stream flowing into such dam or reservoir, by means of any watercourse constructed by the council, or shall wash, throw, or cause to enter therein any dog or other animal, or shall place or throw any rubbish, dirt or filth, or other noisome thing in any such dam or reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing whatsoever, shall for every offence on being convicted thereof forfeit for the use of the said council a sum not exceeding five pounds sterling, and in default of the payment of such fine the party convicted shall be liable to be imprisoned with or without hard labour, for any period not exceeding twenty-one days.

12. The said council are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings, and the supply of water to the shipping visiting the ports of East London, or to the railway or other Government departments shall be regulated, and payment for all private water-leadings, and for the supply of water to such shipping or to such railway or other Government departments shall be in accordance with such tariff; provided nevertheless that the said council or any person duly authorised by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

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Tariff of charges to be published.

13. (1) It shall be lawful for the said council at any meeting at which not less than nine of the members shall be present, and agreeing thereto by a majority, to frame from time to time such regulations or bye-laws as they shall deem necessary for regulating the system of water supply to the town of East London, such regulations and bye-laws to be framed and submitted for the approval of the Governor in manner provided for in the Act No. 23 of 1880, intituled "The East London Municipality Act, 1880."

Council may frame rules and by-laws.

14. In order to pay the interest on the said loan, and to provide for an annual contribution of not less than one per cent. per annum on the said capital, to provide a sinking fund for the payment thereof, and for all other claims under this Act, the council shall be empowered and compelled to impose, levy and collect a sufficient annual rate or assessment over and above what the said council is already empowered to impose and levy upon the immovable property within the limits of the said municipality: and every rate or assessment so imposed and made by the said council shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed upon owners of immovable property, under the provisions of the said Act No. 23 of 1880, or the Act No. 12 of 1881, intituled "The East London Municipality Amendment Act, 1881," so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act, shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof, provided that when and so soon as a revenue shall be derived from charges fixed for water-leadings as aforesaid, the same shall annually, after payment thereof of all working expenses connected with the said supply of water, be applied so far as the same will extend towards payment of the interest on the said loan before the levying of any such rate as aforesaid, and provided that it shall be lawful for the said council to apply for the payment of interest or principal or interest and principal of the said loan or any part thereof, any funds or moneys coming to the

Provision for paying interest and capital borrowed.

No. 15—1882.

Assessment roll of municipality to be assessment roll for this Act.

said council from any source whatever, and not specifically appropriated or required for any other object.

15. The amounts for assessment entered on the assessment roll in force within the said municipality for each and every year shall be the amounts on which the rates shall be levied for the purposes of this Act, so far as the properties included in such assessment roll are concerned, but for any or all properties not included in such assessment roll, and for all properties not liable to assessment under the said Act No. 23 of 1880, or the said Act No. 12 of 1881, the value shall be made and determined by some competent person appointed by the council, in the same manner in all respects, and subject to the same provisions in regard to the hearing and determining objections to such value as is provided for by the said Act No. 23 of 1880, or any regulations framed thereunder, in regard to the valuation and assessment of such immovable property as under that Act is liable to be valued and assessed for rating purposes.

When rates to be payable.

16. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day, to be fixed by the said council, of which day and of the amount of the rate or assessment so to become payable, not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town Office.

How to be collected.

17. As soon as any rate shall be assessed as aforesaid, the same shall be collected in the same manner as any rates duly levied under the provisions of the said Act No. 23 of 1880, or the said Act No. 12 of 1881, and shall on non-payment thereof be recoverable as a separate and distinct rate by action in the Resident Magistrate's Court having jurisdiction within the said municipality or in any Resident Magistrate's Court in the district in which such defaulter shall reside.

"Public Bodies Debts Act, 1867." to apply.

18. All moneys borrowed and debts lawfully incurred by the said council under the provisions and for the purposes of this Act, shall be subject to the "Public Bodies Debts Act, 1867."

Accounts to be kept.

19. The said council shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act, and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act. And the said council shall yearly and every year, so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the Town Clerk, for the inspection at all reasonable times, of any townsman, an account showing the particulars aforesaid, and giving any other information which the said council shall deem necessary or expedient to impart, provided that every such account shall be made up to the 31st December in each and every year.

20. The necessary costs, charges, and expenses, of obtaining this Act may be paid by the said council out of the moneys to be so borrowed as aforesaid.

No. 16—1882.
Costs of Act, &c.

21. Nothing in this Act contained shall be taken to deprive the said council of any rights and privileges it may possess, or of which it may be entitled to avail itself under the provisions of the Acts No. 8 of 1877, intituled "The Irrigation Act, 1877," No. 28 of 1877, intituled "An Act to assist Municipalities to carry out Irrigation Works," No. 7 of 1880, intituled "The Irrigation Amendment Act, 1880," No. 23 of 1880, intituled "The East London Municipality Act, 1880," and No. 12 of 1881, intituled "The East London Municipality Amendment Act, 1881," or any or either of them; the true intent and object of this present Act being to add to and increase, and in no way to derogate or detract from such rights and privileges.

Provisions of this Act not to affect the rights of the Council under other Acts.

22. The word "municipality" in this Act shall mean the municipality of East London as established by the said Act No. 23 of 1880, and the word "council" the municipal council of East London.

Interpretation clause.

23. This Act may be cited as "The East London Water Supply Act, 1882."

Short title.

No. 16—1882.]

[June 21, 1882.

ACT

To Amend the "Resident Magistrates' Courts Act, 1856."

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

Preamble.

1. So much of the Act 20, 1856, the seventh section of the Act No. 9, 1857, and the Act No. 6, 1858, and so much of any other Act or of the rules, orders, and regulations of the Courts of Resident Magistrates as may be repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed.

Repeal of repugnant laws.

2. Where any crime or offence shall be committed on any person or in respect of any property upon any line of railway, or within a distance of ten miles from any line of railway, on either side thereof, such crime or offence may be dealt with, enquired of, tried, determined, and punished by the Resident Magistrate of any district in or through any part whereof or within such distance from the boundary whereof such line of railway passes, in the same manner as if such crime or offence had been actually or wholly committed in the district of such Magistrate.

Jurisdiction of Magistrates in cases of crimes committed on lines of railway or within 10 miles of a line.

3. The Governor may from time to time appoint for any district one or more fit and proper persons to be styled Assistant Resident Magistrates, and every Assistant Resident Magistrate shall, subject to the provisions of this Act, have and exercise all the power and jurisdiction of a Resident Magistrate in and for the district, or within the local limits for which he shall be appointed to act, in

Governor may appoint Assistant Magistrates.

No. 16-1882.

all cases civil and criminal : Provided that nothing herein contained shall prevent the Governor from appointing an Acting Resident Magistrate in and for any district as often as circumstances shall require.

When Assistant Magistrates may act as such.

4. Every Assistant Resident Magistrate shall be subordinate to the Resident Magistrate of the district, and shall act as such Assistant Resident Magistrate,

- (1.) When so required to act at the stated and ordinary place of holding the Court of Resident Magistrate, by the Governor or by the Resident Magistrate, whether the Resident Magistrate be present or not, and such Assistant Resident Magistrate may act in the disposal of any cases assigned to him for disposal by the Governor, or by such Resident Magistrate, while the Resident Magistrate shall be acting in other cases.
- (2.) When so required to act at the place for holding any Periodical Court by the Governor or by the Resident Magistrate.
- (3.) During the absence of the Resident Magistrate on leave, duty, or from illness, or other unavoidable cause.
- (4.) At such place, or within such local limits as may be assigned by the Governor.

Presumption in favour of authority.

5. Every Assistant Resident Magistrate shall in every proceeding had before him be deemed to be acting lawfully and by sufficient authority until the contrary be proved.

Governor may direct Magistrates and Assistant Magistrates to hold periodical courts out of their own districts.

6. The Governor may appoint the Resident Magistrate or Assistant Resident Magistrate of any district to hold a Periodical Court in any district other than that in which such Resident Magistrate or Assistant Resident Magistrate shall have been appointed to act, and such Periodical Court held before such Magistrate, and all proceedings had therein, shall be of the same force and effect as if such Periodical Court had been held by or before the Resident Magistrate of the district within which such Court shall hold its sitting.

Term "Resident Magistrate" in schedule B to Act 9 of 1857, to apply to assistants also.

7. The term "Resident Magistrate," whenever it occurs in schedule B to the Act No. 9, 1857, shall be deemed to apply to the Resident Magistrate or Assistant Resident Magistrate, as the case may be, holding such Court, and as often as a Periodical Court shall be held under the powers of the last preceding section, the said term shall apply to such Magistrate or Assistant Resident Magistrate, and not to the Resident Magistrate of the district within which such Court shall be held.

Cases for review to be forwarded by the Magistrates actually holding the court.

8. As often as any sentence pronounced at or by a Periodical Court as aforesaid, shall be a sentence coming under the provisions of the forty-seventh section of the Act No. 20, 1856, the record in such case shall be forwarded to the Court of Review by the Magistrate, by or before whom such Court was held, and not by the Resident Magistrate of the district, and shall, after review, be

returned to the Magistrate from whom it shall have been received; and in case the Court of Review should see cause to remit such case with instructions, relative to further proceedings therein, the said case shall be remitted to the Magistrate by whom the record was forwarded.

No. 16 - 1882.

9. The term "Court of Review," in the last preceding section mentioned, shall mean as to the districts over which the Court of the Eastern Districts of the Cape of Good Hope exercises jurisdiction, the said Court of the Eastern Districts, as to the districts over which the High Court of Griqualand exercises jurisdiction, the said High Court, and as to all other districts the Supreme Court.

What shall be the courts of review.

10. Whenever the place appointed for holding any Periodical Court shall be so near the boundary of any district that the inhabitants of any adjoining district can with ease and convenience resort thereto, the Governor may define any portion of any such adjoining district as an area over which the Magistrate, holding such Periodical Court, shall, for the purposes of such Court, have and exercise jurisdiction.

Governor may extend area over which periodical court is held to places beyond actual district.

11. All persons residing within any such defined area as aforesaid, shall, for all proceedings, civil and criminal, be subject to the jurisdiction of such Periodical Court, as is in the last preceding section mentioned, as well as to the jurisdiction of the Court of the Resident Magistrate of the district to which such area belongs.

Persons within such areas under the jurisdiction of the court.

12. The Governor may authorise and appoint, to be held in the same district, and at the same time, any number of Courts of Resident Magistrates, which the convenience of the public shall require, and may appoint for such district more Resident Magistrates than one, and every Magistrate appointed to act at any place other than the stated and ordinary place for holding the Court of Resident Magistrate in any district, shall be styled an Additional Resident Magistrate.

Governor may direct any number of courts of Resident Magistrate to be held in the same district.

13. The process of the Courts of Resident Magistrates for summoning any person, whether as a party or a witness in any case, civil or criminal, may be signed by the clerks of such Courts, respectively, and shall be of the like force and effect, in all respects, as if the same had been under the hand of the Resident Magistrate.

How process to be signed.

14. This Act may be cited for all purposes as "The Resident Magistrates' Courts Act, 1882."

Short title.

1860

CARNARVON COMMONAGE.

No. 17—1882.]

[June 22, 1882.]

ACT

For Raising the Sum of Two Hundred Thousand Pounds Sterling towards the Extension of the Breakwater and Construction of the Outer Harbour of Table Bay.⁽¹⁾

Preamble.

WHEREAS it is desirable that the works necessary to form the outer harbour of Table Bay should be forthwith commenced and carried out simultaneously with the extension of the breakwater: and whereas it is necessary to provide the sum of two hundred thousand pounds sterling towards carrying on such works: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to raise loan
of £:00,000.

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

Application of
moneys.

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

Short title.

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

No. 18—1882.]

[June 22, 1882.]

ACT

To Provide for the Management of the Reserved Commonage of Carnarvon.

Preamble.

WHEREAS on the 16th November, 1860, two grants of land were made by the Governor of the Colony, one granting the then present and future proprietors of erven in the village of Harmsfontein, now called Carnarvon, certain commonage known as the inner commonage of Carnarvon; and the second granting to the Schietfontein and Praamberg Kafir proprietors of certain erven in the said village of Harmsfontein certain other commonage, known as the outer or reserved commonage of Schietfontein: and whereas the management of the inner commonage is duly provided for by municipal regulations approved of by the Governor, but no legal provision exists for the management of the outer or reserved

¹ Further sums raised by Acts 25, 1883; 38, 1885; 25, 1886; 19, 1888; 22, 1889; 22, 1892; 20, 1893; 6, 1894.

CARNARVON COMMONAGE.

1861

commonage: and whereas it is desirable to provide for the good management of such commonage: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 18—1882.

1. The Act No. 17 of 1880, entitled an “Act to Provide for the Management of the Outer or Reserved Commonage of Schietfontein,” is hereby repealed.

Repeal of Act 17 of 1880.

2. The proprietors for the time being of such of the erven in the village of Harmsfontein, now called Carnarvon, as are entitled to grazing rights over the said land known as the outer or reserved commonage, shall be entitled to elect from amongst themselves a Committee of Management for the purpose of regulating and controlling the use of the said commonage.

Who to elect a Committee of Management.

3. The said committee shall consist of five persons, who shall be styled the “Committee of Management of the Carnarvon Outer Commonage,” and three of such persons shall form a quorum.

Name of Committee.

4. Every proprietor of one or more erven having such rights as are in the second section mentioned, shall be eligible to be elected a member of the said committee, and qualified to hold office as such so long as he shall continue to be such proprietor.

Who eligible to be member of Committee.

5. Every such proprietor shall be qualified to vote at elections for members of the Committee of Management, and in respect of all matters affecting the rights of proprietors which shall be submitted to the decision of any meeting of proprietors duly convened for that purpose.

Qualification of electors.

6. Every such proprietor shall be entitled to one vote in respect of every erf or lot held by him, not exceeding three, and if two or more persons shall be joint proprietors of any erf or lot, such one of them as may be chosen or deputed for that purpose by the other or others shall appear and vote in respect of such erf or lot.

Proportion of votes.

7. The election of the first Committee of Management shall take place within three months after the taking effect of this Act, at such time and place as may be appointed for that purpose by the Resident Magistrate of Carnarvon.

When election to take place.

8. The members of the Committee of Management shall hold office for a period of three years from the date of their election, and shall then be succeeded by members, who shall be elected and continue in office for a like period, and so on, at the expiration of every successive period of three years: Provided that every retiring member shall be eligible to be re-elected if he shall then be qualified to be elected.

Term of office.

9. Except as to the qualification of voters and as is otherwise in this Act specially provided, the provisions of the “Villages Management Act, (1) 1881,” are hereby incorporated, and shall, *mutatis mutandis*, extend and apply to the said outer commonage:

“Villages Management Act, 1881,” incorporated.

No. 18--1882.

and the said Committee of Management shall have and exercise all the powers by the said Act conferred upon a Board of Management erected under its provisions.

Further regula-
tions authorised.

10. In addition to the purposes for which regulations may be made under the provisions of the nineteenth section of the said "Villages Management Act, (1) 1881," it shall be lawful for the said Committee of Management, subject to the provisions of the said Act, to frame regulations for all or any of the purposes following:—

- (1). For the levying and collection of water rates.
- (2). For improving and collecting grazing dues to be paid by the proprietors of erven and others, in respect of stock depastured upon the said commonage.
- (3). For regulating the use of and providing for the letting of such portion of common lands as is capable of being brought under irrigation and cultivation.
- (4). For defining such parts of the common lands as may be necessary to be allotted to erfholders for building purposes, and for providing for the terms and conditions upon which such allotment may take place subject to the consent of a majority of erfholders present at any meeting of erfholders duly convened for the purpose of considering the propriety of such allotment.
- (5). For carrying out all or any of the conditions contained in or endorsed upon the grants or title deeds of the erven or lots of ground in Harmsfontein, so far as the said conditions relate to the said outer commonage.
- (6). Generally for the control and management of the said commonage, and the preservation and regulation of the rights of the proprietors of erven entitled thereto.

Squatters on com-
monage: Vagrancy
Act to apply to.

11. The provisions of the ninth section of the "Vagrancy Act, 1879," shall extend and apply to the said reserved commonage, in respect of any squatters found trespassing thereon.

Short title.

12. This Act may be cited as the "Carnarvon Reserved Commonage Act, 1882."

No. 19—1882.]

[June, 22, 1882.]

ACT

To enable the Commissioners of the Municipality of Aliwal (Mossel Bay) to provide the Inhabitants of the Town of Aliwal (Mossel Bay) with Water, and for that purpose to take Water from Kleinbosch River, *alias* Kleinberg River, and to acquire Government and other lands required for the Construction of the necessary Waterworks. (1)

WHEREAS it is desirable that the inhabitants of the town of Aliwal (Mossel Bay) should be supplied with good water, and the municipal commissioners thereof have caused surveys to be made and are advised that the same can be obtained from the Kleinbosch (*alias* Kleinberg) River in the district of Mossel Bay: and whereas it is expedient that the works necessary to accomplish that object should be constructed by the said commissioners or by a joint-stock company or co-partnership of individuals or an individual with whom the said commissioners may contract either for the whole or any portion of the said works or the materials therefor: And that to enable the said commissioners to procure the necessary funds the said commissioners should be empowered to issue debentures from time to time for any sum or sums of money not exceeding in the aggregate the sum of twenty-six thousand pounds: and that in order that the said commissioners may be enabled to pay the interest on the said debentures, as well as to contribute annually a sum not less than one per cent. on the said capital by way of a sinking fund in order to enable the said commissioners to pay off the said debentures, the said commissioners should be empowered in each and every year to impose, levy, and collect such a rate or assessment as will produce an amount sufficient to pay such interest and contribution as aforesaid: Preamble.

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

1. It shall be lawful for the said commissioners from time to time to borrow and to take up at interest by the issue of debentures such sum or sums of money not exceeding in the whole the said sum of twenty-six thousand pounds as may be required for the purposes of this Act, and to charge the municipal rates of the said municipality as security for any such sum to be borrowed by the said commissioners.

Commissioners may borrow to extent of £26,000 on rates.

2. The said commissioners shall be empowered to take, impound, divert, appropriate, and convey from the Kleinbosch River, otherwise known as the Kleinberg River, in the district of Mossel Bay,

Power to impound certain water.

No. 19—1882.

such a supply of the water of the said river as they may require for the purposes of this Act: Provided, however, that if such taking, impounding, diversion, appropriation, or conveyance, shall deprive any person of any water or right of water which he may, at the time of the taking effect of this Act, possess or be entitled to, in reference to the said Kleinbosch River, or in any way interfere with or lessen such water, or right to water, such person shall be entitled to recompense or compensation, to be settled in case of difference, as in the eighth section of this Act provided.

To construct all
necessary works-

3. The said commissioners are hereby empowered to construct and make or cause to be constructed and made all such works as may in the opinion of the said commissioners be necessary and expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leading-pipes, conduits, drains, ditches, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works, for securing an adequate supply of water for the inhabitants of the said town of Aliwal (Mossel Bay), and for the shipping visiting that port; and it shall and may be lawful for the Governor of this Colony, and he is hereby authorised to give and grant to the said commissioners in full and free property all such Government land as is situated on and along the line of the said works, and necessary to be acquired for the purposes thereof.

To take Govern-
ment and other lands
or to hire lands, &c.

4. The commissioners are hereby empowered to enter upon, occupy, enclose, take, and use for the purposes of this Act any land belonging to Her Majesty the Queen, commonly called "Crown lands," or any land set apart for Church purposes, commonly called "Glebe lands," and also to enter upon, occupy, enclose, take, and use any land the private property of any person or persons whomsoever which may be required for the purposes of this Act, and may agree, as hereinafter provided, for the purchase or hire of such private land, or may take, carry away, or use for the purposes of the said works, any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such land as hereinafter provided, or enter into any contract relative to obtaining such lands or materials, or for laying down any pipe or pipes, or other works, upon such terms and conditions as may be mutually agreed to.

To take land neces-
sary to protect
sources of impound-
ed water.

5. It shall be lawful for the said commissioners to acquire and take possession in the manner hereinbefore and hereinafter provided of any land, whether belonging to Her Majesty the Queen, commonly called "Crown lands," or land belonging to private persons, that may be required for the purpose of protecting the sources of the said Kleinbosch River, or the sources of supply

from whence the water may flow into the reservoirs, dams, places or place where the said works may take off the water of the said river.

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6. The said commissioners are hereby further empowered to lay down pipes or construct conduits under or along any public road, or street, or any bridge or under or along any ground set apart in the diagram or conditions of sale of any sale of land as a street or thoroughfare, without making or being liable to make any compensation in respect thereof, and to construct and maintain a telegraphic line along their works for the purpose of such works and to erect such telegraph stations as shall be necessary.

To lay down pipes and conduits

7. It shall be lawful for the said commissioners at all times, by themselves, their engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over, and along the line of works, and to and from all other property of the said municipality acquired under the provisions of this Act, for the purpose of adding to, repairing, relaying, or supervising the said works, or for any other purpose whatsoever that may be deemed expedient by the said commissioners in or about carrying out the purpose of this Act.

To have right of access to the works.

8. If any person or persons from whom any water or right of water, land, or any stone, gravel, or other material may be required to be taken for the purposes of this Act, and the said commissioners shall not agree upon the purchase money, or hire, or other recompense to be respectively given and accepted, then the said commissioners shall cause to be served upon such person or persons a written notice, offering as recompense or compensation whatever sum of money they shall deem sufficient, and requiring such person or persons to state, in writing, to the said commissioners or to some other person by them appointed, within a certain limited time to be specified in the said notice, being not less than fourteen clear days after the service of such notice, whether he is willing to accept the sum therein mentioned or not, and if such person or persons shall refuse the sum offered, or neglect to reply to the said notice, then the said commissioners or other person aforesaid shall, by another notice in writing, call upon such person or persons to refer to arbitration the amount of recompense or compensation to be paid to him or them by the said commissioners or other person aforesaid, and for that purpose to transmit to the said commissioners or other person as aforesaid within a reasonable time to be specified in the last mentioned notice, the name of some person whom he shall select to be an arbitrator, and the said commissioners or other person as aforesaid, upon receiving the name of the person so selected shall nominate a second arbitrator, and the said two arbitrators shall before proceeding to the arbitration, choose a third arbitrator, the said three arbitrators to sit together, and the said commissioners or other person as aforesaid shall cause a deed of submission to be prepared, which shall be signed by the said commissioners or other

Arbitration clause.

No. 19—1882.

person aforesaid, and by the person claiming such compensation or recompense as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrators, and the award of the said arbitrators or a majority of them shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law brought for or on account of the matter referred to their arbitration. And if any person as aforesaid claiming such recompense or compensation for land or materials shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then the said commissioners or other person aforesaid may lodge in some joint-stock bank in the Colony the sum of money offered by them as aforesaid in their first notice in this section mentioned, for or on account, and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank as his absolute property; and the said commissioners or other person aforesaid, upon so lodging the said sum, shall be authorised and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by the arbitrators under the provisions of this section, and as if all acts by law required for vesting in the said commissioners or other person aforesaid a sufficient title to the use of or property in the land or materials aforesaid had been duly done and performed.

In case of lands, &c., belonging to minors and persons under curatorship.

9. In case the said commissioners or other person aforesaid shall require to take or use any land or to dig out or carry away any materials belonging to any minor or other person under guardianship or curatorship, then the guardian or curator, as the case may be, shall be authorised in his capacity as such guardian or curator to treat and agree with the said commissioners or other person aforesaid for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement to refer the matter in difference to arbitration, as in the last preceding section mentioned. But all moneys which shall either by agreement or by arbitration be payable by the said commissioners or other person aforesaid for or on account of any land or materials in this section mentioned, shall be paid by the said commissioners or other person aforesaid to the Master of the Supreme Court administering the Guardian's Fund, who is hereby authorised to receive the same, and to place the same to the credit of the minor or other person entitled to such money, and if in any case any person of full age shall by way of *fidei-commissary* limitation, or any limitation of a like nature, be entitled to a life or other limited interest in any such land aforesaid, in which a minor or other such person aforesaid, under guardianship or curatorship, shall be also interested in remainder or expectancy, then the whole value of the land or materials as fixed by contract or by appraisement shall be

paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest shall be entitled to draw the interest payable on the sum so paid in; Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in the like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. And in case the said commissioners shall require to take or use any land or materials, as in the last preceding sections mentioned, of which the owner or owners shall be absent from the Colony and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said commissioners, and they are hereby authorised, to cause a notice to be inserted in the *Government Gazette* and one or more local papers for four successive weeks, describing as accurately as may be the land or materials which are required to be used or taken, and calling by name on the owner or owners of the said land or materials, if known, to take notice that the said commissioners are ready and willing to treat with the owner or owners or any person duly authorised by him or them, for the recompense or compensation to be made by the said commissioners for the said land and materials, and requiring such owner or owners to apply within six months from the date of such notice, which shall be the day of its publication, to the said commissioners stating the recompense or compensation claimed, and if the owner or owners shall not apply within the said period then the like proceedings in regard to the agreement for or otherwise determining the recompense or compensation to be respectively given and received shall in all respects be had and taken which are prescribed in the last two preceding sections, precisely as if the said owner or owners had from the first been in actual possession. And in case the owner or owners shall not apply to the said commissioners within the said period, then it shall be lawful for the said commissioners to appoint some competent person to be approved of by the Civil Commissioner of the division to appraise the value of the land or materials, and such person shall make oath before some Justice of the Peace that he hath to the best of his judgment fairly appraised such value, and thereupon it shall be lawful for the said commissioners to pay whatever sum such person shall have valued the land or materials in question at into the Guardian's Fund to the credit of the party

No. 19--1882.

or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to persons absent from the Colony: And the said commissioners, upon so paying the said sum, shall be authorised and entitled to take or use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all Acts by law required for vesting in the said commissioners sufficient title to the use of or property in the land or materials as aforesaid, had been duly done and performed.

Penalties for injuring the works.

10. Any person who shall wilfully injure, damage, disturb, obstruct, or interrupt any building, line of telegraph, erection, conduit, reservoir, dam, watercourse, drain, ditch, pipe or pipes, or other work or works, or shall obstruct, hinder, or prevent the forming, constructing, completing, or maintaining, the works contemplated by this Act, shall, upon conviction, be liable to forfeit for the use of the said commissioners a sum not exceeding one hundred pounds, or to be imprisoned with or without hard labour for any period not exceeding six calendar months, or to both fine and imprisonment: Provided that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted both under this Act and any other law for or in regard to one and the same act.

No kraal, &c., allowed within 1,000 yards of intake or within 500 yards of stream.

11. No cattle enclosure or kraal shall be constructed or allowed alongside the said river for the space of a thousand yards above the intake of the said works, or nearer the banks of the river within the said space than five hundred yards, and any person who shall bathe or wash himself in any dam or reservoir belonging to the said municipality, or in any stream flowing into such dam or reservoir, or shall wash, throw, or cause to enter therein any dog or other animal, or who shall place or throw any rubbish, dirt, filth, or other noisome thing in any such dam, reservoir, or stream, or wash or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, or shall allow any drainage from any enclosure or kraal to flow into any such dam or stream, shall for every such offence, on being convicted thereof, be liable to forfeit for the use of the said commissioners a sum not exceeding ten pounds, and on failure of the payment of such fine, the party convicted shall be liable to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

Tariff of charges to be published.

12. The commissioners are hereby empowered from time to time to make and publish a tariff of charges by which the supply of water by private water-leadings and the supply of water to the shipping visiting the port of Mossel Bay shall be regulated, and the payment for all private water-leadings and for the supply of

water to the said shipping shall be in accordance with such tariff: Provided, nevertheless, that the said commissioners or any person duly authorised by them, shall have access at all reasonable times to inspect and regulate all such private water-leadings.

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13. It shall be lawful for the said commissioners, at any meeting at which a majority of the members shall be present, to frame from time to time such by-laws as they shall deem necessary for regulating the system of water supply to the town of Aliwal (Mossel Bay), such by-laws to be submitted for the approval of the Governor in manner provided by the Ordinance No. 9 of 1836, and the various Ordinances and Acts amending the same or referring thereto.

Power to make bye-laws.

14. In order to pay the interest on the said loan and to establish the sinking fund hereinafter mentioned, and to provide for all other claims arising under this Act, the commissioners shall be empowered and compelled to impose, levy and collect a sufficient annual rate or assessment over and above what the said commissioners are already empowered to impose and levy upon the annual rental, or if no rental be paid then upon the estimated annual value of the whole of the immovable property within the limits of the said municipality; and every rate or assessment so imposed and made by the said commissioners shall be of the same force and effect and be levied in the same manner as if it had been a rate imposed under the provisions of the Ordinance No. 9 of 1836, section 28, or under the provisions of section eleven of Act 13 of 1864, so far as the same are applicable. And all rates so imposed and assessed under the provisions of this Act shall be and be deemed to be a charge upon the property so assessed, and be recoverable against the present or any future owner or occupier thereof: Provided that it shall be lawful for the said commissioners to apply for the payment of interest or principal or interest and principal of the moneys aforesaid any funds or moneys coming to the said municipality from any source whatever and not specifically appropriated or required for any other object.

How interest and principal of borrowed money to be paid.

15. The amounts for assessment entered on the assessment roll in force within the said municipality for each and every year shall be the amounts on which the rate shall be levied for the purpose of this Act so far as the properties included in such assessment roll are concerned, but for any or all properties not included in such assessment roll, and for all properties not liable to assessment under the said Ordinance No. 9 of 1836, and the Act No. 13 of 1864, the value, shall be made and determined annually by some competent person to be appointed by the commissioners: Provided that such valuation shall be open for public inspection at the office of the municipality for the space of one month from the levying of the said annual rate, and the commissioners shall give notice in one or more of the newspapers published within the said municipality that the same is open for inspection, and the provisions of

Assessment roll.

1870

MOSSEL BAY WATER SUPPLY.

No. 19—1882.

the 28th section of the said Ordinance No. 9 of 1836, and the 10th, 11th and 13th sections of the said Act 13 of 1864, shall apply to the hearing and deciding upon objections to such valuation.

When rates payable.

16. Every such rate or assessment so made and assessed as aforesaid shall become due and payable upon some certain day to be fixed by the said commissioners, of which day and of the amount of the rate or assessment so to become payable not less than fourteen days' notice shall be given, and such notice shall be published by causing the same to be inserted in one or more of the newspapers published within the said municipality, and causing a copy of the same to be affixed in some conspicuous place in or near the Town-hall.

Collection of rates.

17. As soon as any rate shall be assessed as aforesaid the commissioners shall appoint a person to collect the same, and such rate shall, on non-payment thereof, be recoverable as a separate and distinct rate at the suit of such collector, by action in the Resident Magistrate's Court having jurisdiction within the said municipality, or in any Resident Magistrate's Court within the jurisdiction of which such defaulter shall reside.

Acknowledgment to be given to lenders of money as in schedule.

18. The commissioners shall grant to the party or parties, or company, society or co-partnership from whom they shall borrow such moneys as aforesaid, a written acknowledgment for the moneys borrowed by the said commissioners for the purposes aforesaid, not exceeding in the whole the aforesaid sum of twenty-six thousand pounds sterling; which acknowledgment shall in substance be in the form contained in the schedule to this Act, and shall be signed on behalf of the said commissioners by three of the commissioners for the time being, of whom the chairman for the time being of the board of commissioners shall be one.

Public Bodies Debts Act to apply.

19. All moneys borrowed and debts lawfully incurred by the said municipality under the provisions and for the purposes of this Act shall be subject to the Public Bodies Debts Act, 1867.

Separate account to be kept of borrowed moneys, sinking fund, &c.

20. The commissioners shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act, and of the operation of the sinking fund and of the expenditure of such moneys, and of all revenues arising from the waterworks contemplated by this Act, distinguishing sums received for rates imposed under the provisions of this Act, and of all moneys expended upon the construction and maintenance of the waterworks contemplated by this Act: and the said commissioners shall yearly and every year so long as any part of the debt contracted under the authority of this Act shall be in existence, prepare and deposit in the office of the municipality for the inspection at all reasonable times of any shareholder of the municipality, an account showing the particulars aforesaid and giving any other information which the said commissioners shall deem necessary or expedient to impart: Provided that every such account shall be made up to the 31st December in each and every year and be open for inspection at

the office of the municipality on and after the 15th day of January next ensuing.

No. 19—1882.

21. In order to provide a fund for the payment of all moneys borrowed under the provisions of this Act, and for the gradual extinction of the debt to be incurred under the authority of this Act, there shall be set apart an annual sum equal to the interest of the whole amount of such debentures as shall be issued under authority of this Act, and a further sum of not less than one pound sterling per centum on the total amount of the principal or capital sum which shall be raised under the authority of this Act, and such last-mentioned sum shall be annually invested as and by way of a sinking fund, and applied towards the redemption of the said debt so long as any portion of the same or any interest thereon shall remain unpaid and unextinguished; unless the money shall be raised by loan from Government by any Act or Acts specially authorising the same.

Sinking fund of one per cent. for extinction of debt.

22. The necessary costs, charges, and expenses of obtaining this Act may be paid by the said commissioners out of the moneys to be so borrowed as aforesaid.

Costs of Act.

23. The word "municipality" used in this Act shall mean the municipality of Aliwal (Mossel Bay), as established by the Proclamation of the 12th July, 1852; and the word "commissioners," the municipal commissioners of Aliwal (Mossel Bay).

Interpretation clause.

24. Nothing herein contained shall affect or prejudice any loan already raised under the provisions of the Act 7 of 1876 and Act 6 of 1878.

Previous loans not affected

25. This Act may be cited for any purpose as "The Town of Aliwal (Mossel Bay) Water Supply Act, 1882."

Short title.

SCHEDULE.

We, the undersigned commissioners of the municipality of Aliwal (Mossel Bay), do hereby acknowledge that the said commissioners in their said capacity are indebted to _____ in the sum of £_____ for so much money borrowed by the said commissioners for the purposes set forth in the "Town of Aliwal (Mossel Bay) Water Supply Act, 1882," and certify that the said sum is and stands secured by the said Act in manner and form as by the said Act provided. And we further covenant and engage for and on behalf of the said commissioners that the interest and principal of the said debt shall be payable and paid in manner following, that is to say [here insert according to the agreement, the rate of interest and times of payment thereof, and the date or dates, or other conditions upon which the principal of the debt shall become payable.]

Given under our hands at Aliwal (Mossel Bay), this _____ day of _____ 18 ____.

A. B., Chairman of the Municipality.
C. D.,
E. F., } Commissioners.

Witnesses { G. H.
{ I. J.

1872

TURF CLUB.

No. 20—1882.]

[June 22, 1882.

ACT

To Empower the Governor to Grant Land for a Race-course and purposes connected therewith, and to provide for the Management and Regulation of the Club to which such Land shall be granted, and for other purposes. (1)

Preamble.

WHEREAS it is expedient to encourage efforts to improve the breed of horses within the Colony: Be it enacted by the Governor of the said Colony, acting by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation clause.

1. In this Act the term club shall mean the club to which the land hereinafter mentioned shall be granted; the term committee shall mean the committee for the time being of the club; and the term "chairman" shall mean the person who shall be chairman for the time being of such committee.

Power to Governor to grant land for a race-course, &c.

2. It shall and may be lawful for the Governor to grant to any club now established, or hereafter to be established, for the control and management of matters connected with the racing of horses, such piece or parcel of land as to him may seem fit, for the purposes hereinafter described, that is to say, firstly, as a course upon which horse races may be run with the consent or under the direction and control of the said club; secondly, as a training ground for the purpose of training horses intended to race, and also for the erection of training stables and dwellings for the use of persons engaged in training race horses; thirdly, for any other public amusement, or purpose which the Governor may upon the application of the said club, declare to be a public amusement or purpose for which the said land may be used.

Chairman to prosecute and defend the club in actions civil and criminal.

3. All actions, suits, and proceedings at law for any cause, matter, or things to be commenced, instituted, prosecuted or carried on by or on behalf of the said club, or within the said club shall be concerned in any way against any person or persons, body or bodies, whether a member or members of the said club or otherwise, shall be commenced, instituted and prosecuted or carried on in the name of the chairman at the time such action, suit, or proceeding shall be commenced or instituted for or on behalf of the club, and all actions, suits, and proceedings as aforesaid to be commenced, instituted, or prosecuted against the club shall be commenced, instituted and prosecuted against the chairman, for and on behalf of the club, and in all indictments and informations it shall be sufficient to state the property of the club to be the property of the chairman, and any offence committed with intent to injure or defraud the club may, in any prosecution for the same, be stated or

¹ See Act 9, 1886.

laid to have been committed with intent to injure or defraud the said chairman, and any offender or offenders may thereupon be lawfully convicted of any such offence, and the death, resignation, or removal, or other act of such chairman shall not abate any such action, suit, or prosecution, but the same may be continued, prosecuted, and concluded in the name of any person who may be or may become chairman.

No. 20—1882.

4. Upon the election or appointment of any person to be chairman, notice of such election or appointment shall be forthwith given in the *Government Gazette* and such notice shall be sufficient proof of such election or appointment.

Notice of election of chairman to be published in *Gazette*.

5. Every judgment and every decree or order which shall be at any time obtained against the chairman on behalf of the club shall take effect and be enforced and execution thereon be issued against the property and effects of the club.

Judgment to be enforced against property of the club.

6. It shall be lawful for the chairman, for the time being, to purchase or to lease on behalf of the club any lands or buildings which may be required for the purposes of the club, and to sell or relet the same or any part thereof as occasion may require, and transfers or leases thereof shall be passed or made to or by the said chairman on behalf of the said club.

Power of chairman to purchase or hire lands, &c., required by the club.

7. The land, by the second section of this Act authorised to be granted to the club, shall be held, enjoyed, and used only for the purposes authorised by this Act or by any bye-law to be made under and by virtue thereof.

Land granted to be used only for specified purposes.

8. The committee, or an absolute majority in number of such committee present at any meeting, may from time to time make such bye-laws as they may think fit for regulating all matters concerned or connected with any lands, buildings, or other property belonging to the said club, and the admission thereto and expulsion therefrom of members of the club or any person respectively, and the rates or charges to be paid for such admission and for the general management of the said race-course, and may from time to time by any other bye-laws amend, alter, or repeal any such bye-laws: Provided that no such bye-laws be repugnant to the laws for the time being in force in this Colony.

Committee may make bye-laws.

9. No bye-law made under the authority of this Act shall be of any force or effect until the expiration of one month after such bye-law shall have been sent to the Colonial Secretary, and until publication in the *Government Gazette*, and at any time within one month the Governor may disallow any such bye-law, and if disallowed such bye-law shall not come into operation.

When bye-laws to take effect.

10. Every bye-law shall, if not disallowed within one month after the same shall have been sent as aforesaid to the Colonial Secretary, be published in the *Government Gazette*, together with a notice stating when such bye-law was sent to the Colonial Secretary, and that such bye-law has not been disallowed, and such bye-law shall come into operation upon such publication.

If bye-laws not disallowed to be published in *Gazette*.

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Bye-laws may be repealed by Governor.

11. The Governor may at any time, by proclamation in the *Government Gazette*, declare that, from a time to be named in such proclamation, any bye-law made under this Act shall be repealed and from and after the time so named such bye-law shall, unless previously repealed under the provisions in this Act contained, be absolutely repealed, and of no effect: Provided always that such repeal shall not affect any suit, prosecution, or other proceeding, commenced before the time of such repeal, but the same shall be continued as if no such repeal had taken place.

Gazette to be evidence of bye-law.

12. The production of a copy of the *Government Gazette*, containing any such bye-law and notice as aforesaid shall be conclusive evidence that such bye-law was duly made.

Copies of bye-laws to be posted.

13. A copy of all bye-laws made under this Act for the time being in force shall be painted on boards or printed on paper and affixed on boards and hung up or otherwise placed at or near the principal entrance to the said race-course, and also in a conspicuous place at or adjacent to the grand stand on the said race-course so as to give public notice thereof, and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

Bye-laws to be binding.

14. Such bye-laws when so published as aforesaid shall be binding upon and be observed by all persons, and shall be sufficient to justify persons acting under the same; and for proof of publication of any such bye-laws, it shall be sufficient to prove that a painted board or a printed paper affixed to a board, containing a copy of such bye-laws was hung up or otherwise placed in manner by this Act directed.

Proof of bye-laws.

Penalties for infringement.

15. Any person offending against any bye-law made under this Act shall for any such offence be liable on conviction before the Resident Magistrate of the district to a fine not exceeding five pounds, and if the infraction or non-observance of any of such bye-laws be attended with danger or annoyance to the public, or hindrance to the committee or any of the officers of the said club, or the public in the lawful use of the said race-course, it shall be lawful for the committee, or any member, officer, or servant thereof, summarily to interfere to obviate, or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

Penalties for offences, trespasses, &c.

16. Whoever shall wilfully obstruct or impede any officer, servant or agent of the committee in the execution of his duty upon any land owned or leased by the club under this Act, or upon or in any building or premises connected therewith, or wilfully trespass upon any such land, building, or premises, or remove or wilfully injure any building, enclosure, post, fence, tree, or shrub, upon any such land, shall, upon conviction thereof before the said Resident Magistrate, be liable to a penalty of not exceeding ten pounds over and above the amount of the injury done.

Offenders may be arrested.

17. Any member, officer, or servant, of the committee, and all persons called by him to his assistance, may seize and detain any

person who shall have committed any offence against the provisions of this Act, or of the bye-laws made under this Act, and whose name and residence shall not be given to such member, officer or servant, upon his requiring the same to be given, and give such offender in charge to a police officer or constable for the purpose of conveying him before the said Resident Magistrate, in order that the complaint against the offender may be dealt with according to law.

18. Notwithstanding the liability of any person to any penalty under this Act, or the bye-laws made under this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

Liabilities under bye-laws not to affect other liabilities.

19. The committee may, by any bye-law duly made according to the provisions of this Act, from time to time prescribe and vary at pleasure the scale of rates or charges to be levied or taken for admission to any land owned or leased by the said club for the purposes of this Act, or to any building standing or being thereon, and may demand and recover and receive such rates or charges from any person coming upon such land or any part thereof, or into or upon any such building.

Rates of charges for admission to the club's land.

20. The chairman may let for any particular race meeting or meetings, or for any other amusement or sport, any portion of the land or buildings owned or leased as in this Act mentioned, or all or any of the rates or charges demandable and payable under and by virtue of this Act, or the bye-laws made under this Act, and the lessee, his collectors, servants or agents, shall have the same power of demanding, recovering, and receiving the said rates or charges as are hereby given to the committee.

Power to chairman to lease lands for races and other sports.

21. It shall be lawful for the committee in the name of the chairman, from time to time, as they shall see fit, on behalf of the club, for any purpose connected with the said club, to procure advances and to borrow money by way of cash credit, mortgage, bond, debentures, or otherwise, and to pay off and discharge such advances in such manner as may be agreed on, but the said committee shall not have power to pledge the credit of any member of the club nor shall any member be responsible for any debts incurred on behalf of the club beyond the amount of his subscription either annual or for life.

Committee may borrow on security of club's property.

22. The Commissioner of Crown Lands and Public Works may authorise any person to inspect the whole or any part of the land and buildings owned or leased by the club, according to the provisions of this Act, and such person shall have power at all reasonable times, to enter upon and examine the said lands and buildings.

Commissioner of Crown Lands may authorise inspection of land and buildings

23. If the person so authorised as in the last section mentioned shall certify in writing to the Commissioner of Crown Lands and Public Works that in his opinion the surface of the said land or any part thereof, is imperfectly kept in order, for the purpose of a public race-course, or that any building thereon is in want of repair,

If report of inspector unfavourable, Commissioner may call on committee to make repairs.

No. 21—1882.

or is unsafe to the public, or in any other respect improper or unfit for use, and which certificate shall contain a detailed statement of all such defects and want of repairs, the said Commissioner of Crown Lands and Public Works may, by notice in writing addressed to the chairman, call upon the committee, who are thereupon required so to do within a reasonable time after receipt of such notice, well and sufficiently to repair and make good all or any of such defects and want of repair.

If land not properly dealt with, may be dealt with under Act 14 of 1878, &c.

24. In case the land granted in pursuance of this Act shall not at any time have been used *bonâ fide* for the purposes of such grant for a period of three years, the said land shall be and become waste Crown lands, and may be dealt with in accordance with the provisions of the Crown Lands Act, No. 14 of 1878, or in any other manner by law provided.

Land granted to be fenced in within 12 months.

25. It shall be further incumbent upon the said club to fence in the ground so granted them within twelve months from the time when such ground shall have been granted, and until such ground shall be securely fenced it shall not be lawful to impound any cattle or other animals found trespassing on the said ground.

Act only to apply to club declared by Governor within 42 days of taking effect of Act.

26. (1) This Act shall apply only to such club as the Governor may, by notice in the *Government Gazette* under the hand of the Colonial Secretary, declare within forty-two days from the taking effect of the said Act to be the club to which this Act shall apply.

No. 21—1882.] (2)

[June 22, 1882.

ACT

For the Management of the Harbour of Port Elizabeth.

Preamble.

WHEREAS it is desirable to provide for the better management of the Harbour of Port Elizabeth: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. So much of any Act of Parliament, Ordinance, or other statutory enactment, having the force of law as is inconsistent with or repugnant to, the provisions of this Act, is hereby repealed, so far as such inconsistency or repugnance may exist, but not otherwise.

Existing commissioners to retain office *pro tem*.

2. The commissioners appointed under the provisions of the Ordinance No. 21 of 1847, who shall be in office at the time of the taking effect of this Act, shall remain in office, and exercise all powers and perform all duties now exercised and performed by them, until the first meeting of the board of commissioners appointed and elected under the provisions of this Act.

¹ Act applied to S. A. Jockey Club, by Proc. in Gazette 20th Oct., 1882.

² See Acts, 16, 1859; 5, 1873; 23, 1883; 23, 1890; 10, 1894; 16, 1894.

3. The management of the harbour of Port Elizabeth as well as of any works of construction or maintenance connected therewith, shall be vested in a board of commissioners, to be appointed and elected under this Act, from and after the date of the first meeting of such board.

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Management of harbour to be vested in Board of Commissioners.

4. The board of commissioners in the last preceding section mentioned shall consist of seven persons, one of whom shall be the Mayor of Port Elizabeth for the time being, three of whom shall be elected by the constituency hereinafter provided, one of whom shall be nominated and chosen annually by the Port Elizabeth Chamber of Commerce, if such body shall be incorporated but not otherwise, and two of whom, or in case the said Chamber of Commerce shall not be incorporated, three of whom, shall be appointed by the Governor by proclamation: Provided that the persons so appointed by the Governor may be removed as if they had been appointed under the provisions of the 2nd section of the said Ordinance No. 21 of 1847.

Constitution of the board.

5. The existing board of commissioners shall, as soon as may be after the 30th day of June next, and the board by this Act constituted shall, as soon as may be after the 30th day of June in every succeeding year, cause a true list to be made, in alphabetical order, of all persons being inhabitants of, or having their places of business in, Port Elizabeth, who shall during the last preceding twelve months have paid, to the amount of not less than ten pounds sterling, such wharfage dues as are provided by the third section of the Act No. 25 of 1875, and setting forth the Christian and surname of such person at full length, or the name of the firm (in case the said wharfage dues shall have been paid by a firm and not by a single individual), the place of his or their business and the amount of such wharfage dues which such person or firm shall have paid during the period aforesaid, and such person or persons shall be entitled to a vote for the commissioners to be elected under this Act, in proportion to the amount of wharfage dues paid by them severally, according to the schedule of this Act.

Lists to be made yearly of all persons who have in previous twelve months paid wharfage dues to the amount of £10.

Such persons to be voters.

6. As soon as the list in the last preceding section shall be complete the said board shall cause the same to be transmitted to the Sub-Collector of Customs, who shall cause copies thereof to be posted in some convenient place, heading such list with the words "List of persons and firms entitled to vote at the election of Commissioners of the Port Elizabeth Harbour Board."

Sub-collector of Customs to post lists.

7. In case within one month after the posting of such list, as in the last preceding section mentioned, any complaint shall be made to the Sub-Collector of Customs of the omission therefrom of the name of any person or firm whose name ought to have appeared upon such list, or of the insertion therein of the name of any person or firm which name ought to be expunged from such list, it shall be the duty of the said Sub-Collector of Customs to

How lists may be corrected.

No. 21—1882.

investigate such complaint, and to add, or remove, any such name to or from such list as to him shall seem just.

When lists complete persons named therein to be voters.

8. The persons and firms named in such list, after the additions to, or alterations of the same (if any) have been made by the said Sub-Collector of Customs as aforesaid, shall be the voters entitled to vote at the election of the commissioners as hereinafter provided, and as often as a firm shall be named in such list of voters, such firm shall be entitled to vote by one member thereof, and no more, or may by an authority in writing appoint some person to appear and vote for such firm.

Qualification of a Commissioner.

9. Every person being a voter as in the last preceding section provided, and whether he be so individually or as a member of a firm, shall be qualified to be elected a commissioner of the said harbour board: Provided, however, that no such voter shall be competent to be a candidate for the said office unless he shall have received and accepted a requisition to become such candidate signed by not less than five duly qualified voters, and shall have transmitted such requisition, with his acceptance thereof, to the Sub-Collector of Customs at least ten days before any election is appointed to take place.

Lists of candidates and of requisitionists to be published.

10. The Sub-Collector of Customs shall, at least seven days before the day appointed for the election, cause the names of the candidates for election thereat, together with the names of the persons who have signed such requisitions, to be published in the *Government Gazette* and one or more newspapers published in Port Elizabeth.

Sub-Collector of Customs to be returning officer.

11. Every election under this Act shall take place before the Sub-Collector of Customs, who shall be the returning officer for that purpose, on such day and at such place as he shall appoint, and the poll shall be kept open from nine o'clock a.m. until one o'clock p.m.

How poll to be taken.

12. The poll shall be taken by some officer to be appointed for that purpose by the Sub-Collector of Customs, and the voting at such poll shall be by voting papers.

Scrutineers.

13. Every candidate may, if he thinks fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Who to be declared elected.

14. At the close of the election the returning officer shall ascertain the number of votes given for each candidate; and so many candidates being equal to the number to be chosen as shall have the greatest number of votes shall be declared by the returning officer to be duly elected.

When and how elected Commissioners to enter on office.

15. At the first election of commissioners under this Act, the voters shall elect, in manner by this Act provided, three commissioners, who shall be deemed to enter upon their office on the first Monday following, in conjunction with the commissioners appointed by the Governor, the commissioner, if any, nominated by the Chamber of Commerce, and the Mayor of Port Elizabeth for the time being.

16. Of the persons so elected as in the last preceding section mentioned the commissioner who shall have been elected by the smallest number of votes shall vacate his seat at the expiration of one year from the date of entering upon his office; and in case from any cause it shall be uncertain which of them shall vacate his seat, the returning officer shall cause such question to be determined by lot; and the remaining two elected commissioners shall vacate their seats in like manner at the expiration of two years and three years respectively, and upon the retirement from office of such commissioners respectively, they shall be succeeded by commissioners who shall be elected as hereinbefore provided, so that at every annual election after the first there shall be elected one commissioner who shall enter upon his office on the first Monday after his election, and continue therein for three years, and every retiring commissioner shall be eligible for re-election.

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How seats vacated by lapse of time.

17. If any elected commissioner shall die, resign, become insolvent, or assign his estate for the benefit of his creditors, or shall be absent from the ordinary meetings of the board for a period of three calendar months, his office shall become vacant and a commissioner shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the commissioner who has vacated office and whom he shall succeed would otherwise have remained in office.

Resignation, &c., of Commissioners.

18. In case of an equality of votes at any election of a commissioner under this Act, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both elected.

In case of equality of votes at election.

19. The commissioners present at the first meeting of the board constituted under the provisions of this Act, and at the first meeting held after every annual election respectively, shall elect from amongst themselves a chairman, who shall hold such office for the space of one year, and who shall, when present, preside at all the meetings of the board: Provided that if at any meeting such chairman shall not be present, the members attending such meeting shall elect from among themselves a chairman to preside at such meeting: and provided also, that in case at any election of a chairman under the provisions of this section any two or more commissioners shall have an equal number of votes, it shall be decided by lot which of such commissioners shall be chairman.

Chairman to be chosen.

In case of his absence.

20. At every meeting of the board three commissioners shall form a quorum; and in case the votes of the commissioners upon any question before them shall be equally divided, the presiding member shall, in addition to his original or deliberative vote, have a casting vote: Provided, however, that no commissioner shall vote on any question in which he shall have any personal or pecuniary interest, directly or indirectly, under a penalty not exceeding one hundred pounds sterling, to be sued for by the Attorney General.

Quorum.

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Payment of Com-
missioners.

21. Every commissioner appointed or elected under the provisions of this Act shall be entitled to receive the sum of twenty shillings for each attendance at the meetings of the board: Provided, however, that no commissioner shall receive more than one hundred pounds sterling in any one year in respect of such attendances.

Powers and duties.

22. All the rights, powers, duties, privileges, and authority conferred upon, assigned to, and at present enjoyed or received by, the existing board of commissioners for the management of the harbour of Port Elizabeth otherwise designated Algoa Bay by virtue of any Ordinance Act of Parliament or other statutory enactment having the force of law, and not repugnant to or inconsistent with the provisions of this Act, shall be, and the same are hereby, conferred upon, assigned to, and continued in, the board of commissioners to be appointed and elected under this Act; and such commissioners shall be designated the "Port Elizabeth Harbour Board," and may by such title sue and be sued and be described in all legal proceedings, and shall have power to take, purchase, and hold, or to sell and transfer, lands, buildings, hereditaments, and possessions, and all other property, chattels, or effects whatsoever, and such lands or other property, subject to any engagement affecting the same, shall be vested in the said board by such name of the "Port Elizabeth Harbour Board," and without the necessity of any individual member of such board being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

Board may land,
warehouse and de-
liver goods.

23. In addition to all such existing rights, powers, duties, privileges and authority, it shall be lawful for the board of commissioners under this Act to land, warehouse, and deliver goods and merchandize by themselves or by their duly constituted agents in that behalf; and for the purposes of such landing, warehousing, and delivery to construct or hire such railways, tramways, sheds, or warehouses as they may deem necessary, and to enter into contracts or make arrangements with any public company or private individuals for any such construction or hiring.

May construct or
hire railways, &c.,
for the purpose.Certain powers ves-
ted in Governor
transferred to the
Board.

24. The several powers vested in the Governor by the Act No. 21 of 1872 (¹) and the Ordinance No. 1 of 1847, (¹) shall, so far as concerns the harbour of Port Elizabeth, be transferred to, vested in, and exercised by, the said "Port Elizabeth Harbour Board" by this Act created.

Short title.

25. This Act may be cited as the "Port Elizabeth Harbour Board Act, 1882."

¹ Repealed by Act No. 46, 1885.

SCHEDULE.

No 22—1882.

Votes according to Dues paid in respect of every Commissioner to be elected :—

Not less than £10 and not exceeding £100, one Vote.			
Exceeding	100	”	”
			200, two Votes.
”	200	”	”
			300, three Votes.
”	300	”	”
			400, four Votes.
”	400	”	”
			500, five Votes.
”	500	”	”
			600, six Votes.
”	600	”	”
			700, seven Votes.
”	700	”	”
			800, eight Votes.
”	800	”	”
			900, nine Votes.
”	900 and upwards	”	”
			ten Votes.

No. 22—1882.]

[June 22, 1882.

ACT

To Amend the Law relating to the Extradition of Criminals. ¹

WHEREAS it is expedient to amend the law relating to the surrender to the Transvaal State and the Orange Free State of persons accused or convicted of the commission of certain crimes within the jurisdiction of the said states: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. The “Extradition of Criminals Ordinance (No. 2), 1877,” passed by the Legislature of the Province of Griqualand West, is hereby repealed.

Repeal of Griqualand Ordinance 2 of 1877.

2. This Act may apply to the offences specified in the first schedule hereto.

Offences in Schedule.

3. Where a person accused or convicted of having committed an offence (to which this Act applies) in the Transvaal State or the Orange Free State, has left such state, such person (in this Act referred to as a fugitive criminal) if found in this Colony, shall be liable to be apprehended and returned to the state from which he is a fugitive in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the passing of this Act.

Persons convicted or accused of such offences in Transvaal or Free State, and found in his Colony may be extradited.

4. A requisition for the surrender of a fugitive criminal for whose apprehension a warrant has been issued in either of the said states, and who is in or is suspected of being in the Colony, shall be made on behalf of the Government of the state seeking extradition of such criminal to the responsible Minister who shall

Requisition for any such extradition to be made to the Prime Minister.

¹ Extended by Proclamation No. 130 of 1886 to Tembuland and the districts of Kentani and Willowvale in Transkei, and by Proclamation No. 26 of 1887 to Griqualand East and the other districts of Transkei. See Act No. 17, 1877.

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for the time being be the Prime Minister of this Colony. Upon receipt of such requisition the said Minister may by order under his hand signify to any Resident Magistrate or Justice of the Peace that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

Proceedings there-
upon.

5. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, may be issued

(1) By a Resident Magistrate or Justice of the Peace on receipt, or upon publication in the *Government Gazette*, of the said order of the said Minister, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed, or the criminal convicted, in this Colony; and

(2) By a Resident Magistrate or any Justice of the Peace on such information or complaint and such evidence or after such proceeding as would in the opinion of the person issuing the warrant justify the issue of a warrant if a crime had been committed or the criminal convicted in this Colony.

By whom warrants
of apprehension to
be issued.

Any person issuing a warrant under this section without an order from the said Minister shall forthwith send to the latter a report of the fact of such issue, together with the information or complaint, or certified copies thereof; and the said Minister may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended to be discharged.

When warrants may
be cancelled.

6. Every warrant for the apprehension of any fugitive criminal shall command that he be brought before some Resident Magistrate. Where the warrant has been issued without the order of the said Minister, the Resident Magistrate shall order the discharge of the fugitive criminal unless, within such time as having reference to the circumstances of the case he may consider reasonable, the said Resident Magistrate receives from the said Minister the order mentioned in the fourth section of this Act.

What warrants of
apprehension shall
command.

7. When a fugitive criminal is brought before the Resident Magistrate, the said Magistrate shall hear the case in the same manner, and have the same jurisdiction and powers as near as may be as if the prisoner were brought before him charged with an indictable offence committed in the Colony.

Magistrates to exer-
cise jurisdiction as if
offence committed in
this Colony.

8. In the case of a fugitive criminal accused of the commission of any crime or offence to which this Act applies, if the warrant of the state making the requisition is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would according to the law of the Colony justify the committal for trial of the prisoner if the crime of which he is accused had been committed in the Colony, the Resident Magistrate shall commit him to prison, but otherwise shall order him to be discharged.

When magistrates
may order committal
or discharge.

In the case of a fugitive criminal alleged to have been convicted of the commission of any such crime or offence, if such evidence is

produced as (subject to the provisions of this Act) would according to the law of the Colony prove that the prisoner was convicted of such crime, the Resident Magistrate shall commit him to prison, but, otherwise, shall order him to be discharged.

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9. If the fugitive criminal is committed to prison he shall be committed to the principal gaol of the district, there to await the warrant of the Governor for his surrender. The Resident Magistrate shall forthwith send a certificate of the committal to the said Governor with such report thereon as he may think fit.

To what gaol committed person to be sent

10. Upon production of the certificate of committal it shall be lawful for the Governor, by warrant under his hand and the public seal of the Colony, to order the fugitive criminal to be surrendered to such person as may in his opinion be duly authorised by the state from which the requisition for the surrender proceeded, to receive the fugitive criminal, and such fugitive criminal shall be surrendered accordingly.

Upon committal, Governor may order offender's surrender to state demanding it.

It shall be lawful for the person to whom such warrant is directed to receive, hold in custody, and convey the criminal mentioned in the warrant within the jurisdiction of the state to which he has been surrendered.

What may be done under Governor's warrant for surrender.

The gaoler, or other chief officer of any gaol, on request of any person having the custody of a fugitive criminal under such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive criminal and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

Expenses of detention.

If the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of the Colony may be retaken.

Escape of prisoner from custody.

11. Where any person who shall have been committed under this Act to remain until delivered up pursuant to requisition, shall not be delivered up pursuant thereto within two months after such committal, it shall in every case be lawful for the Supreme Court of this Colony, or for the Court of the Eastern Districts or the High Court of Griqualand respectively, if such person be imprisoned within the limits of either of such last mentioned Courts, upon application by or on behalf of any person so committed, and after notice of the intention to make such application has been given to the Attorney-General, or in case such application be made either to the Court of the Eastern Districts or to the High Court of Griqualand after such notice has been given to the Solicitor-General or to the Crown Prosecutor as the case may be, to order the person so committed to be discharged out of custody unless sufficient cause is shewn to the contrary.

Proceedings in regard to persons committed but not given up within 2 months.

12. Depositions or statements on oath taken in either of the aforesaid states, whether taken in the presence of the fugitive criminal or not, and copies of such original depositions or state-

Depositions, &c., to be received in evidence.

No. 22—1882.

ments, and certificates of or judicial documents stating the fact of conviction may, if duly authenticated, be received in evidence in proceedings under this Act.

How warrants of the states to be authenticated.

13. Warrants of the said states and depositions or statements on oath and copies thereof shall be deemed duly authenticated for the purposes of this Act, if authenticated in manner provided for the time being by law, or if authenticated as follows:—

- (1). If the warrant purports to be signed by a Judge, Magistrate, or other officer of the state where the same was issued authorised by law to issue warrants ;
- (2). If the depositions or statements on oath, or the copies thereof, purport to be certified under the hand of a Judge, Magistrate, or officer of the state where the same were taken, to be the original depositions and statements, or to be true copies thereof, as the case may be ;
- (3). If the certificate of or judicial document stating the fact of conviction purports to be certified by a Judge, Magistrate, or officer of the state where the conviction took place ; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of some officer of the Government of the state from which the requisition for surrender proceeded ; and all Courts of Justice and Magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Forms of warrants.

14. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and when used shall be deemed to be valid and sufficient in law.

When Act to take effect.

15. This Act shall take effect so far as concerns the surrender of fugitive criminals to the Transvaal State and the Orange Free State respectively, so soon as the Governor shall by proclamation in the (¹) *Government Gazette* of the Colony declare and make known that the said states have respectively made due provision for the surrender of fugitive criminals who have escaped to either of the said states from this Colony ; and from and after the date of each such proclamation the “Extradition of Criminals Act (No. 19), 1872,” shall, as to the state named therein, be and the same is hereby repealed : Provided that such repeal shall not affect any warrant duly granted or issued, or anything done or suffered, or

¹ See Proclamation No. 122, 4th August, 1882, notifying that the Free State has made due provision, and Proclamation No. 123, of same date, extending this Act to Basutoland and the Transkei, also *Gazette* 6th August, 1886, extending this Act to Territories annexed under the “Tembuland Annexation Act, 1885,” and *Gazette* of 4th Feb., 1887, extending this Act to Territories annexed under the “Transkeian Annexation Act of 1877,” and also notifying that the S.A. Republic (Transvaal) has made due provision.

any legal proceeding or remedy in respect of any such warrant, or in respect of any liability or penalty incurred previously to such repeal; and any such warrant may be executed, and any such legal proceeding or remedy may be carried out, as if this Act had not been passed.

No. 22—1882.

16. In the interpretation of this Act the term "Transvaal State," shall mean the territory otherwise known as the "South African Republic," by whatever name the said territory shall now or hereafter be designated.

Interpretation clause.

17. This Act may be cited as "The Extradition Act, 1882."

Short title.

FIRST SCHEDULE.

- Abduction.
 - Abortion.
 - Arson.
 - Assault, including indecent assault on the person of a girl under the age of twelve years.
 - Assault with intent to do grievous bodily harm.
 - Bigamy.
 - Child stealing.
 - Culpable homicide.
 - Coining, or uttering counterfeit or altered coin.
 - Deserting from any police or defensive force.
 - Offences under any law relating to the dealing in diamonds.
 - Falsity, forgery or uttering a forged document.
 - Fraud.
 - Offences under any law relating to the dealing in gunpowder, lead, or firearms.
 - Housebreaking (including the breaking into any office, store, or hut), with intent to commit any crime.
 - Incest.
 - Offences by insolvents against insolvency laws.
 - Malicious injury to property.
 - Murder, or attempt to commit murder.
 - Perjury or subornation of perjury.
 - Rape and assault to commit rape.
 - Any act done with intent to do injury to person or property on any railway.
 - Robbery.
 - Public violence.
 - Theft, including theft by means of false pretences, and theft by means of embezzlement.
 - Being accessory to the commission of any of the aforesaid crimes or offences.
-

1886

EXTRADITION.

No. 22—1882.

SECOND SCHEDULE.

Form of Order for issue of Warrant of Apprehension.

To the Resident Magistrate [or ——— Esquire, Justice of the Peace] for the district of ———.

Whereas, a requisition has been made to the Government of the Colony of the Cape of Good Hope by the Government of the ——— State, for the surrender of ———, late of ———, accused [or convicted] of the commission of the crime of ——— within the jurisdiction of the said State: Now I hereby, by this my order, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of the said ———, provided that the conditions of the "Extradition Act, 1882," relating to the issue of such warrant, are in your judgment complied with.

Given under my hand at Cape Town, this — day of ——— 18—.

Premier and [Colonial Secretary.]

Form of Warrant of Apprehension by order of the Prime Minister.

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

Whereas the Honourable the Prime Minister and [Colonial Secretary] by order under his hand has signified to me [or has notified] that requisition has been duly made for the surrender of ——— late of ——— accused [or convicted] of the commission of the crime of ——— within the jurisdiction of the ——— State: This is, therefore, to command you in Her Majesty's name, forthwith to apprehend the said ——— pursuant to "The Extradition Act, 1882," wherever he may be found within the limits of the Colony of the Cape of Good Hope, and bring him, or cause him to be brought, before the Resident Magistrate for the district of ———, to show cause why he should not be surrendered in pursuance of the said Extradition Act: for which this shall be your warrant.

Given under my hand at ——— this — day of ——— 18—.

Resident Magistrate
[or Justice of the Peace] for the District of ———.

Form of Warrant of Apprehension without order of the Prime Minister.

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

Whereas it has been shown to the undersigned ——— Resident Magistrate [or Justice of the Peace] for the district of ——— that ——— late of ——— is accused [or convicted] of the commission of the crime of ——— within the jurisdiction of ———: This is, therefore, to command you in Her Majesty's name, forthwith to apprehend the said ———, and to bring him, or cause him to be brought before the Resident Magistrate for the district of ———, to be further dealt with according to law: for which this shall be your warrant.

Given under my hand at ———. this — day of ——— 18—.

Resident Magistrate
[or Justice of the Peace] for the District of ———.

EXTRADITION.

1887

Form of Warrant of Committal.

No. 22—1862.

To the Gaoler of the _____ Gaol :

Be it remembered that on this _____ day of _____ 188— _____ late of _____, is brought before me _____, Resident Magistrate for the district of _____, to show cause why he should not be surrendered in pursuance of the Extradition Act, 1882, on the ground of his being accused [or convicted] of the commission of the crime of _____ within the jurisdiction of _____ and forasmuch as no such sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act :

This is therefore to command you, the said gaoler, to receive the said _____ into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand at _____ this _____ day of _____ 18—.

Resident Magistrate
for the District of _____.

Form of Warrant of the Governor for Surrender of Fugitive Criminal.

WARRANT

By His Excellency, &c.

To the Gaoler of the _____ Gaol and to _____(a).

Whereas _____, late of _____, accused [or convicted] of the commission of the crime of _____ within the jurisdiction of the _____ State, was delivered into the custody of you (b) _____ the said gaoler by warrant dated (c) _____ pursuant to "Extradition Act, 1882" :

Now, therefore, I, the Governor aforesaid, do hereby, in pursuance of the said Act, order you, the said gaoler, to deliver the body of the said _____ into the custody of the said (a) _____, and I command you the said (a) _____ to receive the said _____ into your custody, and to carry him within the jurisdiction of the said State, and there place him in the custody of any person or persons appointed by the said State to receive him : for which this shall be your warrant.

Given under my hand and the Public Seal of the Colony of the Cape of Good Hope, at _____ this _____ day of _____ 18—.

Governor.

By command of His Excellency the Governor,

Premier and [Colonial Secretary.]

(a) Insert name of person authorised by the Foreign State to receive the criminal.

(b) Insert name of gaoler.

(c) Date of warrant of committal.

1888

ORANGEZIGT ESTATE.

No. 23—1882.]

[June 30, 1882.]

ACT

To make provision to release a further Portion of the Estate Orangezigt from the Entail of *Fidei commissum* and to invest the Town Council of the City of Cape Town with the Right to the Water Springs on the said Estate, and of collecting Water on the said Estate and leading out the same for the use of the City of Cape Town, and to confirm the provisions of a certain Rule and Order of the Honourable the Supreme Court, made on the 8th day of December, 1881, relative to the Compensation to be paid for the same.

Preamble.

WHEREAS by Act 29 of 1877, entitled "An Act to release a portion of the Estate Orangezigt of the entail of *Fidei commissum* and to authorise the Town Council of the City of Cape Town to acquire the said lands for the purpose of constructing thereon one or more reservoirs," authority is given to the Town Council of Cape Town to extend and improve the water works of the municipality of the city of Cape Town and to construct a new reservoir or reservoirs for the purpose of increasing the supply of water of the said city, for which purpose the said Town Council of Cape Town was further authorised and empowered to acquire certain lands forming part of the estate Orangezigt, situate in Table Valley, the property of the family of Van Breda, held by them subject to the burthen and entail of *Fidei commissum* as in the said Act is stated and set forth: and whereas under the powers conferred by the said Act, the said Town Council has acquired for the purposes of the city of Cape Town certain portion of the said entailed estate for the purposes stated in the said Act: and whereas it has since been found desirable and necessary that the said Town Council should further acquire for the purposes aforesaid the right and title to and the ownership of the several springs of water rising on the said estate, with the right to dig, bore, excavate or otherwise open up the said springs and carry out all such works as may be found necessary for the said purposes and to construct filtering beds and all other works required for the purpose of collecting the waters of the said estate and to lay down pipes in, on, and across the said estate so as to lead out such waters for the use of the city of Cape Town: and whereas in accordance with such necessity the said Town Council did, under the provisions of section 70 of Act 1 of 1861, acquire and take possession of the water springs on the said estate, and proceeded to do all things necessary to collect and utilize the water for the use of the city of Cape Town, but could not agree with Gerrit Hendrik van Breda, the person now entitled to and in possession of the said estate as to the compensation to

be paid for the same, thereupon such compensation was referred for assessment and decision to arbitrators mutually appointed: and whereas the said arbitrators made their award in writing on the 18th day of November, 1881, which award was on the 8th day of December, 1881, made a rule or order of the Honourable the Supreme Court, which rule or order is set forth in the schedule to this Act: and whereas by reason of the said entail of *Fidei commissum* aforesaid it is necessary that the rights so acquired by the Town Council of Cape Town, and the compensation to be paid for the same, should be sanctioned and confirmed by Legislative enactment: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The burthen and entail of *Fidei commissum* in Act 29 of 1877 mentioned is further removed and annulled so far as it affects the water springs and other sources of water on the estate Orangezigt, and all the said springs and sources of water are hereby declared to be vested in the Town Council of Cape Town and their lawful successors, with the right to dig, bore, excavate and otherwise open up and carry out all such works on the said estate as may be found necessary for the said purposes and to construct filtering beds and all other works required to collect the waters of the said estate and to lay down pipes in, on, and across the said estate so as to lead out the waters for the use of the city of Cape Town.

Burthen of *Fidei Commissum* removed from springs of "Orangezigt."

Vesting of them in Town Council.

2. For the acquisition by the said Town Council of the said springs and other sources of water on the estate Orangezigt and for the right to collect and lead out the waters thereof, and for the other privileges as in the last preceding section mentioned in terms of the said award and rule of court, the said Town Council shall pay the sum of Seven Hundred Pounds sterling per annum (subject to the conditions hereinafter mentioned) to the said Gerrit Hendrik van Breda, the present proprietor, and the future proprietors of the said estate.

£700 per annum to be paid to proprietors of estate.

3. The said sum of Seven Hundred Pounds sterling is hereby charged upon the annual revenues of the Municipality of the City of Cape Town, as a preferent debt ranking in order next after any debt heretofore contracted under the authority of any Ordinance or Act of Parliament: and shall continue until by any Act of Parliament the decree of any competent Court, or the happening of any event, the said estate Orangezigt shall pass free and discharged from the said entail to any person or persons in full and absolute property, and shall then be payable to such person or persons.

Charged upon the revenues of the Municipality.

4. The said annual sum of Seven Hundred Pounds sterling shall be payable in half-yearly instalments to the person or persons entitled to receive the same.

Payable half-yearly.

5. This Act may be cited for all purposes as "The Orangezigt Further Purchase Act, 1882."

Short title.

SCHEDULE.

In the Supreme Court of the Colony of the Cape of Hope, Cape Town,
Thursday, 8th December, 1881.

Upon reading the award, dated at Cape Town, the 18th day of November, 1881, made between Gerrit Hendrik van Breda, of Cape Town, and Johannes Anthony Roos, in his capacity as Secretary to the Town Council of Cape Town, the terms of which said Award is in the words and figures following, that is to say : Whereas by a certain written deed of submission to arbitration, bearing date the 8th day of August, 1881, made between Gerrit Hendrik van Breda, of Orangezigt, Cape Town, of the one part, and Johannes Anthony Roos, also of Cape Town, in his capacity as Secretary to the Town Council of Cape Town, being duly authorised thereto by a resolution of the said Town Council, dated the 29th day of July, 1881, of the other part, reciting that it was expedient and necessary to construct certain water works and filtering beds, and to carry out the other operations in order to increase the water supply of the city of Cape Town, and that it was expedient that the said Town Council should acquire for such purpose certain rights over the estate Orangezigt, situated in Table Valley, the property of the family of Van Breda held by them subject to the burden and entail of *Fidei commissum* under the provisions, conditions, and stipulations set forth and provided in the Deed of Transfer of the said estate, of which said estate the said Gerrit Hendrik van Breda is the present proprietor, and further reciting that negotiations had already taken place between the said Gerrit Hendrik van Breda and the said Town Council with reference to the acquisition by the said Town Council, of the rights aforesaid, and that the said Gerrit Hendrik van Breda was willing to cede the rights aforesaid to the Town Council, but that differences had arisen between the said parties regarding the sum to be paid by the Town Council to the said Gerrit Hendrik van Breda annually by way of rent or compensation, and as to the date from which the said payment should be computed, it was agreed that the question as to the amount of compensation to be paid annually by the said Town Council to the said Gerrit Hendrik van Breda and his successors in the said estate, for the transfer of the said rights enumerated and set forth in the said Deed, subject, however, to certain conditions duly enumerated at length in the said Deed, and also the question as to the date from which such compensation should be computed should be referred to the award, order, and final arbitrament of us, James Rose Innes, junior, and Thomas Watson, both of Cape Town, and of such third arbitrator as we, the said James Rose Innes, junior, and the said Thomas Watson should, by writing under our hand, to be endorsed upon the said Deed of Submission before we proceeded to the said arbitration, nominate and appoint to act with us, or to the final award or order of any two of us the said arbitrators : And whereas we, the said James Rose Innes, junior, and the said Thomas Watson did accept the burden of the said arbitration, and did, by writing under our hands, bearing date the 25th day of August, 1881, endorsed upon the said Deed of Submission nominate and appoint James Murison to act with us as third arbitrator in the said matter ; and whereas the said James Murison did accept the said appointment : Now, therefore, we the said arbitrators, James

Rose Innes, junior, Thomas Watson, and James Murison, having duly weighed and considered the several allegations of the said parties and also the proofs and documents which have been given in evidence before us, do hereby make and publish our award of and concerning the questions above referred to, as follows:—

1. We award and direct that for the rights and privileges ceded by the said Gerrit Hendrik van Breda, and acquired by the said Town Council, as set forth in the said Deed, under the provisions and conditions also set forth in the said Deed, a copy of which, marked "A," is annexed to this Award, there shall be paid every year by the said Town Council to the said Gerrit Hendrik van Breda and his successors in the said estate the sum of £700 sterling.
2. We further award and direct that such compensation shall be computed from the 1st January, 1881.

It is ordered that the said Award be, and the same is, hereby made a rule of this Court.

By order of the Court,

J. C. B. SERRURIER,
Registrar.

No. 24—1882.]

[June 29, 1882.]

ACT

To Incorporate the Port Elizabeth Chamber of Commerce.

WHEREAS there exists an association of merchants and others at Port Elizabeth, called and known as the "Port Elizabeth Chamber of Commerce," formed for the purpose of promoting and protecting the trade of that place: And whereas it is expedient to incorporate such association in order the better and more effectually to carry out its objects: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The several persons who are or who may from time to time, become shareholders in or subscribers to the association in the preamble to this Act mentioned, shall be and are hereby united into one body corporate, under the name and title of the "Port Elizabeth Chamber of Commerce," for the purpose of promoting, encouraging, and protecting the trade of that port.

Incorporation of
"Port Elizabeth
Chamber of Com-
merce"

2. The association hereby incorporated by the name of the "Port Elizabeth Chamber of Commerce" shall have perpetual succession and a common seal, and by such name shall and may from time to time sue and be sued in any competent Court, and shall have power to take, purchase, and hold landed and other property, and such landed or other property, subject to any engagements affecting the same, shall be vested in the association in its corporate name, and without the necessity of each individual member being mentioned in the deed or deeds of transfer, grant or grants, or conveyances thereof.

Power given to
such Corporation.

- No. 25—1882. 3. The said corporation hereby created shall have power from
 To make, &c., rules and regulations. time to time to make, rescind or alter rules or regulations as to the admission of its members, or the expulsion of any such members, and for the general good management and guidance of the association and the furtherance of its objects.
- Existing rules to apply meanwhile. 4. Until any new rules and regulations, as in the last preceding section mentioned, shall have been framed by the corporation hereby created, the existing rules and regulations of the association shall be and continue in force; and all persons now holding office shall continue to hold office in accordance with and subject to the provisions of such rules and regulations.
- Short title. 5. This Act may be cited as the "Port Elizabeth Chamber of Commerce Act, 1882."

No. 25—1882.]

[June 29, 1882.]

ACT

To Authorise the Reduction of the Quitrents payable on certain Lands in Griqualand West.

Preamble.

WHEREAS the late Government of Griqualand West by Government notice, dated the 21st day of July, 1879, intimated that it had been decided that all titles to farms in the said Province, the quitrent on which was in excess of one pound per thousand morgen, might be exchanged for other titles, subject to certain terms of occupation and tenure at a quitrent of one pound per thousand morgen, provided that such exchange were made on or before the thirtieth day of November, 1879: And whereas by further notice issued by the said Government, the said period was extended to the thirty-first day of December, 1879, and again to the 31st day of March, 1880: And whereas, while certain persons, owners of such quitrent lands, availed themselves of the benefits of the said notices, others, in ignorance of the existence of such notices, and from other causes, were unable to do so: And whereas it is just and expedient that effect should be given to the intentions of the said late Government, and that the Governor of the Cape of Good Hope should be authorised, if it shall to him seem fit to do so, to reduce the quitrents on any grants of land in the late Province of Griqualand West on which the quitrents payable are in excess of one pound per thousand morgen, to such an extent, not less than one pound per thousand morgen, as he shall think fit notwithstanding that application was not made within the time mentioned in the said notices respectively, and without reference to any conditions in the said notices set forth: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

1. It shall be lawful for the Governor to reduce the quitrents payable under any of the grants in the preamble of this Act referred to, to such an extent as shall seem to him to be fair and reasonable and from such date as he may determine: Provided that no such quitrent shall in any case be reduced below the rate of one pound per annum for each one thousand morgen granted.

No. 26—1882.
Governor may reduce quitrents, but not below £1 per 1,000 morgen.

2. The reduction of such quitrents shall be recorded on the face of such grants by the Surveyor-General, or on the deeds of transfer by the Registrar of Deeds in case the land granted shall have been transferred from the original grantee, upon production of a certificate under the hand of the Commissioner of Crown Lands and Public Works, stating that such reduction has been authorised by the Governor under the provisions of this Act.

Reductions to be recorded on grants, or on transfers.

3. This Act may be cited for all purposes as "The Griqualand West Quitrents Reduction Act, 1882."

Short title.

No. 26—1882.]

[June 29, 1882.

ACT

To Afford greater Facilities to Persons having a right to Water, to convey the same across the Lands of other Persons.

WHEREAS it has been found that the existing law enabling persons having a right to water to convey the same across the lands of other persons is insufficient for the purpose, and leads to much litigation: and whereas it is desirable to amend and improve such law:

Preamble.

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

1. The Act No. 24 of 1876, being "The Right of Passage for Water Act, 1876," is hereby repealed, except as to things done or proceedings pending at the time of the taking effect of this Act.

Repeal of Act 24 of 1876.

2. Every person having a legal right to any water in any stream or river, or derived from any spring, dam or reservoir, and wishing to employ it for irrigation or hydraulic works, or any other useful purpose, shall be entitled to claim the right, temporarily or in perpetuity as he may elect, to convey such water from or over any land belonging to, or in the occupation of any other person (upon payment of compensation to such last mentioned person in manner hereinafter provided), in every case in which such right is necessary to enable the person claiming the right to use the water for any of the purposes hereinbefore mentioned, or to make a more beneficial use of it than such claimant would otherwise have.

Person with right to water may convey it over lands of others subject to compensation.

3. Every person desiring to acquire the right to convey water as in the last section mentioned shall give notice thereof in writing to the person owning or occupying the land over which he desires

Notice of desire to acquire such right.

No. 26-1882.

to acquire the same, describing in such notice the line of passage along which he proposes to convey the water, the mode in which he wishes to convey it, the works which he proposes to construct upon such land in order to give effect to his purpose, the amount of compensation which he offers, and the period of time during which he wishes to possess the said right.

In case of no private agreement, arbitration to take place.

4. In case the person from whom such right is claimed and the person claiming such right shall not within one month after the service of such notice as aforesaid agree as to the line of passage to be adopted, the mode of conveying the water, the works, or the construction of the works, necessary for such conveyance, or the compensation to be paid in respect thereof, the person claiming the right shall be at liberty, by another notice in writing, to call upon the party from whom the right is claimed to refer to arbitration all the several matters in dispute between them.

Powers and duties of arbitrators.

5. The arbitrators shall, in any matter referred to them under the provisions of this Act have power to do all or any of the following things :

- (1) To give the party claiming the right aforesaid, the line of passage chosen by him, or such other line as may be deemed most beneficial to such party, and as little injurious as possible to the other party.
- (2) To specify the manner in which the water shall be conveyed, and the nature of the works to be constructed for conveying it.
- (3) To award the amount of compensation to be paid for the possession and exercise of the right of passage of water, in one sum, or in different sums at different times, or by way of annual rent.
- (4) In case the land over which the right of passage is claimed shall be under lease, to determine the amount of compensation to be paid to the lessee for any injury which such lessee may sustain by reason of the exercise of such right.

Provided that :

- (1) The arbitrators shall set off against and deduct from the amount of such compensation as would otherwise be claimable, the amount which such arbitrators shall estimate the benefit and advantages to be derived by the owner, or lessee, or owner and lessee respectively, as the case may be, of the property by reason of the construction of irrigation works over such property.
- (2) It shall not be competent for the arbitrators to award any right of passage for water in any case in which it shall appear to such arbitrators that such water is insufficient in quantity for any useful purpose.
- (3) The power to award compensation to a lessee may be exercised whether such lessee shall or shall not be a party

to the arbitration, if in the course of proceedings under the reference such lessee shall claim compensation.

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6. If any mortgage bond shall be existing on the said property the mortgagee shall be made a party to the said arbitration, and shall receive the like notices as are required to be given to the proprietor; and any compensation to be paid under this Act shall be made to the mortgagee in reduction of the mortgage: Provided that if the land is owned by more than one person, and only the share of one or more such persons is mortgaged, a *pro rata* portion only of such compensation shall be paid to the mortgagee.

Mortgagees to be made parties to arbitration.

7. If at any time the Government shall require or deem it expedient to take or use any land, or the bed of any river, stream or river tributary, for the purpose of irrigating any land, or of constructing thereon any dam, reservoir, or other irrigation work, and there may not be any right or power by law to take or use such land or property without the consent of the proprietor thereof, it shall be lawful for the Governor to take or use such land or property for the purpose aforesaid, and the proprietor thereof shall thereupon be entitled to compensation, to be settled in case of difference by arbitration.

In case Government require lands, streams, &c.

8. All channels and other works required for the conveyance of water under the provisions of this Act shall be constructed and maintained solely at the cost of the person claiming the right of passage for such water.

Works to be constructed at cost of party claiming right of passage.

9. In carrying water across any public roads, such works shall be constructed by the person exercising the right of passage as the Divisional Council of the division, or as to roads within a municipality the commissioners of the municipality, or the Town or Borough Council, as the case may be, in which the proposed crossing is situated, may consider necessary for the purpose of preventing danger or inconvenience to persons using the said road, and any works so constructed shall thereafter be maintained in repair by the person using the same.

In case of roads being crossed by such passage.

10. No such proceedings as are authorised by this Act shall be taken in any case where the right to the water for which a passage is claimed is in dispute until such dispute shall have been settled by the judgment of some competent Court.

In case right to water disputed.

11. Every person who shall have acquired, under the provisions of this Act, a temporary right to the passage of water, shall be entitled at any time to have such temporary right converted into a permanent one on paying to the person against whom he enjoys the said right such amount as compensation for such conversion as may be agreed upon between them; and in case no such amount shall be agreed upon, the difference between the said parties shall be referred to arbitration.

Persons having temporary right of passage.

12. All servitudes, which shall arise from or be created by the provisions of this Act shall be duly registered on the title deeds of

Servitudes to be registered.

No. 26—1882.

the dominant and servient properties in the Deeds Registry Office of this Colony.

Person having right of passage bound to repair watercourses, &c.

13. In the event of any channel constructed under this Act across the land of another person being out of repair or in want of cleaning, the person having or claiming the right of passage of water through such channel shall be bound, upon receipt of a notice in writing from the proprietor of such land requiring him so to do, to repair or clean, as the case may be, such channel within a reasonable time, and in the event of his failing so to do, it shall be lawful for such proprietor to cause all necessary repairs or works to the said channel to be done, and to recover the cost thereof from the person having or claiming such right of passage as aforesaid and any person having or claiming such right of passage as aforesaid who shall knowingly allow or suffer any such channel to be out of repair or foul, shall be liable for all damage which may arise therefrom.

In what cases bridges, culverts, &c., must be constructed.

14. In cases where the waters flowing in any channel made under this Act for the benefit of individuals prevent the adjoining proprietors from passing freely to their property, or check the circulation of water in the irrigation or drainage of the same, the parties benefitting by the water shall be bound to construct and maintain in good order all bridges and other works necessary for intercommunication in a sure and convenient manner, and shall be further bound to construct and maintain such culverts, aqueducts, and other like works, as are required for the free progress of irrigation or drainage, except there shall be some agreement or legitimate title to the contrary.

Servitude under this Act only to involve everything necessary to its use.

15. The establishment of a servitude such as before mentioned shall involve the right of everything necessary to its use, including the right to clean and repair; but the right of passage for water shall not give the party exercising it the right of property either in the land at the sides or forming the bed of the channel, and all burdens attached to the land shall be borne by the proprietor of the land.

"Lands and Arbitration Clauses Act, 1882," incorporated.

16. For the purposes of any arbitration under the provisions of this Act, the provisions of "The Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

Interpretation clause.

17. The word "person" and the word "party" in this Act shall include government, divisional council, municipality, corporation, and joint-stock company.

Short title.

18. This Act may be cited as the "Right of Passage of Water Act, 1882."

No. 27—1882.]

[June 29, 1882.]

ACT

To Provide for the Suppression and Punishment of Certain Offences. (1)

WHEREAS it is expedient to consolidate and amend the law relating to the suppression and punishment of certain offences: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the schedule hereto, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed: And the Governor may at or after the coming into effect of the first part of this Act in any municipality or in any community which has been brought under the operation of the "Villages Management Act, (2) 1881," repeal any regulations in force in any such municipality or community as shall be repugnant to or inconsistent with the provisions of the first part of this Act. But such repeal shall not affect any things done, offences committed, or proceedings commenced or pending under, by virtue of, or against any of said repealed laws, or any such regulations so to be repealed as aforesaid.

Repeal of repugnant laws.

Repeal of existing Municipal or other regulations.

2. In the construction of this Act, the term "Local Authority" shall mean

Interpretation clause.

The Council or Board of Commissioners of any Municipality;
The Board of Management of any community in which the "Villages Management Act, (2) 1881," is in operation;
The Resident Magistrate or Special Justice of the Peace (if any, or as the case may be), residing in any town or village not being a municipality, or in which the said "Villages Management Act" (2) is not in operation, and when there shall be no such Resident Magistrate or Special Justice of the Peace, any Justice of the Peace residing in or nearest to such town or village.

PART I.—POLICE PROVISIONS APPLICABLE TO SPECIAL LOCALITIES.

3. The provisions of this part of this Act shall be in operation:
- (1) In every town or village which shall hereafter be constituted a municipality.
 - (2) In every community which has been, or shall hereafter be, brought under the operation of the "Villages Management Act, (2) 1881."

To what localities police provisions to apply.

¹ Extended by Proclamation No 180 of 1882 to the district of Kokstad in Griqualand East; by Proclamation No. 143 of 1883 to Tembuland, and by Proclamation No. 136 of 1885 to Port St. John's. Amended by Act No. 21, 1894.

² No. 29.

No. 27—1 882.

(3) In any city, town, village, or other place in which the Governor shall by proclamation declare this part to be in operation, and from a date to be by such proclamation fixed and appointed.

Governor may define, &c., limits of towns, villages, &c.

4. The Governor may from time to time define, vary and alter the limits of any such city, town, village or other place to which the provisions of this part shall be put in operation, and may revoke any such proclamation.

Penalty on conviction of following offences.

5. (1) Any person guilty of any of the following offences, omissions, or neglects shall, on conviction, in respect of each act or offence, be liable to a penalty not exceeding two pounds, or in default of payment, to be imprisoned, with or without hard labour, for a period not exceeding thirty days, unless such penalty be sooner paid:

Offences enumerated.

- (1) Washing in, or in any manner defiling or polluting, the water of any public stream or watercourse.
- (2) Indecently exposing the person or appearing in any street or public place without such articles of clothing as decency requires.
- (3) Wantonly or mischievously ringing any public bell, or making any noise or disturbance in the streets, throwing stones or other missiles, using catapults, knocking at doors or ringing any private bells, removing signboards, scales, or other property from the premises of the owner, or mischief of a like nature.
- (4) Wantonly irritating any cattle, horses, or other animals, whether attached to vehicles or not, or unnecessarily clapping wagon-whips in any public street or place.
- (5) Making a fire in any street, thoroughfare, or public place, or letting off fireworks without leave of the local authority.
- (6) Hiding a horse or driving a vehicle upon any footpath or side-walk.
- (7) Failing or neglecting to keep the sluices or flood-gates of any erf in a proper state of repair, and to allow the water to pass freely through or past the ground of any person for the use of the occupants of the land below.
- (8) Wilfully or by any neglectful act depriving any person of the water to which such person is entitled at the time proper for the use thereof.
- (9) Unlawfully diverting or appropriating the water to which any other person is entitled.
- (10) Throwing any glass, filth, dirt, rubbish, orange peel, or offensive matter upon any public street, lane, or public place, or in any dam, or reservoir, or watercourse, or fountain, or in any other place than such as may have been appointed for that purpose by the local authority.

- (11) Encumbering any public street, footway, or carriage-road, or obstructing the free passage along the same by means of any wagon, cart, or other thing whatsoever.
- (12) Wilfully or neglectfully breaking up, injuring or damaging any dam or public watercourse, or sluice gate, or any public street, footway, carriage-road, or thoroughfare.
- (13) Cutting down, removing, destroying, or injuring any wood, tree or shrub upon any commonage without special permission from the local authority.
- (14) Destroying, damaging, or injuring any tree or shrub growing in or along any public street, or in any public place.
- (15) Furiously driving any vehicle, horses, or cattle, or furiously riding any animal in or through any public street, lane or thoroughfare.
- (16) Discharging firearms in any street or thoroughfare without leave of the local authority, or unless in the discharge of some duty, or in obedience to some lawful command.
- (17) Driving or leaving any vehicle drawn by oxen in any public street or thoroughfare without a leader, or leaving any vehicle drawn by horses or mules standing in any street or thoroughfare without a person at the head of the leaders.
- (18) Swearing or making use of obscene, abusive, insulting, or threatening language, or swearing, shouting, or screaming to the annoyance of the inhabitants in any street, road, or public place.
- (19) Singing any obscene song or ballad, or writing or drawing any indecent or obscene word, figure, or representation in any public street or place.
- (20) Burning any straw, shavings or other materials upon any footway, carriage-road, or open or public place.
- (21) Leaving any inflammable material or matter in any public shed or place, or on any open space near any building, without having first obtained the permission of the local authority.
- (22) Drawing or trailing any sledge, timber, or other heavy material upon any footway or carriage-road to the injury of such footway or carriage-road.
- (23) Allowing any night-soil or other offensive matter to be spilt or cast into or upon any road, street, footway, or public place.
- (24) Allowing the drippings of the eaves of any house to fall upon any public footway.
- (25) Placing any placard or other document, writing or painting on, or otherwise defacing any house, building, wall, fence, lamp-post, or gate, without the consent of the owner or occupier thereof.

No. 27--1882.

- (26) Neglecting to clean all private yards, ways, passages, or avenues, by which neglect a nuisance by offensive smell or otherwise is caused.
- (27) Rolling any cask, flying any kite, or playing any game to the annoyance of any person in any public place.
- (28) Committing any nuisance in any street, or within view of any dwelling-house, whereby public decency may be offended.
- (29) Any common prostitute or night walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers.
- (30) Suffering to be at large any unmuzzled ferocious dog.

PART II. (1)--GENERAL POLICE PROVISIONS.

Provisions of this part to operate throughout Colony and Transkeian territories.

Repugnant Municipal Regulations repealed.

Penalty on conviction of certain offences.

Offences enumerated.

6. The provisions of this part of this Act shall extend to and be in operation throughout the Colony, including the Transkeian territories annexed by the Act No. 38 of 1877, and so much of any municipal regulation as may be repugnant to or inconsistent with the provisions of this part of this Act, or which would operate concurrently with such provisions shall be and the same are hereby repealed.

7. Any person guilty of any of the following acts or offences, shall upon conviction in respect of each act or offence, be liable to a penalty not exceeding five pounds, or in default of payment to be imprisoned with or without hard labour for a period not exceeding three months, unless such penalty be sooner paid :

- (1) Any driver of any vehicle injuring any property by negligence or driving on the wrong side of the road (2).
- (2) Any driver of any vehicle being away from his horse or cattle so as to be unable to have the full control of them.
- (3) Driving any vehicle or riding any animal, and when meeting any other vehicle or animal being ridden not keeping on the left or near side of the road or street, or when passing any other vehicle or animal going in the same direction, not going or passing or not allowing any person desirous so to do to pass when practicable on the right or off side of such other vehicle or animal being ridden.
- (4) Leaving upon any street, public road or thoroughfare any stone, timber, bricks, or other thing, calculated to damage or endanger any animal or vehicle ridden or driven thereon.
- (5) Any driver or guard of a public vehicle, for the conveyance of passengers wilfully delaying on the road, using

¹ See § 2 Act No. 21, 1894.

² Printed as amended by § 1, Act 13, 1886.

any abusive or insulting language to any passenger, or by reason of intoxication, negligence or other misconduct, endangering the safety or property of any passenger or other person, or demanding or exacting more than the proper fare due from any passenger.

- (6) Leaving upon any public road or thoroughfare any vehicle, plough or harrow without any horse or animal harnessed thereto, unless in consequence of some accident having occurred.
- (7) Having any timber, iron, or boards laid across any vehicle going along any public road so that either end projects more than two feet beyond the wheels or sides of such vehicle.
- (8) Slaughtering or skinning any beast upon any public road or thoroughfare, or leaving any dead beast on any such road or thoroughfare.
- (9) Setting or urging or permitting any dog or other animal to attack or worry any person, horse or other animal, or by ill-usage or negligence in driving any cattle causing any damage or hurt to be done by such cattle
- (10) Wilfully breaking any pane of glass in any building.
- (11) Wilfully breaking or extinguishing or injuring any lamp, or damaging any lamp-post.
- (12) Wilfully trespassing in any place, and neglecting or refusing to leave such place after being warned to do so by the owner or occupier, or any person authorised by or on behalf of the owner or occupier.
- (13) Playing or betting in any street or other open and public place, at or with any table or instrument of gaming, or pretended game of chance.

8. Any person guilty of any of the following acts or offences shall upon conviction in respect of each act or offence be liable to a penalty not exceeding twenty pounds, or in default of payment to be imprisoned with or without hard labour for a period not exceeding six months, unless such penalty be sooner paid, or either to such penalty or such imprisonment, that is to say :

- (1) Any person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person) any pick-lock, key, crow, or other implement of housebreaking. Penalty on conviction of certain other offences.
- (2) Any person found by night, having his face blackened or wearing felt or other slippers, or being dressed or otherwise disguised, with a criminal intent. Offences enumerated.
- (3) Any person found by night without lawful excuse (the proof of which excuse shall be on such person) in or upon any dwelling-house, warehouse, coach-house, stable, cellar, or out-house, or in any enclosed yard, garden, or area, or in or on board any ship or other vessel when lying or being in any port, harbour, or place in this Colony.

No. 27—1882.

- (4) Any person found by night armed with any gun, pistol, sword, bludgeon, or other offensive weapon or instrument with a criminal intent, or who being thereto required shall not assign a valid and satisfactory reason for being so armed.
- (5) Any person who shall resist, or incite, or aid, or encourage any person to resist, and any person who shall hinder or disturb any constable, policeman, or officer of any local authority in the execution of his duty.

Punishment for
drunken, riotous,
and indecent con-
duct.

9. Any person drunk in any street, road, lane, or public place, in or near any shop, store, hotel, or canteen, and any person guilty of any riotous or indecent behaviour in any such place as aforesaid, or in any police office or police station-house, shall, upon conviction, be liable to a penalty not exceeding two pounds, and in default of payment, to imprisonment with or without hard labour, and with or without spare diet for any period not exceeding fourteen days, and in case of a second or subsequent conviction, shall be liable to a penalty not exceeding five pounds, or in default of payment to imprisonment ⁽¹⁾ for any period not exceeding thirty days, unless the fine in any case be sooner paid.

For threats, abu-
sive language, &c.

10. Any person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, in any street, road, public place, or licensed public-house, shall, upon conviction be liable to a penalty not exceeding three pounds, or to imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding thirty days, unless such penalty be sooner paid; and such person may further be required to find sureties to keep the peace for such period, not exceeding three months, as the Court before which such person is tried may deem necessary.

For accepting from
seamen and others
ship's stores, &c.

11. Every person who shall, in any port of this Colony, knowingly purchase, or take in exchange from any seaman or other person, not being the owner or master of any vessel, anything belonging to such vessel lying in such port, or any part of the cargo of any such vessel, or any stores or articles belonging to the same, shall, upon conviction, be liable to a penalty not exceeding ten pounds, or to imprisonment with or without hard labour for any term not exceeding three months, but nothing herein contained shall prevent the trial of such person for any other crime of which, but for the passing of this Act, he would have been guilty.

For seamen and
others removing
ship's boats.

12. If any seaman belonging to any vessel lying in any port of this Colony, or if any other person shall take away or remove from any such vessel any boat attached or belonging to the same

¹ With or without hard labour and with or without spare diet. See § 3, Act 13, 1886.

without having obtained permission so to do from the master or some officer of the said vessel, such seaman or other person shall (although such taking or removal may not have been with intent to steal), upon conviction, be liable to a penalty not exceeding ten pounds, or to imprisonment with or without hard labour for any term not exceeding three months. (1)

No. 27—1882.

PART III.—MISCELLANEOUS.

13. The Local Authority or any Resident Magistrate or Justice of the Peace may authorise any police officer or constable from time to time to visit and inspect any butchers' shambles, slaughter-house, or yard, or any house, outbuilding, lane, alley, or other place, for the purpose of ascertaining if the same be kept cleansed; and such person so authorised shall, if it appear that any accumulation of manure, dung, offal, soil, filth, or other unwholesome or noxious matter ought to be removed, give notice to the person to whom the same belongs, or to the occupier or person in charge of the premises whereon it exists to remove the same; and if at the expiration of four days after such notice the same be not complied with, such owner, occupier or person in charge of the premises whereon it exists to remove the same; and if at the expiration of four days after such notice the same be not complied with, such owner, occupier or person in charge shall, upon conviction, be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day after conviction during which such notice shall not be complied with; or in default of payment to be imprisoned with or without hard labour for a period not exceeding three months in respect of every penalty imposed unless the penalty be sooner paid.

Nuisance in private buildings, lanes, &c., provided against.

14. Any inspector, sub-inspector, or sergeant of police, any chief constable, or any policeman, or constable who may be thereto authorised by any such officer of police, or by any chief constable, may from time to time and at all times as often as they shall have reasonable or probable ground for suspecting that any person licensed to sell wines and spirituous liquors, is selling liquors at unlawful hours or on prohibited days, may demand admittance into the premises of such dealer for the purpose of examining the same; and if such dealer shall wilfully and intentionally refuse to admit any such police officer, chief constable, constable or policeman, after being informed of his official character, or if such dealer shall make any unnecessary delay in admitting the person so demanding admittance as aforesaid, such dealer shall upon conviction be liable for such offence to a penalty not exceeding ten pounds, or in default of payment to be imprisoned with or without hard labour for any term not exceeding three months, unless such penalty be sooner paid.

Powers of police in regard to persons suspected of unlawful dealing in spirits, &c.

¹ See Act No. 21, 1894, § 2.

No. 27—1882.

Right to demand admittance into houses of persons suspected of selling liquor unlawfully.

15. Any of the persons in the last preceding section mentioned and empowered for the purpose therein stated, may demand admittance into any lodging or other house, or into any apartments in any house, not being a licensed house, in case there shall be reasonable or probable cause for suspecting either from the fact that persons are seen coming out therefrom in a state of intoxication, or from any other fact of a like nature, or from private information given, that spirituous or other liquors are being sold therein, for the purpose of examining the same; and if the occupier of any such house or apartment shall wilfully or intentionally refuse to admit any such person as aforesaid (after such person has stated his official character), or if such occupier shall make any unnecessary delay in admitting such person as aforesaid, such occupier shall be liable upon conviction for such offence to a penalty not exceeding ten pounds, or in default of payment to be imprisoned with or without hard labour for any term not exceeding three months, unless such fine be sooner paid.

Power to stop persons carrying bundles &c., between sunset and sunrise.

16. Any officer or member of any police force may stop any person who shall be found at any time between sunset and sunrise carrying or transporting any bundle or parcel or generally any goods of any description, and to interrogate such person: and if such person shall not account satisfactorily for the possession of the goods or articles so being carried or transported, or if there shall be reasonable grounds for suspecting that such goods or articles have been criminally procured, then such officer or member may convey such goods or articles and the person so carrying or transporting the same to any prison or police station, and to detain such person in custody until the next sitting of the Court of the Resident Magistrate (or Special Justice of the Peace, as the case may be), who shall enquire into the circumstances and make such order, or give such direction as to him shall seem fit and proper.

Penalties for burning stubble, grass, &c., without consent.

17. (1) If any person shall without the consent of the owner or occupier of any landed property, burn any stubble, grass, trees, or herbage thereon, or if any person shall leave any fire which he may have lighted or used in the open air before the same be thoroughly extinguished, he shall be liable upon conviction to pay a penalty not exceeding twenty pounds for every such offence, or to be imprisoned with or without hard labour for any period not exceeding six months, unless such penalty be sooner paid, or to both such penalty and such imprisonment: Provided that nothing herein contained shall be deemed to exempt such person from prosecution for any other crime or offence for which but for the provisions of this section he would have been liable, but no person shall be twice prosecuted in respect of the same act or offence.

Persons offending against this Act may be arrested without warrant.

18. Any person found committing any offence punishable under the provisions of this Act may be taken into custody without a

warrant by any constable or any member of any police force, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by the servant of such owner or by any person authorised by such owner; and such person may be detained until he can be delivered into the custody of a constable or policeman to be dealt with according to law: And any such constable or member of any police force may also stop, search, and detain any vessel, boat, cart, or carriage, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property shall be offered to be sold, pledged, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorised and, if in his power, is required to apprehend and detain, and as soon as may be, to deliver such offender into the custody of a constable or policeman, together with such property, to be dealt with according to law: Provided that no person shall be arrested or detained without warrant unless there shall exist reasonable ground for believing that except by arresting the person offending he could not be found or made answerable to justice without delay, trouble or expense.

Search and detention of vessels, carriages, &c., suspected to contain stolen goods.

19. Any person taken into custody without warrant shall be brought before the nearest Court having jurisdiction as soon as practicable after he is so taken into custody, and if it is not practicable to bring such person before such Court within twenty-four hours after such person is taken into custody, any chief constable or officer of any police force may enquire into the case and, except when the offence appears to be of a serious nature, shall discharge the prisoner upon his making a deposit of ten pounds, or on his entering into a recognizance conditioned in a like sum, with or without sureties, as such chief constable or police officer shall require to appear before some Court having jurisdiction, on a day, and at a time and place to be stated in the recognizance; and every such recognizance shall be returned to the Court at which the party was bound to appear at the next ensuing sitting of the same, and if such person fails to appear at the place and time notified by the person taking the same, any deposit so made shall be forfeited, and any such recognizance shall be recoverable in the same manner as any recognizance taken and acknowledged before a Justice of the Peace.

Persons arrested without warrant to be taken before nearest Court having jurisdiction as soon as possible.

Release on bail for minor offences.

20. The offences mentioned in Part I, and in the ninth and tenth sections of this Act, may be prosecuted before any Special Justice of the Peace within whose jurisdiction any such offence shall have been committed, provided that when so prosecuted,

Offences in Part I and sections 9 and 10 may be prosecuted before special justices.

No. 27—1882.

Special J. P.'s jurisdiction limited.

notwithstanding anything in this Act to the contrary, no fine imposed by any such Special Justice shall exceed the sum of two pounds sterling, and no term of imprisonment awarded shall exceed one month, and the said offences, and all other offences created by this Act and all fines and penalties which may be imposed under the provisions of this Act, may be prosecuted before and imposed by any Resident Magistrate of any district in which the offence was committed.

Appropriation of fines.

21. (1) All moneys arising from fines, penalties, and forfeitures under this Act shall, when recovered, and subject to the proviso hereinafter contained, be appropriated as follows

(1) Under Part I and II, if incurred in any municipality or in any village or community in which the "Villages Management Act, 1881," is in operation, such moneys shall be paid to the Local Authority.

(2) Except as aforesaid into the Public Treasury.

Provided that it shall be competent for the Court before which any person shall be convicted to award an amount not exceeding one-half of the amount of any such money recovered to any informer or person prosecuting.

Private prosecutions allowed.

22. Any person shall be deemed to have capacity to prosecute as a private prosecutor any person charged with any offence under this Act.

How offences to be set forth.

23. In any prosecution for any offence under the provisions of this Act, it shall be sufficient to set forth the offence charged in the words of this Act.

Short title.

24. This Act may be cited as "The Police Offences Act, 1882."

SCHEDULE.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ord. No. 2. 1840.	Ordinance for improving the Executive Police of Cape Town and the district thereof, for defining the powers and duties of the said police in certain cases, and for promoting the peace and good order of the said town.	Sections 13, 15, 16, 18, 19, 21, 22, 23, and 29.
Ord. No. 25, 1847.	Ordinance for improving the Police of the Colony.	Sections 13, 15, 16, 18, 19, 20.

¹ See § 27 Act 3, 1883.

Number and Year.	Title.	Extent of Repeal.
Ord. No. 9, 1851.	Ordinance for the better regulation of the sale of Wines and Spirituous and Fermented Liquors.	Section 35.
Act No. 2, 1855.	An Act for abating Public Nuisances and other Mischiefs of a Public Nature in certain Towns and Villages not being Municipalities.	So much as has not already been repealed.
Act No. 8, 1867.	An Act to amend the Ordinance No. 25 of 1847, intituled "An Ordinance for improving the Police of the Colony."	The whole.
Act No. 8, 1875.	An Act to amend the law relating to the sale of Wines and Spirituous and Fermented Liquors.	Section 8.
Act No. 10, 1876.	An Act to improve the Administration of Justice in places distant from a seat of magistracy.	Section 12, and so much as is repugnant to this Act.

No. 28—1882.]

[June 29, 1882

ACT

To Amend the "Villages Management Act, 1881."⁽¹⁾

WHEREAS it is expedient to amend the "Villages Management Act, (2) 1881": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of the "Villages Management Act, 1881," as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Repeal of repugnant laws.

2. At any such meeting as is mentioned in the fifth section of the said Act any Justice of the Peace may preside when the Resident Magistrate is not present thereat; and the Justice of the Peace so presiding shall have and may exercise all the powers which the Resident Magistrate would have and exercise if present.

Justice of Peace may preside in absence of Magistrate.

¹ See Acts 29, 1881; 7, 1884; Extended by Proclamation No. 23 of 1892 to Tembuland and to districts of Kentani and Willowvale in Transkei, and by Proclamation No. 456 of 1894 to Griqualand East.

² No. 29.

No. 30—1882.

Board of Management may defray half the cost of necessary police.

3. It shall be lawful for the board of management of any town, village, or community to which the provisions of the said Act have been applied, from and out of any funds at the disposal of such board, to defray the cost to the extent of one-half of such number of policemen or constables as may be necessary to maintain order, and as may from time to time be agreed upon between such board and the Resident Magistrate of the district on behalf of the Government.

On payment of such moiety into Treasury, Resident Magistrate to appoint policemen.

4. When and as soon as the board of management shall have paid into the Colonial Treasury one-half of the estimated cost of such policemen or constables for one year, the Resident Magistrate shall appoint the policemen or constables agreed to by the board and approved of by the Governor, and such policemen or constables shall possess all the powers and perform all the duties appertaining to policemen or constables.

Certain provisions Act 15 of 1857 to apply.

5. The provisions of the eighth, ninth, tenth and eleventh sections of the Act No. 15 of 1857, intituled "An Act for enabling Municipalities to obtain additional Police by contributing towards the expense thereof," shall, *mutatis mutandis*, extend and apply to any board of management obtaining police under the provisions of this Act as if such board were a municipality.

Short title.

6. This Act may be cited for all purposes as "The Villages Management Amendment Act, 1882."

No. 29—1882.]

[June 29, 1882.]

Act to Amend the "House Duty Act, 1878."
[Repealed by Act 4, 1889.]

No. 30—1882.]

[June 29, 1882.]

ACT

To Authorise the Raising of Moneys for certain Public Purposes.

Preamble.

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

Power to raise £309,365.

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

Short title.

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

SCHEDULE.

No. 30 1882.

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

No. 31.—1882.] [June 29, 1882.

Act for authorising certain Expenditure for the Service of the Year ended the Thirtieth day of June, 1878, not hitherto provided for by Parliament.

[Spent.]

No. 32.—1882.] [June 29, 1882.

Act to Provide for the Imprisonment in this Colony of Criminals sentenced in certain Territories adjacent, but not annexed to this Colony.

[Lapsed. See Act 3, 1885.]

No. 33.—1882.] [June 29, 1882.

To Amend the Act No. 2 of 1878, known as the "Excise Duty Act, 1878."

[Repealed by Act 18, 1884.]

No. 35—1882.

No. 34—1882.]

[June 29, 1882.]

Act for applying a further Sum not exceeding Three Hundred and Seventy-three Thousand Eight Hundred and Seventy-one Pounds for the Service of the year ending 30th June, 1882.

[Spent.]

No. 35—1882.]

[June 29, 1882.]

ACT

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

Preamble.

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

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

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

Interest and capital
charged on general
revenue.

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

Debentures pay-
able at par.

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

Account of money
received and expend-
ed to be kept.

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

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

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

Short title.

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

No. 36—1882.]

[June 29, 1882.

No. 37—1882.

ACT

To Remove doubts as to the legality of the Payment of an Annual Allowance or Salary to the Chief Justice of the Colony of the Cape of Good Hope as President of the Legislative Council.

WHEREAS doubts may arise as to the legality of the payment of an allowance or salary to the Chief Justice as President of the Legislative Council, and it is expedient that such doubts should be removed: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Nothing in the Charter of Justice contained shall be construed so as to prevent the payment to the Chief Justice of the Colony of the Cape of Good Hope, so long as the said Chief Justice shall continue to be the President of the said Council, of such annual allowance or salary for or in respect of his duties as President of the Legislative Council as Parliament may from time to time direct.

Chief Justice empowered to receive salary as President of the Legislative Council.

No. 37—1882.] (1)

[June 29, 1882.

ACT

To Consolidate and Amend the Agricultural Lands Acts.

WHEREAS it is necessary to consolidate, and to amend the several Acts providing for the allotment of land for agricultural purposes: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The several laws mentioned in the schedule hereto, and so much of any law in force in the Colony as is inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed, save in so far as the provisions of the said Acts, or any of them, relate to lands disposed of prior to the taking effect of this Act or to the disposal of lands for which applications have been made, or proceedings commenced, prior to, or are pending at, the time of the taking effect of this Act; all which lands shall be dealt with as if this Act had not been passed.

Repeal of repugnant laws.

2. It shall be lawful for the Governor to grant, to approved applicants, on perpetual quitrent and on the terms and conditions

What grants of Crown Land on quitrent Governor may make.

¹ See Acts 40, 1885; 15, 1887; 40, 1895. Extended by Proclamation No. 94 of 1885 to Griqualand East, and by Proclamation No. 179 of 1886 to Transkei.

- No. 37—1882. in this Act set forth, portions of Crown land, for which such applicants may have applied, not being forest land, and not exceeding two hundred and fifty morgen, and not less than four () morgen in extent.
- How application to be made for grants. 3. Every such application for land shall be in writing, and shall clearly and accurately describe the locality, area, and boundaries thereof as set forth in a plan of the said land framed by a sworn land surveyor, previously appointed by the Surveyor-General: Provided that, with regard to any lands that may have been surveyed before the date of any such application, it shall be sufficient for the applicant in his application to describe the land in such manner that the lot applied for may be recognised.
- To be addressed to Civil Commissioner of District. 4. Every such application shall be made to the Civil Commissioner of the district in which such land is situate, who shall note upon such application the day and hour at which such application is received.
- Divisional Land Boards to be appointed. 5. In every division there shall be a land board ⁽²⁾ for the purposes of this Act, consisting of the Civil Commissioner of such division, and two persons to be appointed from time to time by the Governor, which appointment shall be notified in the *Government Gazette*, and such board shall enquire into the circumstances of land applied for under this Act, and shall report to the Commissioner whether it is desirable that the said land shall be disposed of and the price per morgen which shall be a fair value of the land.
- Deposit to be made by applicant. 6. Every applicant at the time of making application shall deposit with the Civil Commissioner a sum equal to one shilling per morgen of the land so applied for, and in the event of his neglecting or refusing to take up the licence for such land the said sum shall be absolutely forfeited to the Government.
- Who competent to receive licence to occupy land. 7. Any person of full age may receive a licence to occupy land by virtue of this Act, but no person who is the owner of land in extent two hundred and fifty morgen or upwards, and no person who at the time of making his application has made any arrangement or agreement to permit any other person to acquire by purchase or otherwise the allotment in respect of which his application is made, or any part thereof, or the applicant's interest therein, shall receive such licence, and no person shall receive more than one licence under the provisions of this Act.
- Declaration to be made by applicant. 8. Every applicant for land under this Act shall make and append or annex to his application a declaration to the following effect:—I, A.B., of (insert place of abode and occupation), do solemnly and sincerely declare that I am of the age of twenty-one years and upwards; that I make this present application for my own exclusive use and benefit, and not directly or indirectly for

¹ Printed as amended by Act 40, 1885, § 1.² See § 2 Act No. 40, 1885.

the use or benefit of any other person whomsoever, that I am not the holder of any land in extent two hundred and fifty morgen or upwards, that I have not made any arrangement or agreement to enable or permit any other person to acquire, by purchase or otherwise, the allotment in respect of which this my application is made, or any part thereof, and that I am not already the licensee, or holder on quitrent of any land under the provisions of the "Agricultural Lands Act, 1882."

No. 37—1882.

9. In the event of any of the statements contained in the declaration made by the applicant being false in any material respect, the applicant shall forfeit all right to the land applied for, as well as all moneys paid in respect thereof, and all improvements thereon.

False declaration to entail forfeiture of land.

10. The Civil Commissioner shall, with all possible dispatch, forward the said application, together with the applicant's declaration, to the Commissioner, and shall, at the same time, transmit the report of the land board on the said application.

Civil Commissioner to forward application and report of Board to the Commissioner.

11. The Commissioner shall, if he see fit, issue to the said applicant a licence to hold the land so applied for upon the following terms and conditions, which shall be inserted in every licence,

Terms and conditions on which Commissioner may issue licence to hold lands.

- (a) The licence shall be for five years reckoned from the next first July or first January following the date of licence and shall include the period between the date of the licence and such day.
- (b) The yearly fee in respect of such licence shall be equal to one-twentieth of the price fixed for the land, and shall be paid in advance.
- (c) The deposit paid at the time of application, together with the excess over the said value of one shilling per morgen, if any, shall be in discharge of the licence fee due on the next first day of January or July, as the case may be.
- (d) The person to whom such licence is issued shall within six months after the issue of his licence, personally reside on his land, and shall continue so to reside for a period of three years from the date of the issue of the licence.
- (e) The licensee shall within two years from the date of his licence bring under cultivation one-twentieth part of the land occupied by him under such licence, or shall enclose the same with a substantial fence.

12. If any licensee shall desire to assign his interest in the land, he may apply to the Commissioner stating his intention, and naming the person to whom he proposes to transfer the licence; whereupon the said Commissioner shall, at the expense of the said licensee, give public notice in the *Government Gazette* and in one or more newspapers published, or circulating, in the district in which the land is situated of the proposed transfer of interest by the licensee, and no transfer shall be effected until after the expiration of thirty days from the date of the last publication of such

In case licensee desires to assign or transfer his licence.

No. 37—1882.

notice, after which time, if the Commissioner see fit to accept the person proposed as transferee, and such person shall have made the declaration required in the eighth section, the said Commissioner shall, on payment by means of stamps of a transfer fee of one pound sterling, endorse the said transfer on the licence on the production of the same; or, if the loss or destruction thereof be proved to his satisfaction, the Commissioner may dispense with its production, and may issue instead thereof to the person accepted, a new licence to hold the said land on the same terms and from the same date as the original licence, but with the name of such last-mentioned person substituted, and thereupon such person shall be deemed to have been from the date of the original licence the licensee of such land.

In case of his death
or insolvency.

13. In the event of the death or insolvency of any licensee, his executor or trustee of his estate, as the case may be, shall have the like powers as are given to the licensee to assign the interest in the land of the licensee, provided that such power shall be exercised within twelve months from the day of the death or insolvency of the licensee, as the case may be. If such executor or trustee shall fail within such time to exercise the power to assign hereby granted, then, and in every such case, the Commissioner shall forthwith direct the land with all improvements thereon, to be sold as hereinafter provided in cases of sales or forfeiture.

Interest on land
not assignable except
under provisions of
this Act.

14. The interest in land held on licence shall not during the currency of such licence be assignable, except under the provisions of this Act, and shall not be capable of being hypothecated, attached, or taken in execution.

Forfeiture for non-
compliance with
conditions of licence.

15. (1) If any person holding land under licence shall fail to perform any of the conditions under which such licence is granted, such land may be declared forfeited by the Commissioner unless the licensee shall within three months from the date of the notice of forfeiture comply with the said conditions.

Improvements on
forfeited land to be
valued and land sold
under Act 14 of 1878.

16. (2) When any lot of land shall be forfeited or shall become vacant from death or other cause, the Commissioner shall cause the improvements thereon to be valued, and the land shall be sold by auction under the provisions of Act 14 of 1878, upon condition that the purchaser shall pay the sum at which such improvements shall have been valued at such time as may be fixed by the conditions of sale.

Net amount of
valuation to be paid
to original licensee.

17. (2) The amount at which the said improvements shall have been valued shall, when paid by the purchaser, and after deducting the expenses incident to the forfeiture and sale of the land, be paid to the original licensee or to his legal representative.

At expiration of
licence quitrent
grant may be made.

18. (2) At the expiration of any licence, and on the fulfilment of the terms and conditions of such licence, the licensee (3) shall

¹ See § 23 Act 15, 1887.

² See Act 15, 1887 § 1.

³ Printed as amended by § 24 Act 15, 1887.

obtain a title deed on quitrent tenure at an annual quitrent equal to the yearly licence fee and subject to all the conditions stated in the fifth section of this Act.

19. As often as any land shall be put up for auction under the provisions of Act 14 of 1878 and the land so put up shall fail to obtain a purchaser at the upset rent placed thereon, it shall be lawful for any person within one year of the date of such sale to make application in writing for such land, and if the applicant shall fulfil all the conditions required, the Commissioner may allow such person to obtain a quitrent lease of the said land in the same manner as if he had become a purchaser at public auction under the aforesaid Act, and at a price not being less than the said upset rent.

If land put up under Act 14 of 1878, be not sold, application may be made within a year for a quitrent lease.

20. Any person who shall directly or indirectly accept or agree to accept money or any valuable consideration for abstaining from bidding or competing as a purchaser or applicant, shall upon conviction be liable to a penalty not exceeding fifty pounds, or to be imprisoned for any period not exceeding six months.

Penalty for accepting money not to bid at sale of land.

21. The Commissioner or any person appointed by him in writing, may, at any time, enter upon any land held under any licence granted under this Act, to inspect the land and the improvements, or for any other purpose, and any person obstructing the Commissioner or such person in the performance of his duty shall, upon conviction, be liable to a fine of not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months.

Commissioner may order inspection of land under licence.

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

What lands may not be treated as waste Crown lands.

23. All lands disposed of under this Act shall be subject to such special servitudes as may be set forth at the time of the issue of

Servitudes an general conditions.

No. 38—1882.

the licence to occupy, and to the following general conditions, viz. :

(a) Government shall always have the right to make new roads, railways and railway stations, aqueducts, dams and drains, or to conduct telegraphs over the land for the benefit of the public, on payment to the proprietor of such sum of money in compensation for actual damage, as three appraisers, one to be appointed by each side, and a third to be chosen by the two others, before proceeding to act, or any two of them, shall award.

(b) The rights of the proprietor shall not extend to any deposits of gold, silver, or precious stones, which may at any time be or be discovered on the land hereby granted.

24. In the interpretation of this Act the term "licensee" shall mean any person who may receive a licence to occupy land under the provisions of this Act, and the word "Commissioner" shall mean the Commissioner of Crown Lands and Public Works.

25. This Act may be cited for all purposes as the "Agricultural Lands Act, 1882."

Interpretation clause.

Short title.

SCHEDULE.

LAWS REPEALED.

Number and year.	Title.	Extent of Repeal.
Act No. 4 of 1870.	"Agricultural Lands Act, 1870."	The whole.
Act No. 10 of 1877.	"Agricultural Immigrants Land Act, 1877."	The whole.
Act No. 33 of 1879.	"Agricultural Immigrants Land Extension Act, 1879."	The whole.

No. 38—1882.]

[June 29, 1882.]

ACT

To Exempt from Charges for Customs Duty certain Material Imported through this Colony for the Orange Free State Railways.

Preamble.

WHEREAS the House of Assembly, on the thirteenth day of June, 1882, adopted a resolution in the terms following: that is to say "This House concurs in the proposal that all material imported through this Colony for the Orange Free State Railways shall be exempt from charges for Custom duty; the term material to include rails, sleepers, fastenings, iron girders and bridge work, locomotives, ballast trucks, goods waggons and carriages, and that a Bill be

introduced for the purpose of carrying out this resolution": And whereas it is expedient to give effect to the said resolution: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 40—1882.

1. In case the Government of the Orange Free State shall undertake the construction by contract or otherwise of any railway, which shall be connected with any railway now being or hereafter to be constructed in this Colony, it shall be lawful for the Governor to exempt from the payment of Customs duty, or to refund such duty after payment as to him may seem fit, upon all such material imported through this Colony for the said Railway as is mentioned and described in the preamble to this Act.

Government may exempt from Customs Duty railway material for Orange Free State.

2. This Act may be cited as "The Customs Duty Exemption Act, 1882."

Short title.

No. 39—1882.]

[June 29, 1882.

Act for Applying a Sum not exceeding One Hundred and Forty-three Thousand Two Hundred and Twenty-three Pounds Four Shillings and Eightpence, for the purpose of meeting and covering certain Unauthorised Expenditure for the Service of the Year 1875, and certain Deficits on Votes or Appropriations for the Year ended 30th June, 1881.

[Spent.]

No. 40—1882.]

[June 29, 1882.

ACT

For the Better Administration of Justice.

WHEREAS it is desirable to increase the number of judges in the High Court of Griqualand, and to provide in other respects for the better administration of justice: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the schedule hereto, to the extent to which the same are therein expressed to be repealed, and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Laws repealed.

THE SUPREME COURT.

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

Number of Judges.

3. The number of judges of the Supreme Court necessary to form a quorum thereof shall continue to be two as in the thirty-third

Quorum of Supreme Court.

No. 40—1882.

section of the Charter of Justice is provided, and in case of a difference of opinion between such two judges, the decision of the said Court shall be suspended until three or more judges shall be present, but not longer; and the decision of such two judges, when unanimous, or of the majority of such three or more judges in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole Court.

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

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

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

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

THE HIGH COURT OF GRIQUALAND.

Constitution of High Court of Griqualand.

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

Quorum.

Term of office of Judge President.

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

In case of difference of opinion between two judges.

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

Office of Sheriff of Griqualand West abolished.

Deputy Sheriffs provided for.

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

Griqualand West at the time of the taking effect of this Act shall be executed and returned as if this Act had not been passed.

No. 40—1882.

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

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

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

Jurisdiction of High Court in appeals.

12. The summons or process of the High Court of Griqualand for procuring the attendance of any person before the said Court to give evidence in any criminal case shall be delivered to the resident

Service of summons, &c.

No. 40--1882.

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

THE COURT OF APPEAL.

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

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

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

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

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

JURISDICTION OF THE COURT OF THE EASTERN DISTRICTS.

Extension of the jurisdiction of the Eastern Districts Court.

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

Of the Solicitor-General.

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

¹ See also § 5, Act 17, 1886.

JURISDICTION OF THE COURTS OF RESIDENT MAGISTRATE IN THE
TRANSKEI AND GRIQUALAND EAST.

No. 40—1882.

19. (1) The Resident Magistrates of the territories known as the Transkei and Griqualand East shall, until the Governor shall by any proclamation to be issued under the provisions of the second section of the "Transkeian Annexation Act, 1877," otherwise direct, respectively have jurisdiction in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death; and may sentence any person convicted to any punishment allowed by law: anything in the forty-second section of the Act No. 20, 1856, to the contrary notwithstanding.

Jurisdiction of Magistrates' Courts of Transkei and Griqualand East in criminal cases.

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

Review of such Magistrates' decisions.

21. [Repealed by § 1 Act 26, 1894.]

JURISDICTION OF SPECIAL JUSTICES OF THE PEACE.

22. Every Special Justice of the Peace appointed under the provisions of "The better Administration of Justice in Criminal Cases Act, 1876," shall in addition to the jurisdiction conferred by the second section of the said Act, have and enjoy and be at liberty to exercise within the local limits fixed and determined by any such proclamation as is in the first section of the said Act mentioned, the same jurisdiction, (3) power and authority as if he were Resident Magistrate of the district in which the offence then under investigation was committed, over and in respect of any such offence or instance of misconduct as is mentioned in the second and seventh sections respectively of the "Masters and Servants Law Amendment Act, 1873," as such Act is amended by the "Masters and Servants Act, 1875," subject to the provisions of the said Acts respectively.

Extension of jurisdiction of Special Justices of the Peace.

¹ But see § 250, Act 24, 1886.

² But see §§ 259 and 268 *ibid*.

³ Jurisdiction extended to all offences against Masters and Servants Acts by Act No. 30, 1889.

No. 40—1882.

Their powers of fine and imprisonment.

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

Time of taking effect of Act.

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

Short title.

SCHEDULE.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
4 May, 1832.	The Royal Letters Patent of His late Majesty King William the Fourth, commonly called the "Charter of Justice."	So much as is repugnant to or inconsistent with the provisions of this Act.
Act 20, 1856.	An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates.	
27 Oct., 1871.	Proclamation of His Excellency Sir Henry Barkly, No. 70 of 1871, establishing the High Court of Griqualand.	
Act No. 39, 1877.	The "Griqualand West Annexation Act, 1877."	The third section.
Act 38, 1877.	The "Transkeian Annexation Act, 1887."	
15 Sep., 1879.	Proclamation of His Excellency the Right Honourable Sir Henry Bartle Edward Frere, under the provisions of the Act No. 38, 1877, annexing the Transkei, and promulgating regulations for the government thereof.	The twentieth section of this Proclamation, and so much thereof as may be repugnant to or inconsistent with this Act.

¹ Declared in force September 8th, 1882.

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

No. 41—1882.]

[June 29, 1882.]

ACT

To extend the Advantages of the Electric Telegraph.

WHEREAS it is expedient to extend the advantages of the Electric Telegraph: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Any summons, writ, warrant, rule, order, notice, or other process document or communication which by any law, rule of Court, agreement of parties, or by any regulation made under the authority of this Act, is required or directed to be served upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served upon such person, or left at his house or place of abode or business shall be of the same force and effect as if the original had been shown to, or a copy thereof served upon, such person, or left as aforesaid, as the case may be.

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

No. 41—1892.

Telegram stating issue of warrant or writ of arrest, authority for execution of the same.

2. ⁽¹⁾ A telegram from any diplomatic, judicial, or police officer, or the Sheriff or any Deputy Sheriff, stating that a warrant or writ has been issued for the apprehension or arrest of any person accused of any crime or offence, or to appear in or answer to any civil suit, action, or proceeding, shall be a sufficient authority to any officer by law authorised to execute any such warrant or writ for the arrest and detention of such person in this Colony until a sufficient time, not exceeding thirty days, has elapsed to allow of the transmission of the warrant or writ to the place where such person has been arrested or detained, unless the discharge of such person is previously ordered by a Judge of the Supreme Court: Provided that any such Judge may upon cause shown order the further detention of any such person for a period to be stated in such order, but not exceeding sixty days from the date of the arrest of such person.

Members of Parliament may resign by telegraph.

3. A member of the Legislative Council or House of Assembly respectively, desiring to resign his seat as such member, may transmit his resignation by telegraph, and a telegraphic message from such member received, in the case of a member of the Legislative Council, by the President thereof, and in the case of a member of the House of Assembly by the Speaker, or in the case provided for by the ninth section of the "Constitution Ordinance Amendment Act, ⁽²⁾ 1874," by the Colonial Secretary, shall be deemed to be a writing under the hand of the member so resigning for the purposes, respectively, of the sixty-ninth and seventieth sections of the "Constitution Ordinance" and the said ninth section of the "Constitution Ordinance Amendment Act, 1874."

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

4. The Judges of the Supreme Court acting in pursuance of any Act for the time being regulating the making of general rules of Court may from time to time make and alter rules for more effectually carrying out the object of this Act in regard to the use of the telegraph for the service of any notice, process, or proceeding in any of the Courts of this Colony, or the execution of the process of any such Court.

Governor may make rules for service of documents other than legal process.

5. The Governor may from time to time make and alter rules and regulations for the service of notices or documents other than such as relate to legal process and procedure, by the delivery of telegraphic copies of such notices or documents, and for prescribing the manner in which the service of such copies shall be made, and for certifying by telegraphic officers that such service has been effected, and may by such regulations declare that any notice, document, or instrument in such regulations described, which is by any law required or directed to be in writing, and delivered or transmitted by or to any officer or person in the public service, may be transmitted by telegraph: and all such rules and regulations shall be of the same force as if in this Act set forth, and

¹ See § 3 Act 34, 1888.

² No. 18.

shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be then sitting, and if Parliament be not then sitting during the next session thereof.

No. 42—1882.

6. Any person charged with the delivery of any telegraphic message who shall wilfully deliver such message to any person other than the person to whom the same shall be addressed, or other than the agent or representative of such last mentioned person, shall upon conviction be liable to a penalty not exceeding twenty pounds, or to imprisonment with or without hard labour for any period not exceeding six months.

Penalty for delivering messages to others than persons addressed.

7. Any person who shall without lawful authority or excuse (the proof whereof shall be upon the person accused), sign the name of any other person to any telegraphic message with intent to procure such message to be sent as a message from such other person, shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding six months.

Penalty for affixing person's name to telegram without authority.

8. This Act may be cited as "The Telegraphic Messages Act, 1882."

Short title.

No. 42—1882.]

[June 29, 1882.]

ACT

For enabling the surviving Trustees of the Church Committee of Hanover to transfer to the Commissioners of the Municipality of Hanover certain Immovable Property, and for other purposes connected with such transfer.

WHEREAS the farm "Petrus Vlei," situated in the division of Colesberg, was on the 13th day of October, 1856, transferred by G. W. Gous to the following persons, that is to say: Christoffel Johannes Vermeulen, Walter Barber, Johannes Wilhelmus Swart, Philippus Johannes Andreas Watermeyer, and Adriaan Johannes Botha, in their capacity as "The Church Committee of Hanover," for the purpose, as therein set forth, of establishing the village of Hanover, and making the same a separate parish of the Dutch Reformed Church: and whereas the said village has been established and the said parish formed as contemplated by the said transfer, but all the several persons hereinbefore named, to whom such transfer was made, are now dead with the exception of the said Philippus Johannes Andreas Watermeyer and the said Adriaan Johannes Botha: and whereas it has been deemed advisable by the Church Committee of Hanover that the rest, residue and remainder of the said property so vested in the said Church Committee or the surviving members thereof, still unsold, should be transferred to and vested in the commissioners of the municipality of Hanover under the same terms and subject to the same conditions as those under which the said farm was transferred to

Preamble.

No. 42--1882.

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

Power to surviving Members of Church Committee to transfer remainder of property to Hanover Municipality.

1. It shall and may be lawful for the said Philippus Johannes Andreas Watermeyer, and Adriaan Johannes Botha, or the survivor of them as such surviving members of the Church Committee of Hanover, by any power of attorney or other instrument required for that purpose to make and pass transfer before the Registrar of Deeds to the commissioners for the time being of the municipality of Hanover, of all and singular the erven and lands included in the remainder of the said farm "Petrus Vlei," so held by them under the aforesaid deed of transfer of the 13th October, 1856.

No transfer duty payable.

2. No such transfer as is required to be passed by the preceding section shall be subject to the payment of transfer duty.

Lands to be held under conditions in schedule.

3. (1) The property so transferred to the said commissioners of the municipality of Hanover for the time being, shall be held by them, and administered, subject to all and singular the conditions set forth in the schedule to this Act annexed.

Municipality may transfer under conditions.

4. (1) It shall and may be lawful for the said commissioners of the municipality of Hanover for the time being, from time to time to make and pass transfer to the purchaser or purchasers of erven, under and subject to the conditions in the said schedule referred to.

Short title.

5. This Act may be cited as the "Hanover Transfer Act, 1882."

SCHEDULE. (1)

The following are the conditions referred to in the 3rd section of this Act :

1. All erven sold and transferred by the municipal commissioners shall be subject to the same servitudes as attach to those heretofore sold by the members of the church committee.

2. The sale of the erven or building plots shall be confined to the portions surveyed, beacons off, and marked off in the diagram annexed to the deed of transfer to the church committee, the remaining part of the farm shall be common as grazing ground to proprietors of ground within the plot so marked off: Provided that if at any time the proprietors aforesaid shall consent by a majority at any meeting duly convened for that purpose by the municipal commissioners, to empower the board of commissioners to dispose of any of the said ground so reserved for grazing purposes, the board of commissioners shall have the right to do so.

3. Out of the proceeds of the sale of such erven or ground the said commissioners of the municipality shall be obliged to pay over to the consistory for the time being of the Dutch Reformed Church of the parish of Hanover, for the use of the congregation of that parish, seventy-five per cent. of such proceeds, and the remaining twenty-five per cent. shall be paid into the municipal funds for general municipal

¹ See Act No. 23, 1894.

purposes: provided that the said consistory of the Dutch Reformed Church shall at all times have the right of appointing one of their members to consult and agree with the board of commissioners of the municipality in the fixing of a reserved price at which such erven or plots of ground are to be sold.

No. 45—1882.

4. In laying out new erven within the defined limits, the commissioners of the municipality may create such new squares and thoroughfares as they may think fit, but shall at no time interfere or do away with any street or square already existing without the unanimous consent, at a public meeting duly convened for that purpose, of all proprietors of ground in the village who shall be present at such meeting.

5. Proprietors unable or unwilling to attend any public meeting hereinbefore mentioned may be represented by proxy or agent at such meeting, and every such proxy or appointment of agent shall be deposited with the secretary of the municipal commissioners at the time of such meeting, and every such proprietor shall be bound by the vote of such agent or proxy.

No. 43—1882.]

[June 30, 1882.]

Act to apply a Sum of Money for the Service of the year ending the 30th day of June, 1883.

[Spent.]

No. 44—1882.]

[June 30, 1882.]

Act to Consolidate and Amend the Acts No. 1 of 1861 and No. 1 of 1867.

[Repealed by Act 26, 1893.]

No. 45—1882.]

[June 30, 1882.]

ACT

To Consolidate and Amend the Law relating to Municipalities. ⁽¹⁾

WHEREAS it is expedient to consolidate and amend the laws relating to municipalities, and to provide more effectually for the government of Municipalities: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

PRELIMINARY.

1. This Act shall apply to every municipality hereafter constituted, and to every existing municipality which shall in the manner by this Act provided be brought under the operation of this Act.

Application of the Act.

¹ Amended by Act No. 22, 1893. See Act No. 27, 1892. Extended by Proclamation No. 56 of 1892 to all the Native Territories.

No. 45—1882.

Repeal of Laws in
Schedule.

Governor may re-
peal special Acts in-
corporating Muni-
cipalities coming un-
der provisions of this
Act.

Existing Municipal
Laws to continue
until Municipality
comes under this
Act.

Provisions to apply
to Municipalities
coming under this
Act.

2. From and after the commencement of this Act the several laws mentioned in the first schedule shall be and the same are hereby repealed, except as to property vested, acts and things done or commenced, rights, privileges, and protection acquired, liabilities incurred, offences committed, and proceedings taken, and except as in the fourth section is excepted.

3. In case any municipality incorporated by any Ordinance or Act of the Legislature shall, in pursuance of the provisions of this Act, come under the operation of this Act, it shall be lawful for the Governor, by proclamation, to repeal any such Ordinance or Act incorporating such municipality, but notwithstanding such repeal, the provisions of the several sub-sections numbered (1) to (6) respectively of the next succeeding section shall apply.

4. Notwithstanding the repeal of the laws hereby repealed, the said several laws shall be and continue in force and applicable to every municipality already established as if this Act had not been passed until such municipality shall come under the operation of this Act, and as often as any existing municipality shall come under the operation of this Act, the following provisions shall apply:

- (1) All creditors of such municipality shall have the same rights and remedies as if this Act had not been passed.
- (2) All municipal regulations then in force in such municipality shall (unless repugnant to the provisions of this Act) continue in force, until altered or amended under this Act.
- (3) The councillors or commissioners, as the case may be, then in office, shall continue in office until the election and first meeting of councillors under the provisions of this Act.
- (4) All rates due or payable to or recoverable by such municipality shall be vested in and recoverable by the municipality newly constituted under this Act, and the valuation or assessment roll in use at such time, shall continue to be used until a new one shall be completed under the provisions of this Act.
- (5) All works and undertakings authorised to be executed, all rights, liabilities, and engagements existing, and all actions, suits, and proceedings pending by or against or in respect of such municipality, shall be vested in, attached to, and be enforced, carried on and prosecuted by or against the municipality newly constituted; and no such action, suit, or proceeding shall abate or be discontinued or prejudicially affected by such constitution.
- (6) All property, movable and immovable, and all moneys of or vested in any such municipality, shall be vested in and belong to the municipality newly constituted.

THE CONSTITUTION OF MUNICIPALITIES.

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5. The inhabitants of every city, town, or village for the time being subject to the provisions of this Act shall, under such name or designation as the Governor may by proclamation declare, be a body corporate with perpetual succession and a common seal, with power to alter and change the same from time to time, and shall by such name be capable in law of suing and being sued, of purchasing, holding, and alienating land, and of doing and performing such other acts and things as bodies corporate may by law do and perform subject to the provisions of this Act.

Incorporation of Municipalities.

6. Every municipality subject to the provisions of this Act shall be governed by a council composed of a Mayor or chairman, and councillors; and all acts of the council shall be deemed to be acts of the municipality.

Mayor or Chairman, and Councillors to be the governing body.

7. Whenever the number of councillors for any municipality is determined under the provisions of this Act, such number shall be not less than six nor more than twenty-four, and in case such municipality is divided into wards, the number produced by the return of three councillors for each ward.

Not less than 6 nor more than 24 Councillors, 3 to each Ward.

8. Subject to the provisions of this Act, the Governor may from time to time exercise all or any of the powers following :

Power of Governor in regard to proclaiming Municipalities, &c.

- (1) Declare any city, town, or village to be a municipality, constituted under the provisions of this Act.
- (2) Assign a name to such municipality.
- (3) Describe the boundaries thereof.
- (4) Unite any two or more villages, which form one continuous area, so as to form one municipality.
- (5) Subdivide or re-subdivide any municipality into any number of wards not exceeding eight.
- (6) Alter the boundaries of or abolish the subdivisions existing in any municipality.
- (7) Determine and alter, within the limits of this Act, the number of councillors assigned to any municipality.
- (8) Alter and adjust the boundaries of adjoining municipalities and determine any questions arising out of such alteration and adjustment.
- (9) Sever any portion of a municipality from the municipality of which it forms a part, and constitute the same a separate municipality, or annex the same to any other municipality of which the portion severed formed one continuous area; and from time to time make any apportionment of property, rights and liabilities, and give any directions, as to any matters and things, that may be necessary to do justice between the municipalities concerned.

9. The Governor may exercise any of the powers by this Act conferred after the presentation of a petition, in pursuance of the

How such powers to be exercised after petition presented.

No. 45—1882.

provisions of this Act for the exercise thereof, and after the publication of the substance and prayer of such petition, in the *Government Gazette*, and in some newspaper (if any) circulating in the neighbourhood referred to thereby, at least once a week during three weeks; and it shall be in the discretion of the Governor to refuse the prayer of any such petition, or to grant the whole or any part thereof: Provided always that the Governor shall not exercise, in respect to any existing municipality, constituted by special Ordinances or by any Act of Parliament, any of the said powers (anything in the next succeeding section to the contrary notwithstanding) if there shall be presented to him within three weeks, after the said publication in the *Government Gazette*, another petition signed by not less than one-half of the ratepayers, registered within such municipality, praying him not to exercise such powers.

How petitions to be signed.

10. Every petition for the constitution of a municipality shall—

- (1) In the case of an existing municipality, be signed by not less than three-fourths of the councillors or commissioners (as the case may be) of such municipality.
- (2) In case no municipality exists, be signed by not less than twenty-five persons, being registered as voters for the election of members of Parliament resident within the proposed municipality.

Particulars to be stated in petitions.

11. Every petition shall state precisely what exercise of the powers by this Act conferred on the Governor is desired by the petitioners, and shall pray for such specific exercise thereof, and may also pray for any partial exercise of such powers. And every petition for the constitution of a municipality shall state the proposed boundaries thereof.

Petitions may be opposed.

12. It shall be competent for any persons interested to present to the Governor any counter-petition, setting forth the grounds of opposition to any petition of which notice shall have been given as aforesaid.

Notice to be given of Governor's intention to exercise powers of his own accord.

13. It shall be lawful for the Governor, from time to time, to exercise any of the powers conferred by this Act without the presentation of any petition, provided that before the exercise of any such power, notice be given once a week during three consecutive weeks, in the *Government Gazette*, and in a newspaper (if any) circulating in the neighbourhood, stating the intention of the Governor to exercise such powers. If within one month after the date of the last publication of such notice no sufficient cause shall be shown why the power proposed to be exercised shall not be exercised, it shall be lawful for the Governor to exercise such power: Provided, however, that the powers conferred by this section shall not apply to the case of any city, town, or village having a municipality constituted by a special Ordinance or Act of Parliament.

In case no cause shown.

Powers not to be exercised in cases of specially established Municipalities.

14. It shall be lawful for the Governor to appoint the Resident Magistrate of any district, together with two other persons, to investigate any matter connected with any petition or counter-petition, and to report thereon, or upon any matter by the Governor referred to such Resident Magistrate and other persons for report, in relation to such petitions. The Resident Magistrate and other persons aforesaid shall report within such time as may be by the Governor be named in that behalf.

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Resident Magistrate and others to investigate matter of petitions.

MUNICIPAL COUNCIL.

15. (1) Every male person of full age liable to be rated in respect of immovable property within the municipality of the yearly value of not less than twenty pounds owned or occupied by him (or of different properties of not less than such yearly value owned or occupied in immediate succession) for a period not less than six months next before such election, and in regard to which property no municipal rate made three months or more before the date of such election shall then be due and in arrear, shall be eligible to be elected a councillor, and qualified to hold office as such, but so long only as he shall continue to possess such qualification.

Qualification of Councillors.

16. No person having his affairs under liquidation, under assignment, or by arrangement with his creditors, no insolvent who shall not have obtained his rehabilitation, no alien who has not been naturalized, no person convicted of treason, murder, rape, theft, perjury, or other infamous crime, and who shall not have received a free pardon, no person of unsound mind, and no person who is not qualified or who is disqualified by this Act, shall be capable of being elected or of continuing a councillor of any municipality.

Disqualifications.

17. No person holding any office or place of profit under Government, or under or in the gift of the council of any municipality, or concerned in, or participating in the profit of, any contract with any municipality, or concerned in or in the profit of any work to be done under the authority of any such council, shall be capable of being or continuing a councillor of such municipality: Provided that nothing in this section contained shall extend or apply to any contract entered into by any company, partnership, or association consisting of more than twenty persons, or any incorporated company, when such contract is entered into for the general benefit of such company, partnership, or association: and provided that it shall be lawful for any councillor to purchase at public sale any property or right which the board of which he is a member shall offer to sell by public competition.

Further disqualifications.

18. All proceedings of the council of a municipality, or of any person acting as Mayor, chairman, councillor, auditor, or Municipal Clerk, as the case may be, shall, notwithstanding that it be after-

Proceedings of Council to be valid though defect existed in mode of election.

¹ See §§ 1, 2, Act No. 22, 1893.

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wards discovered that there was some defect in the election or appointment of any such councillor, officer, or person as aforesaid, or any disqualification, be as valid and effectual as if every such councillor, officer, or person had been duly elected and qualified.

RETIREMENT AND VACANCIES IN COUNCIL.

When whole number of Councillors to go out of office.

19. At the conclusion of the election to be held on the first Wednesday in August next after any first election of councillors who shall have been elected by voters registered for the election of members of Parliament as provided in the twenty-sixth section of this Act, the whole number of councillors shall go out of office.

Retirement of Councillors by rotation regulated.

20. At the conclusion of the annual election in every year, except as in the last preceding section is provided, one-third part of the councillors of every municipality shall go out of office by rotation, and the councillors who shall go out of office shall be the councillors who have been the longest time in office without re-election. If by reason of two or more councillors having become councillors at the same time, it shall not be apparent which of such councillors ought to go out of office, then such councillors as to whom it shall not be apparent as aforesaid shall go out of office in the order of the number of votes obtained by each at his election, commencing with the lowest number and proceeding upwards. And in case of an equal number of votes being given for such councillors, or in case such councillors shall have been elected without a poll, the councillors to go out of office shall be determined by lot, and in default of being so determined, or not otherwise determined or capable of being determined, the Governor shall for such occasion determine in what order and which of such councillors shall go out of office: provided that in case of any subdivided municipality, where one-third of the whole number of councillors are to go out of office, one of the number of councillors of each ward shall go out of office.

Officers under this Act may resign.

21. Any person elected or appointed to any office under this Act may resign such office by any writing addressed to the Municipal Clerk, and the resignation shall be complete from the time of its being received by such clerk.

When offices shall become vacant.

22. (1) The office of Mayor or chairman, or councillor, shall become vacant, and every such vacancy shall be deemed to be an extraordinary vacancy within the meaning of this Act, in case such Mayor, chairman, or councillor shall

- (1) Die; or
- (2) Resign his office; or
- (3) Be declared incapacitated from holding office by any competent Court; or
- (4) During the time for which he is elected cease to be qualified; or

¹ See Act 9 of 1885. This section to apply to Municipalities which have not yet come under the operation of this Act. See also § 3 Act 22, 1893.

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- (5) Be absent from four consecutive ordinary meetings of the council, without leave of the council; or
- (6) Be convicted and sentenced to imprisonment for any offence.

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23. For the purpose of determining the time of his retirement, every Mayor or chairman, and every councillor elected to supply an extraordinary vacancy shall be deemed to have been elected at the same time, and in the same manner, and in the case of a councillor to have received the same number of votes (if any) as the last holder of the seat he was elected to fill who was elected otherwise than to fill an extraordinary vacancy.

How to determine date at which officers must retire.

24. Every councillor going out of office at the conclusion of any annual election shall retain office until the councillors elected at such election are declared duly elected, and shall thereupon, unless he be one of such councillors, go out of office.

Interim between retirement and election of new Councillors.

25. Any person vacating office as Mayor, or chairman, or as a councillor, may be re-elected to such office if for the time being he is eligible under the provisions of this Act of being or continuing a Mayor, or chairman, or councillor.

Mayor, &c., vacating office may be re-elected.

ELECTORS.

26. At any election held in any municipality before a Voters' Roll shall have been prepared for such municipality in the manner by this Act provided, the Resident Magistrate shall, from the list of registered voters for the election of members of Parliament, frame a list of all such voters as shall be resident within the limits of the municipality, or the wards thereof respectively if the municipality be subdivided, and such voters shall be and be deemed to be the voters of such municipality, or the respective wards thereof as the case may be, for the purposes of such election.

Who to vote before voters' list under this Act is prepared.

PERSONS ENTITLED TO BE ENROLLED.

27. From and after the completion of a Voters' Roll for any municipality under the provisions of this Act, the persons whose names are inserted in such roll shall be the voters of the municipality, and shall be entitled to the number of votes for which they are respectively enrolled.

After voters' roll completed.

28. Every person of full age, not disqualified under the provisions of this Act, who on the first day of June in any year is the owner or occupier of any immovable property in any municipality, and who shall have paid all sums if any then payable by such person in respect of any rates made three months or more before such day, shall be entitled to be enrolled on the Voters' Roll for such municipality according to the following scale:

Qualification of voters.

- (1) If the property liable to be rated be of the annual value of, or exceeding, ten pounds, and less than fifty pounds, he shall have one vote.

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- (2) If such value amount to fifty pounds and be less than one hundred pounds, he shall have two votes.
- (3) And if such value amount to or exceed one hundred pounds, he shall have three votes.

And in case any municipality is subdivided, every person entitled to be enrolled under this section shall be so entitled for only one ward wherein any rateable property in respect of which he is so entitled is situated, such ward to be selected by such person.

Provisions in cases of joint owners of property.

29. Where more persons than one are jointly liable to be rated in respect of any property, each of such persons, not exceeding three in all, shall for the purposes of the last preceding section, be deemed to be liable to be rated, in respect of rateable property, equal to that of the whole of such first mentioned property divided by the number of persons so rated not exceeding three. In case more than three persons are liable to be rated in respect of any property the persons to be deemed liable and qualified to vote shall be any three whom the remaining or other persons so liable shall nominate in writing, and failing such nomination, those three whose names stand first in order upon the rate book in use, or if no rate book has been made, upon the valuation roll: Provided that in any such case the annual value of the property liable to be rated shall be of an amount which when divided by the number of persons jointly liable to be rated, not exceeding three, shall give a sum of not less than ten pounds for each such person.

Disqualifications.

30. The following persons shall not be qualified to vote at any elections held under the provisions of this Act:

- (1) Persons who have not paid all sums due from them in respect of any rates made or levied three months or more before the day of voting.
- (2) Persons convicted of treason, murder, rape, theft, perjury or of bribery, or receiving a bribe, or of any other corrupt practice at any election, or any infamous crime, and who shall not have received a free pardon.
- (3) Persons whose names do not appear upon the Voters' Roll for the time being.

MAKING OF ROLL.

Roll of voters to be made annually.

31. The clerk of every municipality shall, before the first day of June in every year, make out a list to be called the "Voters' Roll," containing the names of all persons qualified to vote under the provisions of this Act, which list shall shew—

- (1) The names in full of the voters, arranged according to the alphabetical order of surnames.
- (2) Description of property giving title to vote.
- (3) Whether the voter be owner or occupier.
- (4) The annual value of such property.
- (5) Number of votes.

32. The Municipal Clerk shall, immediately after making out the said list, notify by advertisement in some newspaper generally circulating in the neighbourhood, and in such other manner as the council shall from time to time direct, that a copy of such list is ready for inspection at the municipal office, and if the council shall so direct, at such other place as may be appointed, and a copy of such list shall be open to inspection at the municipal office, and at each appointed place as aforesaid, during office hours for a period of seven days; the said advertisement shall also intimate that on a certain day and hour, and at a place to be therein set forth, claims to be inserted in, or objections to, the said list will be heard and determined as hereinafter in the next succeeding section is provided.

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Notification that lists are ready for inspection.

33. The Mayor or chairman and two councillors elected for that purpose by the council shall, on the day so notified, in open court hear all such claims and objections and determine thereon, and may adjourn the sitting of such court from time to time as may be necessary.

Court to hear objections.

34. The said Mayor or chairman and councillors shall, in revising the Voters' Roll, be guided by this Act, and the following directions and provisions: that is to say, they shall

Directions for guidance of such Courts.

- (1) Insert the name of every person who shall prove to their satisfaction that he is entitled to be inserted in the Voters' Roll for one or more votes according to the provisions of this Act.
- (2) Except in the case of death, retain on the list the names of all persons to whom no objection has been made.
- (3) Retain on the list the name of every person objected to, and the number of votes set against the same, unless the person objecting appears by himself, or some one on his behalf, in support of such objection, and establishes the same by satisfactory proof.
- (4) In case any objection is made and satisfactorily proved, expunge the name of the person objected to from the Voters' Roll, or alter and correct the number of votes set against the same (as the case may be).
- (5) Expunge from the Voters' Roll the name of any person inserted therein who is proved to be dead.
- (6) Correct any mistake or supply any omission which may appear to have been made in the Voters' Roll.

35. The revised roll certified by the Mayor or chairman of the municipality, shall be the Voters' Roll for the municipality, and shall continue in force, and shall not be added to or otherwise altered until a new roll has been made for the municipality, and revised under the provisions of this Act, whether the same be duly made at the time appointed or afterwards.

Revised roll to be in force till new one framed.

36. Any printed or written copy purporting to be a copy of the Voters' Roll of any municipality or of any ward or subdivision of a

Printed copies signed by Mayor to be evidence.

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municipality, signed by the Mayor or chairman of such municipality, shall be *prima facie* evidence of such roll and of the contents thereof.

Omission of certain prior formalities not to invalidate roll.

37. No omission to make any notification by advertisement or otherwise, with regard to any list, or to exhibit, or keep any list for inspection, shall be deemed to prevent, invalidate, or render imperfect any of the proceedings by this Act prescribed with regard to the compilation or completion of any list or roll, or to invalidate any such list or roll.

In case list not revised within required time.

38. If from any cause the revision of any list awaiting revision under this Act has not been made or completed within the proper time appointed or allowed for that purpose, the Governor may appoint a day for holding a Court for revising such list, and such day shall as to all such acts and proceedings as then remain to be done or had with respect to such list, be deemed to be for all intents and purposes the day appointed for such revision, and all further proceedings shall be had and taken accordingly.

In case list not prepared in time.

39. If from any cause the preparation or revision of the Voters' List has been omitted or not completed, the Governor may at the request of the council of the municipality direct the same to be done within such time as may be prescribed by the order in council authorising it, and upon the publication of such order in the *Government Gazette*, such omission or non-completion shall be rectified, and such list validated in accordance with the terms of such order.

ELECTION OF COUNCILLORS.⁽¹⁾

When first election to take place.

40. A first election of councillors in any municipality shall be held on such day within three months after the constitution thereof, as the Resident Magistrate of the district may appoint.

All Councillors to be elected at first election.

41. At every first election of councillors in any municipality the whole number of councillors assigned to the municipality shall be elected, and in case of a subdivided municipality they shall be elected in equal numbers for every ward.

And annually thereafter.

42. In every municipality an annual election of councillors shall be held on the first Wednesday in August in every year.

Proportion of Councillors to be annually elected.

43. At the annual election (except as in the nineteenth section is excepted) one-third of the whole number of councillors shall be elected, and in case of a sub-divided municipality they shall be elected in equal numbers for every ward.

In cases of extraordinary vacancies.

44. On the occurrence of any extraordinary vacancy in the office of councillor of any municipality, an election to fill such vacancy shall be held on such day not being more than thirty days after the occurrence of such vacancy as the Mayor or chairman of the municipality may appoint, and in default of such appointment on the thirtieth day after the occurrence of such vacancy.

¹ See Act 27, 1892.

45. In case any extraordinary vacancy occur in the office of councillor within one month before any annual election, and the councillor vacating office would have gone out of office at such election, or was one of several councillors who might have gone out of office by rotation at such election, such vacancy shall not be filled up, and the person vacating office shall be reckoned one of the councillors going out of office at such election.

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Exceptions.

46. In the case of a municipality which is not subdivided into wards, the proceedings of every election shall be taken and had for the whole municipality, and in the case of a municipality which is subdivided the like proceedings shall be taken and had for and in every ward.

Proceedings when there are, or are not, wards.

47. Every municipal election shall be held before the Mayor or chairman of the municipality, or in case there is no Mayor or chairman, or the Mayor or chairman as the case may be is absent or incapable of acting before such person as the council of the municipality, or, in case there is no council, the Governor, may appoint. And such Mayor or chairman or other person shall be the returning officer at such election.

Returning officer.

48. No person specially appointed to act as returning officer as aforesaid shall be or become a candidate for office at such election.

Returning officer not to be a candidate.

NOMINATION OF CANDIDATES.

49. Not less than twenty-one days before the day appointed for the first election the Resident Magistrate, and thereafter at any election, the Mayor or chairman of the municipality, shall give public notice of such election, and by such notice shall specify a day, not being more than fourteen days from the date of giving such notice, as the day of nomination, and shall require all candidates at such elections to be nominated at some place within the municipality, to be named in such notice in manner after-mentioned.

Notice of election.

50. No person may become, or shall be deemed, a candidate at any election unless he shall be nominated in manner following: Before four o'clock in the afternoon of the day before the day of nomination there shall be delivered at the place appointed, a nomination paper in the form in the second schedule, or to the like effect, stating the christian name and surname of such candidate, together with the other particulars required in and by the said schedule, and such nomination paper shall be signed by not less than five persons whose names appear on the Voters' Roll.

Mode of nomination.

51. The council shall cause the names of all persons who have been nominated as candidates for election to be posted, and kept posted outside the place named as aforesaid for the delivery of nomination papers.

Lists of nominated persons to be posted.

52. If at the expiration of the time appointed for the nomination of candidates, the number of persons who have become candidates as aforesaid does not exceed the number of councillors

If no more nominations than number of Councillors required election complete.

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then to be elected, the returning officer shall, at or after noon on the day of nomination at the place named as aforesaid for the delivery of nomination papers, publicly declare such candidates to be duly elected, and they shall be deemed duly elected accordingly.

In case candidates less than number required.

53. If at the expiration of the time appointed for the nomination of candidates the number of persons who have become candidates shall be less than the number of councillors then to be elected, the persons nominated shall be declared to be duly elected in the manner provided in the last preceding section, and the like proceedings shall be taken to supply any vacancy arising from failure to nominate as in the case of an extraordinary vacancy.

In case greater number, returning officer to give notice of poll.

54. If at the expiration of the time appointed for the nomination of candidates, the number of candidates exceeds the number of councillors to be elected, then the returning officer (1) shall, at noon on the day of nomination, at the place appointed for the delivery of nomination papers, publicly announce the names of the persons who have become candidates, and the places at which a poll will be taken, and shall also forthwith give public notice by advertisement, stating the names of the persons nominated, and that a poll will be taken for the election of councillors on the day appointed for holding the election under the provisions of this Act, and naming such day and the polling places. And the poll shall take place accordingly, and shall commence at nine o'clock in the forenoon and close at five o'clock in the afternoon.

POLLING PLACES AND POLLING.

Candidate to declare for which Ward he elects to be a Councillor.

55. If any candidate shall, in any municipality divided into wards, be elected for more wards than one, such candidate shall declare within twenty-four hours after being called upon in writing so to do, for which ward he elects to be a councillor, and upon such election the seat of such person for any other ward for which he was elected shall become vacant, and in case such person shall fail to elect as aforesaid then all the seats for which such person was elected shall become vacant.

Returning officer may appoint and change polling places.

56. For the purposes of every election, the returning officer shall and may from time to time appoint and abolish the polling places, but no polling place shall be appointed or abolished later than three days after the day of nomination.

Appointment of polling officers, &c

57. At every election the returning officer shall appoint such polling officers and polling clerks as may be required for taking the poll, and if, in case of illness or other sufficient cause, the returning officer or any polling officer shall be prevented from attending, or shall refuse to attend, the Municipal Clerk shall by writing under his hand appoint a substitute, who shall have all the power and authority of the person for whom he was substituted.

¹ See § 2 Act No. 22, 1893.

58. If after a poll has been appointed at any election any candidate nominated for election shall be desirous of retiring from his candidature, he may not later than three days before the day of polling, sign, and deliver to the Municipal Clerk a notice of his retirement; and the returning officer on receipt of such notice shall, if the number of candidates is by such retirement reduced to the number of persons to be elected at such election on the day appointed for the election, declare the remaining candidates to be duly elected, and if the said number is not so reduced, shall omit the name of the person so retiring from the list of candidates, and such person shall not be capable of being elected at such election.

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In case candidate desires to retire from contest.

59. Every candidate may appoint one scrutineer to attend at the place of polling on his behalf, and see that the votes are fairly taken and recorded.

Scrutineers.

60. At any election the polling officer shall, if he sees fit, or if required so to do by any candidate or scrutineer, put to the person tendering his vote any of the questions following :

Questions to electors.

- (1) Are you the person whose name appears on the Voters' Roll now in use for this municipality (or ward, as the case may be), being enrolled therein in respect of property described to be situated (specify the street or other place described in the roll) ?
- (2) Have you already voted at this election (for this ward) ?
- (3) Have all sums due and payable by you in respect of rates made or levied three months or more before this date been paid ?

And no person who shall refuse to answer any such question, or who shall not answer the first and third of such questions absolutely in the affirmative, and the second of such questions absolutely in the negative, shall be permitted to vote.

61. Every person who shall wilfully make a false answer to any of the questions aforesaid, or who shall poll or attempt or offer to poll at the same election more than once, or more than the number of votes which such person is entitled to poll at such election, in case such person is entitled to vote for more candidates than one, shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months.

Penalty for false answers.

62. No voter shall at any election be required to answer any questions except as aforesaid; and no person claiming to vote at any election shall be excluded from voting except by reason of its appearing to the polling officer upon putting any such question allowed as aforesaid that he is not the person whose name appears on the roll, or that he has previously voted at the same election, or that such sums as aforesaid due for rates are unpaid, or except by reason of such person refusing to answer any of the said questions.

When polling officer may reject vote tendered

63. All the acts enumerated as acts of bribery and corruption, or undue influence, in any Act for the time being in force regulating or in respect of elections of members of Parliament, shall,

Bribery.

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mutatis mutandis, be deemed to be acts of bribery, corruption, or undue influence with reference to all elections under this Act. And every person committing any act forbidden or made punishable, by any such Act relating to elections of members of Parliament, in reference to any elections under this Act, shall upon conviction incur and be liable to such penalty or punishment as is by such Act provided.

Manner of voting. 64. The manner of voting shall in substance and as nearly as is material, be as follows :

- (1) The polling officer, shall ascertain that the person coming to vote is a voter entered upon the Voters' Roll, and having ascertained that such person is so entered, shall ask for whom he votes.
- (2) When the voter has named the candidate for whom he intends to vote, such officer shall lay before the voter a page of paper having at the top the name of that candidate, and the voter shall, if able and willing to do so, write in the presence of such officer his name where such officer shall direct.
- (3) Should the voter be unable or unwilling to write, the polling officer shall at the request and in the presence of the voter write the christian and surname of the voter, and attest the fact by his own signature.
- (4) In case the voter shall be entitled to vote for more than one candidate to be elected at such election, there shall be laid before the voter so many papers bearing the names of candidates not exceeding the number to be elected, as the voter shall have named as the candidates for whom he votes.

Result of poll to be stated.

65. Every returning officer shall, at the close of the poll and as soon as possible after he shall have received the voting lists or papers taken by the polling officers in the presence of such candidates and scrutineers as may attend, cast up, examine, and count the number of votes given for each candidate at the several polling places, and the returning officer shall, as soon as the results are ascertained, publicly announce the state of the poll, and at the same time declare the name or names of the person or persons elected. And in the event of the number of votes being found to be equal for any two or more candidates, he shall by lot determine which shall be elected.

In case of ties.

66. The returning officer shall immediately after the declaration of the poll, enclose in one packet all the voting papers aforesaid, and shall seal up such packet and endorse thereon a description of the contents thereof, and sign such endorsements with his name. The said sealed packet, together with a certificate stating the names of the councillors declared to be elected, shall be delivered to the Municipal Clerk, who shall safely keep such sealed packet for six months after the receipt thereof, and after the expiration

Voting papers to be sealed up and kept for 6 months.

of six months such papers may be destroyed in the presence of two councillors, unless the council shall otherwise direct.

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67. No such sealed packet of voting papers shall be opened during the said period of six months, unless by order and in presence of the council, or by order of some competent Court. And if any person shall, contrary to the provisions hereof, wilfully break the seal of or open any such packet, he shall, upon conviction, be liable to a penalty not exceeding twenty pounds.

Such packets not to be opened except by competent authority

68. When the proceedings at any election are interrupted or obstructed at any polling-place by any riot or open violence, the polling officer shall not finally close the poll, but shall adjourn the taking of the poll at such polling-place to the day following, and if necessary, such polling officer shall further adjourn such poll until such interruption or obstruction has ceased, when he shall again proceed with the taking of the poll at the place at which the same shall have been so interrupted or obstructed.

In case of riot, poll may be adjourned, &c.

69. If from any cause, not being such as mentioned in the last preceding section, after a poll has been appointed for any election, no election takes place on the day appointed, the election shall stand adjourned until the same day of the following week, and the polling officer shall give not less than three days' notice thereof by advertisement or by placards affixed in public places in the municipality. And in all such cases as in this and the last preceding section mentioned, the councillors (if any) who would on the day appointed for the election have retired from office by rotation, shall continue in office until the day to which such election or polling for the same has been adjourned.

In other cases of non-election on polling day.

70. In any subdivided municipality the provisions of this Act relating to elections shall extend and apply to every ward in which an election shall take place, as well as, or instead of, to the whole municipality, as circumstances may require.

"Wards" included in foregoing provisions.

71. No election under the provisions of this Act shall be liable to be set aside by reason only of any defect in or want of title of the officer or person by or before whom such elections, or any polling for the same, has been held: provided that such person has been acting in the office giving the right to preside at such election.

Elections not to be impeached for want of title of polling officer.

72. The invalidity of any election under this Act shall not affect any action, suit, or other proceeding by or against any council, but every such action, suit, or other proceeding shall be tried and determined as if no such objection existed.

Actions by or against Council not affected by mode of election.

73. If at any time there shall be no Mayor or chairman, or Municipal Clerk, or any Mayor, chairman, or clerk shall refuse to act or be incapable of acting as by this Act provided, all acts and things which may or are required to be done by such Mayor, chairman or clerk, as the case may be, may lawfully be done and performed by such one of the councillors as the council of the municipality may appoint for that purpose, and failing such

In cases where there is no Mayor or other officer in this Act mentioned.

No. 45—1882. — appointment by the council, by such person as the Governor may so appoint.

ELECTION AND PRIVILEGES OF CHAIRMAN.

- Election of chairman. 74. ⁽¹⁾ At the first meeting of the council of any newly-constituted municipality, or at some adjournment thereof, and thereafter at the first meeting of the council after every annual election of councillors, or at some adjournment thereof, the councillors shall elect some one of their own number to be chairman of the municipality.
- In case of vacancy. 75. In case any vacancy shall occur in the office of chairman, such vacancy shall forthwith be filled at an ordinary or special meeting of the council.
- “Mayor” or “Chairman.” 76. Such chairman shall be styled and designated “the Mayor” or “the Chairman,” as the council shall by regulation or bye-law from time to time determine, and shall be entitled to hold office until the conclusion and completion of the next annual election.
- To preside. 77. The chairman shall preside at all meetings of the council at which he is present, and in his absence the councillors present shall elect a chairman to preside at such meeting.
- Chairman to be ex-officio Justice of the Peace. 78. The chairman of every municipality shall during his tenure of office be a Justice of the Peace for the district in which the municipality is situated: provided that any such chairman may at any time be removed from being a Justice of the Peace by the Governor, and from the date of notification in the *Government Gazette* of such removal the powers of such chairman to act as a Justice of the Peace shall cease and determine.

AUDITORS.

- Two auditors to be chosen annually. 79. Two auditors shall be elected at the same time as the first election of councillors, and thereafter annually for every municipality, at the same time as the annual election of councillors, and, notwithstanding any subdivision into wards, such auditors shall be elected for the whole municipality, and save as aforesaid every election of auditors shall be conducted in the same manner and subject to the same conditions and provisions as an election of councillors.
- Vacancy by death or other cause. 80. Upon the occurrence of any vacancy in the office of auditor for any municipality by death, removal, resignation or otherwise, the like proceedings shall be taken to supply such vacancy as upon an extraordinary vacancy in the office of councillor.
- Power of Governor to remove. 81. The Governor may at any time remove any auditor elected for a municipality upon petition of the council thereof.
- Payment of Auditors. 82. The auditors shall be paid out of the municipal funds such remuneration as the council may from time to time determine.

¹ See § 4, Act No. 22, 1893.

PROCEEDINGS OF THE COUNCIL.

No. 45 - 1892.

83. The council of every newly constituted municipality shall hold their first meeting on the first Wednesday after the first election of councillors; and in case of failure, on such day and at such hour as the Resident Magistrate of the district shall appoint for that purpose.

When first meeting of Councillors to be held.

84. The council of every municipality shall hold ordinary meetings for the transaction of business not less than once every month, on such days and at such hours as the council shall from time to time appoint, and when such appointment is made the Municipal Clerk shall give notice thereof to each of the councillors, and they shall afterwards, until the time of such ordinary meeting is changed, and notice of the change given to the councillors, be required to attend such ordinary meetings without notice.

Ordinary meetings.

85. All meetings of the council shall be open to the public, and, save when it is otherwise provided, all the councillors present at any meeting shall vote, and all questions shall be decided by a majority of the councillors present. In case of an equality of votes the chairman presiding shall, in addition to his vote as councillor, have a casting vote.

Meetings of council to be public.

86. All powers vested in the council by this Act may be exercised at any duly convened meeting thereof at which not less than one-third of the members thereof, exclusive of the chairman or in the absence of the chairman an additional member, shall be present.

Quorum.

87. No councillor shall vote upon or take part in the discussion of any matter in or before the council in which he has directly or indirectly by himself or his partners any pecuniary interest. And any councillor contravening the provisions of this section shall, for every offence, be liable to a penalty not exceeding fifty pounds.

Councillor not to vote where interested pecuniarily.

88. The councillors present at any meeting may from time to time adjourn such meeting: and if at any meeting of the council a sufficient number of members be not present to exercise the powers vested in the council, the councillors present or the major part of them or any one councillor, if one only be present, may adjourn such meeting.

Adjournment of meetings.

89. No resolution at any meeting of the council shall be revoked or altered at any subsequent meeting unless notice of the intention to propose such revocation or alteration be given to each of the councillors two days at least before holding the meeting, nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds of the councillors present at such subsequent meeting, if the number of councillors present at such subsequent meeting be not greater than the number present when such resolution was come to or by a majority if the number of councillors present at such subsequent meeting be greater than the number present at such former meeting.

Resolutions not to be revoked except upon notice.

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Notices of special or adjourned meetings.

90. All notices of any special meeting or adjourned meeting of the council shall be in writing, and shall be delivered or sent by post or otherwise to the usual place of business (if any) within the municipality, or to the place of abode of each of the councillors twelve hours at least previous to such meeting, and every such notice shall specify the time of meeting, and in case of a special meeting, shall specify the object thereof, and no business shall be transacted at any special meeting except such as is stated in the notice thereof.

Occasional and standing Committees.

91. The council may from time to time, as they may see fit, appoint occasional or standing committees, either of a general or a special nature, and may delegate to any committee any inquiry or power to do any act which they may think fit, and may fix the quorum of every such committee, and every such committee may from time to time appoint one of the members to be chairman thereof, and the council may from time to time continue, alter, or discontinue such committee, and every such committee shall report to the council.

Committee may adjourn.

92. Every committee so appointed may meet from time to time and may adjourn from place to place, as they may think proper, but no business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the council and if no quorum be fixed two members be present, and at all meetings of the committee if the chairman be not present one of the members present shall be appointed chairman, and all questions shall be determined by a majority of the votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Quorum.

Vacancy in Council not to affect validity of proceedings.

93. No proceeding of the council or of any committee shall be invalidated or be illegal in consequence only of there being any vacancy in the number of councillors at the time of such proceeding.

Minutes to be kept of all proceedings.

94. The council shall cause entries of all the proceedings of the council and of every committee appointed by them with the names of the councillors who attend at each meeting, and of the names of all councillors voting upon any question for the decision of which a division is called, to be duly made from time to time in books to be provided for the purpose, which shall be kept by the Municipal Clerk under the superintendence of the council. And every such entry shall be signed by the chairman at the meeting next succeeding the meeting at which such proceeding has taken place.

To be signed by Chairman and received in evidence.

And every entry purporting to be such entry as aforesaid and to be so signed, or a copy of or an extract from such entry, attested by the corporate seal and the signatures of the chairman and Municipal Clerk, shall be received as evidence in all Courts, without proof of the meeting to which the same shall refer having been duly convened or held, or of the persons attending such meeting having

been or being councillors or members of committee respectively, or of the signature of the chairman or of the fact of his having been chairman, all which last-mentioned matters shall be presumed until the contrary is proved.

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95. Such book shall at all reasonable times be open to the inspection of any of the councillors and of any ratepayer or creditor of the municipality, any of whom may at all reasonable times, without fee make any copy of or take any extract therefrom.

Minute Books open to inspection.

ACCOUNTS AND AUDIT.

96. The council shall cause books to be provided and true and regular accounts to be entered therein of all sums of money received and paid on account of and for the municipality, and of the several purposes for which such sums of moneys have been received and paid, which books shall at all reasonable times be open to the inspection of any councillor, ratepayer, or creditor of the municipality. And any such person may take copies of or extracts from the said books without paying anything for the same.

Proper accounts of moneys received and paid to be kept.

97. The council shall in each year, not later than the thirty-first day of January and the thirty-first day of July, cause the accounts of the municipality to be balanced to the thirty-first day of December and the thirtieth day of June immediately preceding such first mentioned dates respectively, and after each such balancing the auditors shall audit the said accounts as soon as conveniently may be. And the council shall, by the Municipal Clerk, produce and lay before the auditors the accounts so balanced as aforesaid, with all vouchers in support of the same, and all books, papers and writings in their custody or power relating thereto; and if the auditors after due inquiry shall be satisfied that all moneys received have been duly accounted for, and that all payments charged have been duly authorised and made, they shall sign the said accounts, in token of their allowance thereof, but if they think there is just cause to disapprove of any part of the said accounts they may disallow any parts of the said accounts so disapproved of.

Books to be balanced half-yearly and audited.

98. Any person interested in the said accounts, either as a creditor of the municipality, or as a ratepayer, may be present at the audit of the said accounts, by himself or his agent, and may make any objection in writing, signed by such person or his agent, to any part of such accounts.

Accounts may be inspected and objected to.

99. Half-yearly statements showing the financial position of the municipality to the end of December and June respectively shall be prepared and laid before the council at their first ordinary meeting in the months of February and August respectively. Such statements shall be audited by the auditors and shall contain an account of all moneys paid by the council during the preceding half-year and a statement of all rates made and contracts entered into during such half-year, and of all assets and liabilities of the municipality.

Half-yearly financial statements to be laid before council.

No. 45- 1882.

Statements to be open to inspection.

100. The council shall cause every such audited statement to remain for inspection at the office of the council, and any creditor or ratepayer of the municipality, or any person acting on his behalf, may at all reasonable times inspect such statement and compare the same with the books and documents relating thereto in the possession of the council.

How accounts to be finally settled.

101. The accounts of the council so balanced as aforesaid and audited, and either allowed or disallowed by the auditors as aforesaid, together with the said statement, shall be produced at the last-mentioned meetings of the said council, or at some adjournment thereof, at which meetings all creditors, ratepayers, and other persons interested as aforesaid may be present, and the accounts shall then be finally examined and settled by the council, and if the same be found just and true they shall be allowed by the council and certified accordingly, under the hand of the chairman of such meeting. And a copy of such abstract shall be kept by the Municipal Clerk at the office of the council, and shall be open to be inspected by any creditor or ratepayer during office hours.

Governor may appoint person to examine accounts.

102. The Governor may from time to time appoint some person to examine the accounts of any municipality. And the council of such municipality shall by the Municipal Clerk produce and lay before the person so appointed all books and accounts of the municipality for the preceding twelve months, with all vouchers in support of the same, and all books, papers, and writings in their power relating thereto: Provided that seven days' notice in writing shall be given to the chairman and Municipal Clerk of any such intended examination.

Powers given to such examiners of accounts.

103. For the purpose of every audit under the provisions of the last preceding section it shall be lawful for the auditor to hear, receive, and examine, evidence upon oath (which oath such auditor is hereby empowered to administer) and by summons under his hand to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons, and to produce all such books and papers as may be necessary for such audit. And any person so required who shall without lawful excuse refuse to attend in obedience to such summons, or who having appeared shall refuse to be examined upon oath or affirmation, or to take such oath or affirmation, or having taken such oath or affirmation, to answer such questions as shall be put to him, shall incur and be liable to a penalty not exceeding ten pounds for every act or offence, and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months unless such fine be sooner paid: Provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act, matter, or thing required to be done or performed by him, or from being successively convicted and punished for every distinct commission of the same act or offence.

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CONTRACTS.

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104. The council may in the name and on behalf of the municipality enter into contracts for the purposes of this Act, and all such contracts lawfully made shall be effectual and binding on the municipality and all the other parties thereto, their successors, heirs, executors, or administrators, as the case may be. Every contract shall be deemed to be duly executed by or on behalf of the municipality if signed by the chairman, or if signed by any one or more councillors thereto authorised by resolution of the council.

Council may make contracts.

105. Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of fifty pounds or upwards is entered into by the council, fourteen clear days' notice at the least shall be given in some newspaper, generally circulating in the neighbourhood, expressing the purpose of such contract, and inviting any person willing to undertake the same to make proposals for that purpose to the council. And the council shall accept the proposal, which on a view of all the circumstances appears to them to be most advantageous, and may take security for the due and faithful performance of every such contract, or the council may decline or accept any such proposal.

Tenders for contracts to be called.

OFFICERS.

106. The council shall from time to time appoint a Municipal Clerk and such other officers to assist in the execution of this Act, as may be necessary and may pay such salaries and allowances to such officers respectively as the council may determine: And unless it shall be otherwise stipulated in the contract with, or appointment of, any such clerk or other officer the council may at any time remove any such clerk or officer upon a notice of not less than three months, or in case of misconduct without notice.

Officers to be appointed.

107. The chairman may at any time suspend from office any officer of the council who may in his opinion be guilty of misconduct or neglect, and if necessary temporarily appoint another officer in his place: Provided that at the next meeting of the council after such suspension the chairman shall report the matter to the council, and if the officer so suspended be dismissed by the council, no salary or wages shall be due or paid to him from and after the date of his suspension, and every officer so temporarily appointed shall hold office and receive remuneration (which shall in no case exceed that paid to the officer or servant so suspended) only until the council shall decide whether the person suspended shall be reinstated or be dismissed, and a successor appointed in his stead.

Officers may be suspended and dismissed.

108. Every officer employed by the council who shall exact or accept on account of anything done by virtue of his office, or in relation to the matters to be done under this Act any fee or reward

Officers to take no fees or rewards beyond salary.

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whatsoever other than the salary or allowance by way of salary allowed by the council, or who shall be in anywise concerned or interested in any bargain or contract made by the council, shall be incapable of being afterwards employed by the council.

BYE-LAWS OR REGULATIONS.

Power to make by-laws and regulations.

109. (1) The council of any municipality may from time to time make, alter, and revoke bye-laws or regulations for all or any of the following purposes :

- (1) Regulating the proceedings of the council and the duties of their officers and servants and preserving order at council meetings.
- (2) For preventing and extinguishing fires and compensating the owners of buildings removed to prevent the spread of fire.
- (3) For establishing and regulating public markets and market dues and regulating public sales.
- (4) For suppressing nuisances, houses of ill-fame, and gaming houses.
- (5) For restraining noisome and offensive trades, and compelling residents to keep their premises free from offensive or unwholesome matters.
- (6) For regulating the supply and distribution of any water under the control or management of the council.
- (7) For regulating sewerage or drainage.
- (8) For regulating lighting with gas, electricity or otherwise.
- (9) For preserving public decency.
- (10) For preventing the spread of contagious or infectious diseases, and for preserving the public health.
- (11) For regulating and licensing boatmen, porters, public carriers, carters, cabs, and vehicles plying for hire.
- (12) For regulating the killing of cattle and sale of butchers' meat, and the establishment and locality of slaughter houses.
- (13) For regulating the removal of night soil, stable litter, filth, and refuse from private premises, and from all streets, roads and public places.
- (14) For preventing the dangerous use of gunpowder, fireworks, or other combustibles, and for regulating the storage or removal of petroleum, gunpowder, dynamite, or other explosive material.
- (15) For imposing a tax upon the keeping of dogs.
- (16) For preventing the pollution of any water which the inhabitants have a right to use.
- (17) For establishing and maintaining cemeteries.
- (18) For planting and preserving trees and shrubs.

¹ See § 5 Act No. 22, 1893.

- (19) For regulating the width, curbing, paving, guttering, gravelling, and cleansing of roads and streets.
- (20) For establishing, maintaining and controlling any ferry, pontoon, or bridge, and levying and collecting tolls and dues thereon.
- (21) For granting licences or permits for the making of bricks or for digging or removing clay or gravel, or for quarrying stone, or for cutting firewood, brushwood, or grass upon municipal lands, and to prescribe the fees (if any) to be paid for the same.
- (22) To establish and provide for the management of pounds and appointment of poundmasters, subject to the provisions hereinafter in this Act contained.
- (23) To provide for the management and protection of all common pasture or other municipal lands, and to fix the number and description of livestock any inhabitant shall be allowed to keep and depasture thereon on any part thereof. But no such provision shall interfere with or derogate from any existing rights which may be possessed or enjoyed by any person over such common pasture or other municipal lands either by virtue of any valid title deed or of any lawfully constituted servitude.
- (24) To grant temporary grazing rights over the said lands to carriers and others frequenting or passing through the municipality or attending the markets thereof, or to travellers, and to charge such reasonable dues as hereinbefore mentioned in consideration of the same.
- (25) For establishing, maintaining, and regulating public libraries, museums, botanical gardens, parks, public baths, and washhouses, and public places of recreation.
- (26) For regulating traffic and processions
- (27) Generally maintaining the good rule and government of the municipality.

But no such bye-law or regulation shall be contrary to the provisions of this Act or of any other law in force in this Colony.

110. After any resolution for passing any bye-law or regulation has been agreed to by the council and not less than seven days before the same is confirmed, a copy of such bye-law or regulation shall be deposited at the office of the council, and shall be there open to the inspection of any person, at all reasonable times, and a notice shall be published in some newspaper generally circulating in the neighbourhood, setting forth the general purport of the proposed bye-law or regulation, and stating that a copy is open to inspection as aforesaid.

Proposed bye-laws open to inspection.

111. After any bye-law or regulation has been passed by the council it shall be submitted for the approval of the Governor and if approved shall be published in the *Government Gazette*, and thereupon such bye-law shall have the force of law in the municipality.

Governor's approval required.

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Governor's power of repeal.
112. Every bye-law or regulation in force in any municipality hereafter constituted or brought under the operation of this Act may be repealed by the Governor.
- Power to impose penalties in bye-laws.
113. Any bye-law or regulation made under this Act may impose a penalty for any breach thereof, and may also impose different penalties in case of successive breaches, but no penalty shall exceed twenty pounds. And any such bye-law or regulation may provide that in addition to any such penalty, any expense incurred by the council in consequence of any breach of such bye-law or regulation, or in the execution of any work directed by any such bye-law or regulation to be executed by any person, and not executed by him, shall be paid by the person committing such breach or failing to execute such work.
- Limit.
- Evidences of bye-laws.
114. A copy of the *Government Gazette* containing any bye-law or regulation of any municipality shall be evidence of the due making of such bye-law or regulation, and of the contents thereof.

RATEABLE PROPERTY.

- Land rateable with exceptions.
115. All land within any municipality shall be rateable property within the meaning of this Act, save as hereinafter excepted that is to say,
- (1) Land the property of Her Majesty or of the Colonial Government ⁽¹⁾ which is unoccupied or used for public purposes.
 - (2) Land in the occupation of Government, or of any person or public body, and used for public purposes.
 - (3) Places used exclusively for public worship, or for public worship and educational purposes, or for public schools, libraries, museums, or cemeteries.
 - (4) Land used exclusively for hospitals, lunatic asylums, benevolent asylums, or orphanages.
 - (5) Land set apart for any mine or mining area.

MAKING OF VALUATIONS.

- Fresh valuations.
116. The council of every municipality shall from time to time, but not less than once in five years cause to be made for such municipality a valuation of all rateable property within the municipality by a competent person or competent persons as valuers, and the rates made by the council for the purposes of this Act shall be made upon such valuation.
- Valuation of property omitted to be valued.
117. It shall be lawful for the council at any time to direct that a valuation be made of any property discovered to have been omitted from the valuation roll, and of any property subdivided or any buildings erected between any two valuations, and to appoint a valuer or valuers for that purpose.

¹ But see Act 36, 1891.

118. The annual value of any property valued under the provisions of this Act shall, for the purpose of framing any Voters' Roll, or for the purpose of making any rates (in case the council shall determine to assess rates upon the annual value) be deemed to be a sum equal to six per cent. upon the capital sum for which such property has been valued.

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How annual value of property to be calculated.

119. Every valuer shall, before entering upon the valuation entrusted to him, make before some Justice of the Peace a solemn declaration in the terms following :

Declaration to be made by valuer.

“ I———, do solemnly and sincerely declare that I will to the best of my skill and knowledge, and without fear, favour or prejudice, truly and impartially appraise and value all such property as I shall be required to value in the municipality of———, for the purpose of assessment, and that I shall conscientiously value the same at and for the full and fair price or sum which such property would, in my judgment, be likely to realize if brought at the time of valuation to voluntary sale, and sold upon the usual terms and conditions. And I make this solemn declaration conscientiously intending to fulfil the same; and by virtue of the provisions of the Ordinance No. 6, 1845, entitled ‘An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.’

“ Declared at———, this———day of———.

“ Before me———.”

And every such declaration shall be lodged with and preserved by the municipality to which it relates.

120. Every valuer shall, for the purpose of making the valuation as aforesaid, have power to enter at all reasonable hours in the day time, into and upon any rateable property within the municipal district without being liable to any action or other proceeding on account thereof.

Valuer's power of entry.

121. It shall be lawful for any valuer to put to any person in occupation or charge, or being the owner of any rateable property which such valuer shall have been authorised under the provisions of this Act to value, questions upon all such matters as may be necessary to enable such valuer correctly to value such property, and to state the names of the owner and occupier thereof, and such other particulars as may be necessary to be stated in his valuation with regard to the premises. And if after being informed by such valuer of his purpose in putting such questions, and of his authority under this Act to put the same, any such person in occupation or charge, or any such owner, shall refuse or wilfully omit to answer the same to the best of his knowledge and belief, or shall wilfully make any false answer or statement in reply to such questions, such person shall, for every such offence, be liable to a penalty not exceeding ten pounds.

Questions which valuer may put.

Penalty for refusing to answer such questions.

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Valuation Roll to be open for inspection.

122. As soon as any valuation as aforesaid shall be completed, the roll shall lie in the office of the municipality for the inspection of every owner or occupier of any property included therein who may, upon all lawful days, and at reasonable times, inspect the same and take extracts therefrom, and the council shall by public notice announce, for general information, that upon some day and at some hour and place to be fixed by such notice, a court will be held at which at least a quorum of members shall be present, for the purpose of hearing and determining objections to such valuation: Provided that the notice shall be published fourteen days at least before the day appointed therein for the holding of such court.

Court to hear objections.

123. Upon the day and at the place and hour mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation, by any owner or occupier, or other person on his behalf, and shall inquire into the merits of such objections, and shall confirm, alter, or reduce any valuation objected to: Provided that the said court may be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

Power of appeal.

124. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the valuation roll aforesaid, to appeal within one month against such valuation from the decision of the court in the last preceding section mentioned to the Court of the Resident Magistrate of the district in which such property shall be situated, and such Court shall inquire into such valuation, and the decision of such Court shall be final and conclusive: Provided, however, that if any question of law shall arise as to the principle upon which any valuation has been or should be made, it shall be lawful for such Resident Magistrate, instead of himself deciding such question, at the request of the council or party objecting to record such question of law for decision by some superior Court, and such question shall be stated in the form of a special case, and may be argued before and determined by the Supreme Court, or by the Court of the Eastern Districts or High Court of Griqualand, in case any such question shall arise within the limits of the jurisdiction of such last-mentioned Courts respectively, and the Court adjudicating upon any such special case may make such order as to costs as to the Court shall seem fit.

MAKING OF RATES.

What rates may be levied.

125. The council of every municipality shall once at least in every year, and may from time to time as they may see fit, make and levy rates upon all rateable property within the municipality, and such rates may be:

- (1) A landlords' or owners' rate assessed upon the value of the rateable property.
 - (2) A tenants' rate assessed upon the annual value of such property.
- Or either or both of such rates.

Provided that no rate exceeding twopence in the pound on the value, or eightpence in the pound on the annual value, of any rateable property, and no such special rate as in the next succeeding section mentioned, shall be levied unless notice of the intention to levy such rate or special rate as the case may be, shall be published by the council for not less than seven days; and any twenty ratepayers may, within seven days after the last publication of such notice, demand that the question whether such rate or special rate shall be levied or not shall be submitted to the election of, and be determined by, the ratepayers in the manner by this Act provided for determining whether or not a loan shall be incurred.

126. Where it appears to the council that any work, improvement, or undertaking which the council is authorised to do or execute is for the special benefit of any particular portion of the municipality, the council may for defraying the expenses incurred in doing or executing such work, improvement, or undertaking by resolution distinctly defining such portion, make and levy a rate to be called a "special rate" equally on all rateable property situated within such portion.

Special rates for works in special localities.

RECOVERY OF RATES.

127. Every rate assessed by the council of any municipality shall become due and payable upon a day to be fixed by the council, of which day, and the amount of the said rate, the council shall give at least thirty days' notice by advertisement in a newspaper (if any) circulating in such municipality and in such other mode as the council shall by resolution direct.

When rates payable.

128. Whenever the council shall have given such notice as aforesaid of the day on which any rate will become due and payable, it shall be the duty of all persons liable for such rate to pay the amount thereof to the municipal clerk or any collector duly authorised by the council to collect and receive the same, failing which defaulters will be liable to legal proceedings for the recovery of the amounts due by them respectively.

Proceedings in default of payment of rates.

129. If after the expiration of the time fixed for the payment of any such rate as aforesaid, any person fail to pay any rates due by him it shall be competent for the council to cause a demand in writing to be made upon such person, requiring such person to pay the amount stated in such demand within fourteen days after service thereof. And in case any person who shall have had any such demand delivered to him personally, or left at his ordinary place of residence, or place of business, or office, shall make default,

How defaulters to be sued.

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it shall be lawful for the chairman of the council to issue his warrant directed to the messenger of the Court of the Resident Magistrate of the district requiring such messenger to levy and raise the amount stated therein by sale of the goods and chattels found on the premises in respect of which such rate shall be due, and continuing to be occupied by the person on whom such notice shall have been served. And every such messenger receiving any such warrant shall execute the same as if a warrant issued out of the Court of the Resident Magistrate of the district, and shall conform to such rules and make such charges in respect of the execution of such warrant as are for the time being applicable to warrants of such Court as aforesaid.

Actions for rates
in Magistrate's
Court.

130. Notwithstanding the provisions of the last preceding section the council may at their discretion after the expiration of the time fixed for the payment of any rate as aforesaid, recover from any person in default (without further notice or demand) the amount of rates due by such person by action in the Court of Resident Magistrate, as hereinafter in this Act is provided.

Jurisdiction in re-
gard to rates.

131. Any rates assessed as aforesaid and unpaid after the expiration of such notice as aforesaid shall in case the amount thereof do not exceed fifty pounds, be recoverable at the suit of the council of the municipality or their collector thereto appointed in writing, by action in the Court of the Resident Magistrate of the district in which such municipality is situated, or in case the person liable for such rate shall not reside within such district, then either in the Court of the Resident Magistrate of such district or in the Court of Resident Magistrate of the district in which such person shall reside: Provided that as often as any such person not resident in the district in which the municipality is situated shall be proceeded against in the Court of Resident Magistrate of such district the summons directed to such person may be served upon the person, if any, in occupation of the property in regard to which the rate alleged to be due is claimed, or upon the person summoned by the messenger of the Court of any Resident Magistrate in which such person shall be found.

Evidence in suits
for recovery of rates.

132. In any proceeding to levy or recover rates or consequent on the levying or recovering of any rate under the provisions of this Act the valuation rolls and rate books of the council, and all entries purporting to be made therein in manner by this Act required, extracts or certified copies thereof signed by the chairman and sealed with the seal of the municipality, shall upon production thereof alone be *prima facie* evidence of such rate, and of the contents thereof without any evidence that the notices required by or other requirements of this Act, have been complied with: Provided that it shall be competent for any person proceeded against to offer evidence to prove the contrary.

In cases where ow-
ner or occupier ceases
to be such before

133. When the occupier or owner who is rated to any rate ceases to be the occupier or owner of the property in respect whereof

he is rated before the end of the period in respect of which such rate was made, such occupier or owner shall be liable to pay a portion only of the rate payable for the whole of such period proportionate to the time during which he continued to be the occupier or owner, and any person who shall be the occupier or owner of the property during the remainder of the period, shall be liable to pay a portion of such rate in proportion to the time during which he is such occupier or owner, and the same shall be recovered from him in the same manner as if he had been originally rated for such property.

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period for which rates due.

134. When the occupier of any rateable property is rated in respect thereof, and the rate remains unpaid for three months, the council or their collector, notwithstanding any judgment or order of any Court for the recovery of such rate from any other person, may, at any time within twelve months after the making of the rate by notice served as aforesaid, or published in the *Government Gazette* and in some newspaper circulating in the neighbourhood, demand the amount of such rate or any part thereof from the owner for the time being of such rateable property, and on non-payment thereof after one month from the service or publication of such demand may recover the same from such owner before any Court of competent jurisdiction; and subject to any agreement previously made between the owner and occupier, the owner may recover the sums so paid, if not paid on demand, from such occupier as arrears of rent could be recovered from such occupier by such owner.

When owners may be sued for default of occupier.

135. When the owner of any rateable property has been rated in respect thereof, and the rate remains unpaid for three months the council, or their collector as aforesaid, may, at any time within twelve months after the making of the rate, demand the amount of such rate or any part thereof from the occupier for the time being of such rateable property, and on non-payment thereof may, after one month from the date of such demand, recover the same in like manner as rates may be recovered from any occupier liable to be rated. And every such occupier shall be entitled, subject to any agreement to the contrary, to deduct from any rent payable by him to such owner so much as was so paid by or recovered from him; and the production of the receipts for such rates so paid by or recovered from such occupier shall, subject as aforesaid, be a good and sufficient discharge for the amount so paid or recovered as payment of rent to the owner.

When owner in default, demand against occupier.

136. If on the request of the council or any collector of rates duly authorised by them as such, the occupier of any property refuses or wilfully omits to disclose, or wilfully misstates to the council or collector making such request, the name of the owner of such property, or of the person receiving or authorised to receive the rents of the same, such occupier shall be liable to a penalty not exceeding five pounds.

When occupier refuses to disclose name of owner.

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When interest to
run on rates in de-
fault.

137. In case any rates made or levied under the provisions of this Act shall remain unpaid after three months from the date fixed by the council for the payment thereof, interest upon such rates shall be chargeable and recoverable by such council at the rate of six per centum per annum, reckoned from the date upon which such period of three months shall expire

When property
rated may be seized
and leased.

138. Where any rateable property in any municipality is unoccupied, and the rates thereon accrued and due at the time such municipality shall come under the operation of this Act, or any rates thereon accrued under this Act shall have been unpaid for five years, the council may, in the name of the municipality, take possession of such property and grant leases of the same subject to the provisions of this Act.

For what term.

139. Every such lease shall be for such term, not exceeding five years, as the council may deem fit, and shall be granted for the best rent which may be reasonably had for such property, and subject to such covenants and conditions as the council may determine.

Notice before the
seizure.

140. The council shall not take possession of any such property until three months after a notice in writing setting forth that rates in respect of such property are unpaid, and demanding payment thereof, and stating that in default of payment the council will take possession of such property under the provisions of this Act has been served upon the owner of such property, if within this Colony, and whose name and address is known to the council or if there is no such owner within this Colony, or no such owner whose name and address is so known, until such notice has been affixed to some conspicuous place on such property and published in the *Government Gazette* at least once a month during three months; and every such notice shall contain a sufficient description of the property to identify the same; but every lease granted by the council otherwise in accordance with the provisions of this Act shall be valid notwithstanding the non-compliance with the provisions of this section, unless all arrear rates and interest thereon are paid within twelve months after the council shall have taken possession.

How owner may
regain possession.

141. Within three months after demand by the owner of any property taken possession of by any council as aforesaid, made within thirty years after the date of taking possession, and after payment of all arrears of rates due in respect thereof and interest upon such arrears at the rate of six per centum per annum, such owner shall be entitled to resume possession of such land, subject to the terms of any lease theretofore lawfully granted by such council under the provisions of this Act.

Application of
rents accruing under
the leases.

142. All rent and other moneys payable under any such lease shall until the payment of all arrears and interest as aforesaid by the owner, or the expiration of thirty years from the date of taking possession of such property by the council, whichever shall first happen, be received by the council and shall be applicable

- (1) In defraying the expenses of and incidental to the giving of the notices as aforesaid and the execution of such lease and the collection of the rents.
- (2) In payment to the council of all arrears of rates and other payments due in respect of such property, together with interest on all arrears of rates at the rate of six per centum per annum, from the time when interest upon such rates shall accrue respectively, and in payment of all rates and other payments becoming due thereon.

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And the residue of such money shall belong to such person as would have been entitled to receive the rents or profits of such property if this Act had not been passed.

143. Unless some person entitled to resume possession of any property of which the council of any municipality has taken possession as aforesaid shall within thirty years after the date of taking possession pay all arrears of rates, interest, and incidental expenses properly chargeable under this Act, such property, and all accumulations of rent and other moneys received in respect of such property shall vest absolutely in such municipality.

After prescriptive possession of 30 years property seized to vest in Council.

LOANS.

144. Subject to the provisions of this Act, the council of every municipality may borrow money for permanent works or undertakings, or to liquidate the principal moneys owing by the municipality on account of any previous loan.

Borrowing power for works.

145. Before proceeding to borrow any money for the construction of permanent works and undertakings, the council of every municipality shall cause to be prepared plans and specifications, and an estimate of the cost thereof, and also a statement showing the proposed expenditure of the money to be borrowed, and such statement shall be open to the inspection of the ratepayers, for one month after the publication of the notice next hereinafter mentioned at all reasonable times.

Plans and specifications of works to be prepared.

146. No proposition for borrowing money for any of the purposes aforesaid shall be adopted by the council, unless a notice thereof has been published in the *Government Gazette* and also twice in some newspaper generally circulating in the neighbourhood, not less than one month nor more than three months before such proposition is adopted, stating the amount of the moneys proposed to be borrowed, and the purposes for which the loan is to be applied, and in case such loan is to be expended in the purchase of any land, works or undertakings, specifying such land, works, or undertakings, and in case the loan is to be expended in the construction of works and undertakings, stating that the plans and specifications and estimate of such works, and the statement hereinbefore mentioned, are open for inspection at the office of the council.

Notice to be given of intention to borrow.

147. Within one month after the last publication of such notice as aforesaid, of any proposition to borrow money, not being a

When proposal to borrow, must be submitted to ratepayers.

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proposition to borrow money to liquidate any loan lawfully incurred, any twenty ratepayers may by writing under their hands delivered to the chairman or clerk of the municipality, demand that the question whether or not such loan shall be incurred, be submitted to the election of the ratepayers.

Proceedings on demand for such submission.

148. When any such demand has been made, the votes of the ratepayers shall be taken upon such questions on a day to be fixed by the council of which day not less than fourteen days' notice shall be given and on such day a poll shall be taken in the manner by this Act prescribed for holding elections of all ratepayers who desire to prohibit the council from proceeding further with such loan.

Scrutineers.

149. One scrutineer shall be appointed by the council and the persons demanding a poll may by writing under the hands of a majority or the whole of them also appoint one scrutineer to be present at every polling place.

How result of poll to be ascertained.

150. Immediately after the close of the poll, the number of votes recorded thereat shall be ascertained in the manner provided for ascertaining the number of votes at elections, and the returning officers shall, as soon as conveniently may be on or after the day of the poll, give notice to the council of the number of votes recorded, and the council shall be prohibited from proceeding further with such loan if the number of votes recorded against the loan exceeds one-half of the total number of votes for which voters are recorded on the Voters' Roll of the municipality.

In case proposal to borrow be not opposed or fail to be prohibited.

151. If no such demand is made as aforesaid, that the question whether or not such loan be incurred be submitted to the election of the ratepayers, or if on such demand being made the ratepayers fail to prohibit the council from proceeding further with the loan, the council may at any time not more than six months after the last publication of such notice as aforesaid pass a resolution for borrowing money for the purposes mentioned in the notice.

Majority necessary to support proposal to borrow.

152. No resolution for borrowing money shall be adopted by the council, unless at the meeting of the council at which the resolution is confirmed as herein required, the resolution for confirmation is carried by a majority of the whole number of members of the council: Nor shall any such resolution be adopted if the sum proposed to be borrowed, together with any sums previously borrowed and not repaid, would exceed a sum equal to ten times the then annual revenue of the municipality.

Separate accounts to be kept of borrowed money.

153. The council of every municipality shall cause a separate account to be kept in some bank, for every loan incurred by them, and all money forming part of such loan shall be paid into such account, and shall be applied solely to the purposes for which the same was borrowed.

Advances from Banks.

154. For the temporary accommodation of councils of municipalities, it shall be lawful for such councils to obtain advances from banks, by overdraft of the current account upon the credit of

the municipality. But no such overdraft or accommodation shall at any time, under any circumstances exceed the prior year's income.

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155. If after the commencement of this Act, the council of any municipality borrow any money, as on the credit of the municipality which the municipality is not legally bound to pay, all councillors who have consented to the borrowing of such money shall be jointly and severally liable to repay the same and all interest thereon to the persons from whom the same was borrowed, and the same may be recovered from such councillors or any of them, as money lent by such persons to such councillors in any Court of competent jurisdiction, but in no case shall such money be recoverable from the municipality.

When Councillors personally liable for loans.

POWERS AND DUTIES OF THE COUNCIL.

156. The council shall have power and authority to do all or any of the following things :

Powers and duties of Council.

To make, construct, alter, keep clean and in repair the roads, streets, dams, furrows, sewers, drains, culverts and bridges within the limits of the municipality.

To excavate, construct, and lay down within the limits of the municipality, watercourses, water pipes, conduits, sluices, dams, reservoirs, aqueducts, wells and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair, or to grant leave to any person, or company of persons, to lay down pipes or to execute any other like works.

To lease, or purchase any land, and to erect, lease, or purchase, maintain and keep in repair, any building or buildings for any municipal requirement or purpose.

To lease, purchase, or erect and maintain such school buildings and manage such schools as the council shall, from time to time, think proper; and to enter into such guarantees in respect of such schools as may be, required by the Government, in case any aid from the Government in support of such schools should be required under any Act which may now or hereafter be in force for this purpose.

157. The council of any municipality may appoint and employ such number of street-keepers, policemen, and special constables as shall be required for the protection of the inhabitants and property, streets, and public places within the municipality by day and by night; and to provide all such street-keepers, policemen, and special constables with such clothing, arms, ammunition and weapons, and appoint to them such duties and hours or time of duty, and to make such rules, orders, and regulations, relative to such street-keepers, policemen, or special constables and their duties, as shall be deemed fit. All such street-keepers and policemen shall act as

Police, street keepers and other officers.

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constables within the municipality while in the execution of their duties under this Act, and are hereby invested with and shall have and enjoy the like powers, authorities, privileges, and immunities, and shall be subjected to such and the like penalties and forfeitures as constables or policemen are invested with, or shall or may have or enjoy or are or may be subject to or liable to by law: provided that nothing in this section contained shall be taken to alter or affect any existing law regulating the number of police required to be provided by or in any municipality.

Power to take lands &c.

158. The council of every municipality may, within the municipality and with the consent of the Governor, take land with or without buildings for the purpose of executing any work or undertaking authorised by this Act, and the council shall make full compensation to the owners and occupiers of any lands so taken.

MUNICIPAL LANDS.

Common lands, &c., of inhabitants vested in Council.

159. The property of and in all lands, streets, roads, and buildings to which the inhabitants of any municipality shall at any time have or acquire a common right, shall be vested in the council of such municipality for the time being.

As to disposing of, enclosing, &c., such lands.

160. When and as soon as the council shall at any meeting duly convened for that purpose, resolve that it is expedient to dispose of or alienate or permit to be built upon, enclosed, or cultivated, any part or portion of the common pasture lands of the municipality, or any other lands which shall be vested in the said council, it shall and may be lawful for the council to apply in writing for the consent of the Governor to the proposed sale, lease or other arrangement for the occupation or enclosure of any part or portion of such lands, and upon obtaining such consent, but not otherwise, to execute or carry into effect such sale, lease or other arrangement.

Notice of application for such dealing with lands to be given.

161. No such application shall be made to the Governor aforesaid until a notice in writing of such intended application shall have been posted for general information at some conspicuous place within the municipality for a period of not less than fourteen days, and published for a like period in a newspaper (if any) published or circulating within such municipality, which notice shall in some part thereof describe the part or portion of land proposed to be sold, leased, or otherwise permitted to be occupied or intended to be enclosed, and the object, terms and conditions of the proposed sale, lease or other right of occupation or enclosure, and shall require any person objecting to the proposed proceeding to lodge with the council, within fourteen days from and after the date of the posting of such notice, his objections thereto in writing.

Copy of notice and of objections to be sent to Governor.

162. In every case in which any such council as aforesaid shall apply to the Governor for such consent as aforesaid, they shall transmit, together with such application, a copy of the notice

posted as aforesaid, and of all objections which shall have been lodged in pursuance thereof, with such observations, if any, upon such objections as they shall deem necessary or fitting.

163. When and as soon as the Governor shall have signified his assent to such application as aforesaid, all contracts, leases, or other instruments necessary to effect the object of such application may be signed or executed.

No. 45—1882.

Contract of sale, &c., to be completed when Governor's assent given.

MISCELLANEOUS.

164. The provisions of the Ordinance No. 16, 1847, ⁽¹⁾ commonly called the "Pound Ordinance," and of all Acts amending the said Ordinance, shall *mutatis mutandis*, extend and apply to every municipality hereafter constituted or brought under the operation of this Act: Provided that the council of every such municipality shall, in regard to every pound established therein, have and exercise all the powers now had and exercised by the Civil Commissioner and Divisional Council in regard to pounds not within municipalities.

Pound Ordinance 16 of 1847 to apply.

165. In all cases in which any matter or things is by this Act required to be published, advertised or inserted in a newspaper generally circulated in the municipality or neighbourhood, the said newspaper shall be such newspaper as the council shall for the time being appoint in that behalf.

Newspapers for Notices.

166. The council shall for the purposes of this Act have power, by themselves or their officers, to enter at all reasonable hours in the daytime into and upon any building or land within the municipal district for the purpose of executing any work or making any inspection authorised to be executed or made by them under this Act without being liable to any legal proceedings on account thereof.

Power of entry.

167. Any summons or notice, or any writ or other proceeding at law required to be served upon any municipality may be served by being given personally to the Chairman or Municipal Clerk, or left at the municipal office.

Service of process.

168. Every order, notice, or other document requiring authentication by the council may be sufficiently authenticated without the common seal of the municipality if signed by two councillors or by the Municipal Clerk.

Authentication of documents.

169. Every person who shall at any time obstruct the council, or any person employed by them, or any person appointed by the Governor in the performance of anything which they are respectively empowered or required to do by this or any other Act, shall be liable to a penalty not exceeding five pounds.

Penalties for obstructing officers.

170. The council may order proceedings to be taken for recovery of any penalties and for the punishment of any person offending against the provisions of this Act, or of any bye-

Legal proceedings and expenses.

¹ Repealed by Act 15, 1892, but see § 81 of that Act.

No. 46—1882.

Number and Year.	Title.	Extent of Repeal.
Act No. 13, 1864.	To amend the Ordinance No. 9 of 1836, intitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded."	The whole.

SECOND SCHEDULE.

FORM OF NOMINATION.

Municipality of _____.

We, the undersigned voters of the municipality of _____ (or if the municipality be divided into wards, for the Ward No. _____ of the municipality of _____), do hereby nominate (*state christian and surname*) as a candidate for the office of councillor (or auditor as the case may be) of the said municipality at the election to be held for the said municipality (or ward as the case may be) on the _____ day of _____ 18.

(Here are to follow the Signatures.)

No. 46—1882.]

[June 30, 1882.

ACT

To Declare and Amend the Law relating to Libel. (1)

Preamble.

WHEREAS it is expedient to declare and amend the law relating to defamatory libels, be it declared and enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Penalties for defamatory libel.

1. Any person who shall publish a defamatory libel shall be deemed to be guilty of a crime and shall, upon conviction thereof, be liable to imprisonment with or without hard labour for any term not exceeding two years, or to a fine not exceeding five hundred pounds sterling, or to both such fine and such imprisonment as the Court may award.

What defence under plea of not guilty.

2. Any person charged with the crime of publishing a defamatory libel may, under the plea of not guilty, set up any defence (save as hereinafter excepted), which might be pleaded in answer to a civil action for the same libel.

When truth of libellous matter a defence, special plea of justification necessary.

3. (2) On the trial of any person accused of the crime of publishing such libel as aforesaid, the truth of the matters charged

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

² See Act 29, 1886, § 1.

may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters should be published in the manner in which and at the time when they were published, but to entitle the defendant to give evidence of the truth of such matters, it shall be necessary for him to file a special plea of justification in manner hereinafter in the fourth section of this Act provided; and if after such plea the defendant shall be convicted, it shall be competent to the Court in pronouncing sentence to consider whether the guilt of the defendant is aggravated or mitigated by the said plea or by the evidence given to prove or disprove the same: Provided always that the truth of the said matters shall in no case be inquired into without such special plea: Provided also that the defendant may plead such special plea alone or in addition to a plea of not guilty.

4. (1) Every such special plea of justification as hereinbefore in the third section of this Act mentioned shall be in writing and signed by the defendant or his counsel or attorney, and shall allege that the matters charged in the said libel are true, and that it was for the public benefit that such matters should be published in the manner in which and at the time when they were published, and shall also set forth the particular fact or facts by reason of which it was for the public benefit that such matters should be so published. A copy of such plea, together with a notice that the defendant intends to plead it, shall be served upon the prosecutor within such time before the trial as the Court at the trial may consider reasonable, in default whereof the Court may refuse to permit such plea to be pleaded or may adjourn the trial upon such terms as it thinks fit. The prosecutor may reply generally to any such special plea of justification denying the whole thereof.

Plea of justification to be in writing and signed, &c.

Requisite contents of plea.

Reply thereto.

5. Whenever under the plea of not guilty, upon the trial of any person for the publication of a defamatory libel, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove as a defence that such publication was made without his authority, consent or knowledge, and did not arise from want of due care or caution on his part.

When defendant may prove want of knowledge of publication of libel.

6. If any person shall publish or threaten to publish any libel upon any other person, or shall directly or indirectly print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing of any matter or thing touching any other person with intent to extort any money or security for money or any valuable thing from such or any other person or with intent to induce any person to confer upon or procure for

Threats to publish, or offers to abstain from publishing, libels.

No. 46—1882.

any person any appointment or office of profit or trust, every such offender on being convicted thereof, shall be liable to be imprisoned with or without hard labour for any term not exceeding three years.

Costs in cases of private prosecutions.

7. In case of any private prosecution for the publication of a defamatory libel, if upon a special plea of justification such as hereinbefore mentioned the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea, such costs so to be recovered to be taxed by the proper officer of the Court before which the defendant is tried.

Fiat of Public Prosecutor necessary before criminal prosecution allowed.

8. No criminal prosecution shall be commenced against any person under the provisions of this Act for the publication of any libel or defamatory matter without the written fiat or allowance of the Attorney-General, or in case the publication shall have been made within the Eastern Districts or Griqualand West without the written fiat or allowance of the Solicitor-General or Crown Prosecutor for Griqualand West within their respective jurisdictions, as the case may be.

When Magistrate's Courts shall have jurisdiction.

9. ⁽¹⁾ No Court of a Resident Magistrate shall have jurisdiction in any case in which any person shall be charged with publishing a defamatory libel unless such case, after a preparatory examination has been duly taken therein, shall have been remitted for trial to such Court by the Attorney-General, the Solicitor-General, or the Crown Prosecutor for Griqualand West, respectively, under the provisions of the statutes in that behalf made and provided.

Limitation of time for prosecution.

10. No prosecution shall be commenced against any person for the publication of any defamatory libel after the lapse of a period of six months from the date of such publication.

Definition of term "Prosecutor."

11. The term "prosecutor" in this Act shall with regard to any private prosecution mean the private prosecutor, and shall with regard to public prosecutions mean the Attorney-General, Solicitor-General or Crown Prosecutor, as the case may be, by whom, or under whose direction such public prosecution shall be commenced or shall be conducted.

What is a "defamatory libel."

12. The expression "defamatory libel" in this Act shall have the same signification that is attached thereto by the law of England: Provided that nothing herein contained shall have the effect of giving force in this Colony to any statutory enactment made and passed by the Imperial Parliament after the taking effect of this Act, unless the same shall be re-enacted here.

Short title.

13. This Act may be cited as the "Libel Act, 1882."

No. 47—1882.]

[June 30, 1882.]

Act to incorporate the Table Mountain Water Supply Company (Limited.)

[Repealed by Act 35, 1887.]

¹ See § 2, Act 29, 1886.

No. 48. -1882.]

[September 1, 1882.]

ACT

To Amend and Consolidate the Laws for the Regulation of the Trade in Diamonds, and to provide for the trial and punishment of certain Offences. (1)

WHEREAS it is expedient to amend and consolidate the laws regulating the trade in diamonds, and to provide for the trial and punishment of certain offences: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the first schedule hereto to the extent which the same are therein expressed to be repealed and all other laws or ordinances repugnant to or inconsistent with the provisions of this Act, are hereby repealed; except as to offences committed and proceedings taken, and except as in this Act is excepted.

Repeal of repugnant laws.

I.—WHO MAY DEAL IN DIAMONDS.

2. It shall not be lawful for any person, except as in this Act is excepted, to have in his possession any rough or uncut diamond; and any such person as aforesaid who shall be found in the possession of any rough or uncut diamond and shall be unable to account satisfactorily for, or prove his right to, the possession of such rough or uncut diamond, or to produce his proper permit for the same in accordance with the provisions of this Act, shall, on conviction, be liable to the penalties provided by the following section.

Possession of uncut diamonds unaccounted for.

3. It shall not be lawful for any person or any firm or joint-stock company, save as in this Act excepted, to buy, deal in, or receive by way of barter, pledge, or otherwise, either as principal or agent, any rough or uncut diamond, or to be an accessory to such buying, dealing in, or receiving as aforesaid, unless such person so buying, dealing in, or receiving as aforesaid, shall be duly licensed or authorised to deal in diamonds either as buyer or seller, broker or factor, or shall be duly licensed to carry on the trade or business of a diamond cutter, or unless such person, firm, or joint-stock company, buying, dealing in, or receiving as aforesaid, shall be a banker within the Colony; and any person convicted of contravening this section shall be liable to a penalty not exceeding one thousand pounds, or to imprisonment with or without hard labour for any period not exceeding fifteen years, or to both such penalty and imprisonment: Provided, however, that when any person shall have been sentenced under the provisions of this Act, to any greater term of imprisonment than five years, it shall be

Prohibition against and penalties for buying or dealing in rough or uncut diamonds except licensed, &c.

¹ See Acts 14, 1885: 34, 1888; and 31, 1893.

No. 48—1882.

Terms on which
portion of sentence
may be remitted.

lawful for the Governor ⁽¹⁾ to remit any portion of such term in excess of such five years, on condition of such person so sentenced leaving and not returning to any part of Griqualand West or to any district in which this Act shall be in force, as the case may be, during the remainder of his sentence; and if any person, a portion of whose sentence shall have been so remitted, shall notwithstanding, return within the time aforesaid, such person shall be liable to be re-arrested and imprisoned for a term equal to the portion of the sentence unexpired at the time of his release from custody: Provided also that nothing herein contained shall in any manner affect Her Majesty's prerogative of mercy.

Imprisonment
when fine not paid.

4. In all cases where a fine has been inflicted on any person for contravening any of the provisions of this Act it shall be lawful for the Court to sentence such person to an additional term of imprisonment, without hard labour, for a period not exceeding one year, unless such fine shall have been sooner paid as the Court may think fit: Provided that in cases where any person shall have been in the first instance sentenced to imprisonment in addition to any fine, such further period of imprisonment shall take effect from the termination of the first sentence, and shall not exceed the term to which he was originally sentenced.

Who may sell and
deal in diamonds.

5. It shall not be lawful, save as hereinafter excepted, for any person not being a banker, licensed diamond dealer, or a registered claimholder, or the duly accredited and registered agent of a registered claimholder or joint-stock company, or the holder of a washing permit or prospecting licence, or otherwise duly authorised under the provisions of this Act, to sell, offer or expose for sale, barter, pledge, or in any way either as principal or agent dispose of or deliver any rough or uncut diamond or diamonds: Provided that it shall not be lawful for such banker or diamond dealer, or duly authorised person, to sell, offer, or expose for sale, barter, pledge, or in any way dispose of or deliver any rough or uncut diamond, unless such diamonds shall be actually the property or in the lawful possession of such banker or diamond dealer: and provided also that it shall not be lawful for any such registered claimholder, or the duly accredited and registered agent of a registered claimholder or joint-stock company, or the holder of a washing permit or prospecting licence, to sell, offer, or expose for sale, barter, pledge, or in any way dispose of or deliver any rough or uncut diamond unless such rough or uncut diamond shall have been obtained or found in soil taken from any claim registered in the name of such claimholder or joint-stock company, or in the soil or ground mentioned and specified in such washing permit, or in ground not being a public diamond field worked under such prospecting licence, and any person convicted of contravening this section shall be liable to the penalties provided by the third section

of this Act: and provided also that the onus of proof of the *bonâ fide* possession within the meaning of this section of any such diamond as aforesaid shall in all cases rest on such banker, diamond dealer, registered claimholder, duly accredited and registered agent of a registered claimholder or joint-stock company, holder of a washing permit and prospecting licence, or otherwise duly authorised person as aforesaid.

6. Any person being the proprietor of any landed property in the title to which there shall be no reservation of minerals or precious stones to the Crown and which may not be proclaimed a public digging or mine, who may find, win, or pick up any rough or uncut diamond or diamonds upon such farm or landed property, shall within fourteen days thereafter make a solemn declaration of the fact, and upon production of such declaration the Resident Magistrate of the district shall grant a permit to such person to hold or sell or dispose of such diamond. And in the case of a company being the proprietor of any such landed property, the secretary, manager, or other duly authorised representative of such company whose name shall be registered in the office of the Resident Magistrate of the district in which such landed property is situate, shall make the declaration aforesaid. And any person contravening the provisions in this section contained for declaring such finds as aforesaid, shall be liable, upon conviction, to a penalty not exceeding one hundred pounds, or in default of payment to be imprisoned with or without hard labour, for a period not exceeding one year. Provided that any person who shall sell, offer, or exchange, or barter, pledge, or in any way dispose of or deliver any rough or uncut diamond found, won, or picked up on any such landed property without the permit aforesaid shall be liable to the penalties provided by the third section of this Act.

7. Any banker or licensed dealer registered claimholder, authorised or registered agent of a registered claimholder or joint-stock company, holder of a washing permit, prospecting licence, dealer in or cutter of diamonds, buying or receiving by way of barter, pledge or otherwise, either as principal or agent, any rough or uncut diamond from any person or in any way dealing with the same with any person not being a banker or licensed dealer, or cutter of diamonds, or a registered claimholder, or a registered and accredited agent of a registered claimholder or joint-stock company, or not having a washing permit or prospecting licence, or permit under the sixth section of this Act, shall be liable on conviction to the penalties in the third section in this Act provided, and shall in addition forfeit any licence or permit which such person may hold and any right of renewal of the same for such time as the Court may direct, and no such person shall thereafter be registered as the agent of any claimholder or joint-stock company.

8. Any licensed diamond dealer or diamond cutter, in any way dealing in rough or uncut diamonds otherwise than in the manner

No. 48—1882.

Persons finding diamonds on private property to make declaration within 14 days.

In case land belongs to a company.

Persons competent to purchase not to buy, &c., from persons incompetent to sell.

Licensed dealers to adhere to terms of licence.

No. 48-1882.

specially authorised by the licence held by him, shall on conviction thereof be liable to the penalties in the third section of this Act provided, and shall in addition forfeit his licence and any right of renewal of the same for such time as the Court may think fit and direct.

No dealings allowed between sunset or sunrise, or on Sundays.

9. It shall not be lawful for any banker or diamond dealer to buy, deal in, or receive by way of barter, pledge or otherwise, or to sell, barter, pledge, or in any way for the purposes of trade dispose of or deliver, or for any licensed diamond broker or factor to act as such diamond broker or factor, or in any way to negotiate the purchase or sale of diamonds between other persons, or act as agent or factor between buyer or seller in respect of any rough or uncut diamond or diamonds between sunset and sunrise, or on Sundays, and every person contravening this section shall incur a penalty not exceeding one thousand pounds and in default of payment shall be liable to be imprisoned with or without hard labour for any term not exceeding one year, and shall in addition be liable to forfeit any licence which such person may hold and any right of renewal of the same for such time as the Court may direct.

Burthen of proof of being licensed.

10. If in any proceeding under this Act, the Court has to be satisfied either that the prisoner, or any witness, or other person, is not authorised or licensed to deal in diamonds within the meaning of the section under which such accused person is being tried, such prisoner, witness, or other person shall be deemed to be unlicensed, or unauthorised, unless such prisoner shall prove to the satisfaction of such Court, that he, or such witness or other person is duly authorised or licensed as aforesaid.

Restrictions on exporting and importing rough or uncut diamonds.

11. It shall not be lawful for any person, firm, or joint-stock company to export or import rough or uncut diamonds out of or into any of the districts of the Colony in which this Act shall be in force, unless such importer or exporter shall be licensed or authorised to deal in diamonds, or unless such person, firm, or joint-stock company shall be a banker or bankers within the Colony, and every person convicted of contravening this section shall be liable to the penalties provided by the third section of this Act.

Right of police to detain post packages supposed to contain diamonds sent illegally.

12. It shall be lawful for the Chief of the Police of any district or the Chief of the Detective Department of Griqualand West as the case may be, whenever he shall have good cause to believe that any parcel or package is being dispatched through the Post Office by any person, and which parcel or package contains rough or uncut diamonds, which have not been entered according to the provisions of this Act in the register of the person so sending them as aforesaid, or of which he may at any time have become unlawfully possessed, to stop or cause to be stopped such parcel or package as aforesaid at any Post Office within the Colony, either during the transit of such parcel or package or otherwise, and

thereupon he shall by a notice in writing served personally on the person who shall have dispatched such parcel or package as aforesaid call upon such person as aforesaid to attend either personally or by an agent duly authorised by him in writing, to appear at a time and place to be named in such notice, for the purpose of being present at the opening and examination of such parcel or package, and thereupon on the day and at the place appointed in such notice the Chief of the Police of the district as aforesaid, or the Chief of the Detective Department at Griqualand West, as the case may be, shall proceed to open and examine such parcel or package, and if there shall be discovered therein any rough or uncut diamonds which shall not have been duly entered in the register of such person as aforesaid in accordance with the provisions of this Act, or for the possession of which he is not able satisfactorily to account, such person shall on conviction be liable to the penalties provided in the third section of this Act, and all diamonds contained in such parcel or package shall thereupon be forfeited and sold as hereinafter provided.

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Proceedings thereon.

13. Whenever any person shall find or pick up any rough or uncut diamond on any ground or place not being the claim or depositing floor of such person, or in any ground or place worked by him under a prospecting licence, he shall forthwith take and deliver such diamond to the Resident Magistrate of the district, who shall thereupon advertise the same in the local newspapers; and if within twenty-one days from date of such advertisement, the owner of such diamond shall not have been discovered or in case no person shall have been able to prove to the satisfaction of the Resident Magistrate his right to have such diamond delivered to him, the Resident Magistrate shall thereupon order the same to be sold and the proceeds thereof to be paid into the public treasury: Provided always that a sum calculated at the rate of ten per cent. on the amount realised by such sale shall in all cases be paid to the person finding such diamond as aforesaid; and provided always that any person so finding or picking up any rough or uncut diamond as aforesaid, who shall fail or neglect to deliver the same to the Resident Magistrate, as provided by this section shall, on conviction thereof, be liable to a fine of five hundred pounds sterling, or to imprisonment with or without hard labour for a period not exceeding five years.

Duty of person finding by chance uncut diamond outside his claim.

14. It shall be lawful for any detective officer, constable, or policeman when thereto authorised by warrant granted under the hand of any Resident Magistrate or of the Chief of the Detective Department in the Territory of Griqualand West, which warrant such Magistrate or Chief of the Detective Department is hereby authorised and required to grant, upon sufficient cause shown to his satisfaction to enter into and upon and search any stand, buildings, and premises where he may have good cause to suspect that any rough or uncut diamonds are unlawfully concealed and

Powers of entry into and search of premises, &c., where stones suspected to be concealed.

No. 48-1882.

Power of arrest at any time of suspected person.

any person then being upon such stand, building or premises; and at any time in any highway, street, or public place, to arrest and search any person whom he may have good cause to suspect of having on his person, or in his possession, any rough or uncut diamonds unlawfully obtained, or without having a proper permit for the same, and to stop and search any vehicle in or upon which he shall have good cause to suspect that any such diamonds are concealed or being carried away and to search any person then being in or upon such vehicle; and should there be found any rough or uncut diamonds in or upon such stand, buildings, or premises, or upon such person, or vehicle, to seize and detain such diamonds, and thereupon arrest any person then being in or upon such stand, building, premises, or vehicle, who may reasonably be suspected of being the possessor of, or interested in such diamonds, and as soon as may be bring such person before any Resident Magistrate or Justice of the Peace; and if such person as aforesaid shall at the trial fail to produce a proper permit for such diamonds, or to account for the possession thereof to the satisfaction of the Court before which such person shall be tried such person shall on conviction be liable to the penalties provided by the third section of this Act; and on every conviction under this section any diamond found on such stand, or in such building or premises or on such person, cart, or other conveyance as aforesaid may be forfeited, and the Court may order the same to be sold: Provided that if no conviction takes place, and such person be able to prove a *bonâ fide* right to the possession of such diamonds, or to produce a proper permit for the same, the said diamonds, or the value thereof, shall be restored or paid to such person.

Arrest, trial, and conviction of any person in such cases.

When seized diamonds ordered by Court to be sold.

15. No person who by the order in writing of any Court or Resident Magistrate, shall sell any rough or uncut diamonds seized, detained, or forfeited under any of the provisions of this Act, shall be liable in respect of such sale to any of the penalties provided for in this Act.

Application of fines, &c.

16. All fines recovered, and the proceeds of all diamonds forfeited and sold under the provisions of this Act shall be paid into the public treasury.

Persons having uncut diamonds in their possession not registered at the time of this Act taking effect.

17. Every person who shall, at the time of the taking effect of this Act, have in his possession any rough or uncut diamonds which shall not be registered under the provisions of the Ordinances No. 4 of 1877 and No. 8 of 1880 respectively, may within three months thereafter obtain from the Resident Magistrate of the district, a permit stating the number and weight of such diamonds, and after the expiration of such period of three months such permit shall upon any prosecution be the sole evidence of the lawful possession of such diamonds.

II.—LICENCES, PERMITS AND REGISTERS.

Persons requiring licences.

18. It shall not be lawful for any person to deal in rough or uncut diamonds either as buyer, seller, exporter, or importer, or to

carry on the business or trade of a diamond broker or factor, or the business or trade of a diamond cutter, unless such person shall be duly licensed for such purposes as aforesaid, either as dealer, broker or factor, or diamond cutter as aforesaid, and any person contravening this section shall be liable to the penalties provided by the third section of this Act.

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19. Every licence to deal in rough and uncut diamonds within the Colony shall be written upon or covered with stamps of the value of thirty pounds for a yearly licence, or ten pounds for a quarterly licence, and every such licence shall be in the form A set forth in the second schedule: provided that all such licences as are quarterly shall, no matter when taken out, terminate on the last day of the current quarter, such quarters ending respectively on the 31st March, 30th June, 30th September, and 31st December in each year; and all such licences as are annual shall, no matter when taken out, expire on the 31st December then next.

Stamps, &c., on licences of dealers.

20. Every licence to be a diamond broker or factor shall be written upon or covered with stamps of the value of fifteen pounds for a yearly licence or five pounds for a quarterly licence, and shall be in the form C set forth in the second schedule: provided that all such licences shall terminate and expire as provided for and on the days set forth in the preceding section.

Stamps on brokers licences.

21. It shall not be lawful for any distributor of stamps to issue any licence to deal in rough or uncut diamonds unless the person so applying for such licence shall, when applying for the same, produce and lodge with such distributor a certificate under the hand of the Resident Magistrate of the district in the form B set forth in the second schedule: provided that it shall not be lawful for any Resident Magistrate to sign or issue such certificate until the person applying for such certificate shall, together with two sufficient sureties, have entered into a recognizance in the form G set forth in the second schedule, and unless the office in respect of which the licence is sought shall be in localities or limits from time to time defined by notice in the *Government Gazette*, under the hand of the Commissioner of Crown Lands and Public Works: Provided, also, that it shall not be lawful for any such Resident Magistrate to grant to any person a certificate for a licence to deal in rough or uncut diamonds or to carry on the trade or business of a diamond broker or cutter of diamonds who shall, at the time of making application for such certificate, be the holder of or interested in any licence to deal in intoxicating liquors or in any licence to keep a Kafir store or Kafir eating-house, or who shall have been convicted of any of the offences set forth in the tenth section of proclamation 24 of the 5th July, 1873, of Griqualand West, or in this Act, or in any of the Ordinances or proclamations hereby repealed: Provided, however, that in the case of a licensed person who shall have been convicted and sentenced to forfeit his licence for any period, it shall be lawful for the Resident

Persons applying for licences to deal to produce certificate of fitness.

Who prohibited from being licensed.

No. 48—1882.

Magistrate to grant to such person a certificate as aforesaid after the period shall have elapsed for which the licence of such person has been suspended.

Broker applying to produce certificate of fitness.

22. It shall not be lawful for any distributor of stamps to issue any licence to trade as a diamond broker or factor, unless the person applying for such licence shall, when applying, produce and lodge with such distributor a certificate under the hand of the Resident Magistrate of this district in the form D set forth in the second schedule; and it shall not be lawful for any Resident Magistrate to grant such certificate to or for any person not of full age who shall not either produce authority from his parent or guardian to trade as a diamond broker or factor (in which case such parent or guardian shall be a party to his recognizances hereinafter mentioned as assisting in such) or make a solemn declaration that he is not under tutelage. Nor in any case until the person applying for such certificate, together with two sureties, shall have entered into a recognizance in the form G set forth in the second schedule.

And enter into recognizances.

Licences of diamond cutters, form and amount of.

23. Every licence to carry on the business or trade of a diamond cutter, shall be written upon or covered with stamps of the value of ten pounds for a yearly licence, or three pounds ten shillings for a quarterly licence, and every such licence shall be in form E set forth in the second schedule: provided that all such licences as are quarterly shall no matter when taken out, terminate on the last day of the current quarter, such quarters ending respectively on 31st March, 30th June, 30th September, and the 31st December of each year; and all such licences as are annual shall, no matter when taken out, expire on the 31st December then next ensuing.

Diamond cutters to produce certificate of fitness before being licensed.

24. It shall not be lawful for any distributor of stamps to issue any licence to carry on the trade or business of a diamond cutter unless the person or persons applying for such licence shall, when applying, produce and lodge with such distributor a certificate under the hand of the Resident Magistrate of the district, in the form F set forth in the second schedule, and it shall not be lawful for any Resident Magistrate to sign or issue such certificate until the person or persons applying for such certificate shall together with two sufficient sureties, have entered into a recognizance in the form G set forth in the second schedule, and unless the place of business in respect of which the licence is sought, shall be in localities or limits which shall from time to time be defined by notice in the *Government Gazette* under the hand of the Commissioner of Crown Lands and Public Works.

And enter into recognizances. G. in Schedule.

Licences obtained by concealment or misrepresentation.

25. Any licence or permit which may be obtained by concealing or misrepresenting matters which, if known, would have prevented the issue of any certificates under this Act for any of the reasons aforesaid, shall, upon proof of such concealment or misrepresentation before any Resident Magistrate be forfeited, and the person who by such concealment or misrepresentation shall have

obtained such licence, or permit, shall upon conviction be liable to a penalty not exceeding five hundred pounds or to be imprisoned with or without hard labour for any period not exceeding five years.

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26. Any licensed diamond cutter may without permit, as in the following section provided, receive for the purpose of his trade any rough or uncut diamond from any person not licensed or authorised as in the seventh section of this Act provided, on the production by such person of a written authority or permit from any Resident Magistrate as in the following section of this Act is provided, anything in this Act to the contrary notwithstanding.

Diamond cutter may receive stones from unlicensed persons under magistrate's permit.

27. It shall be lawful for any Resident Magistrate to give any person a permit, bearing a stamp of the value of one shilling, to buy, sell, deliver, or receive, any diamonds, such permit to set forth clearly the person from whom and to whom such diamond or diamonds is or are to be bought or received, sold, or delivered, and to be in the form H set forth in the second schedule: Provided that no such permit shall be granted unless the applicant shall make a solemn declaration, that such purchase, sale, delivery, or receiving is not for the purpose of trade, and in the case of an applicant for a permit to sell or deliver, that such applicant is the lawful owner of such diamond, together with a statement showing the lawfulness of his or her ownership, which declaration shall be in the form I or J as the case may be, set forth in the second schedule: and provided further that the Magistrate shall keep a record of all such permits, and of all such declarations as aforesaid: and provided further that for the purposes of this section the word "trade" shall not be construed as including the trade or business of a diamond cutter.

What permits may be given.

Form of such permits.

28. It shall be lawful for the Resident Magistrate to issue to any person save as hereinafter excepted, a special permit bearing a stamp of the value of one (¹) shilling to sell or dispose of any diamonds that shall have been found by such person in ground or soil bought and washed by him, and such permit shall be called a washing permit, and shall be in the form K contained in the second schedule, and shall set forth clearly the name of the person from whom the ground or soil in which such diamonds shall have been found was bought or received, together with the date of such purchase, the number of loads of the said soil so bought or received, the price paid for the same, and the number of loads thereof washed, and such permit shall also show the total weight of the parcel of diamonds for which the permit is granted, and shall specify the number of diamonds of the weight of ten carats and upwards contained in such parcel, and further the weight of any single stone of the value of one hundred pounds and upwards: Provided that no such permit shall be granted unless the applicant shall make a solemn declaration that such diamonds were actually

Washing permits.

Particulars to be stated.

¹ Printed as amended by § 7 Act 31, 1893.

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Restrictions.

Permits to police
and detectives.Buyers and cutters
to have place of busi-
ness mentioned in
licence.Transactions to be
confined to such
place of business.Licences of persons
removing to be en-
dorsed by distributor
of stamps.

found by him in such ground or soil as aforesaid, and such declaration shall be made in the form L set forth in the second schedule: and provided also that the said Resident Magistrate shall keep a record of all such washing permits and of all such declarations as aforesaid: and provided also that no such washing permit shall be issued to any person to whom the Resident Magistrate would not have power to issue a certificate under the twenty-first section of this Act: and provided lastly that such permit shall only be available in the district over which the Resident Magistrate so issuing such permit shall have jurisdiction.

29. It shall be lawful for any Resident Magistrate to grant to the Chief of the Police of the district, or chief of the Detective Department, as the case may be, or a person duly authorised in writing by him to receive the same, a permit to buy or receive one or more rough and uncut diamonds, such permit to be in the form H set forth in the second schedule, and every such Resident Magistrate as aforesaid shall keep a record of all such permits so granted as aforesaid.

30. Every licensed buyer or cutter of diamonds shall have an office or place of business at some place to be described in his licence, and shall have affixed on some conspicuous place on the outside of and over, or by the side of, the outer door of the place in which he may have such office or place of business, his name at full length (or where there are partners, the name and style of the firm or partnership), and after such name or style the words "licensed diamond dealer (or dealers)" or "licensed diamond cutter (or cutters)," as the case may be, such name or style and such description to be publicly visible and legible in letters at least two inches in length, and every licensed diamond buyer, seller, or cutter contravening this section, shall incur a penalty not exceeding twenty pounds for the first offence, and for a subsequent offence, within two years, a penalty not exceeding fifty pounds, and shall in any case be liable to forfeit any licence held by him or any right of renewal of the same for such period as the Court may direct.

31. It shall not be lawful for any diamond buyer, seller, or cutter to buy, sell, deal in or receive by way of barter, pledge or otherwise, any rough or uncut diamond otherwise than in his said office or place of business, and any such licensed person as aforesaid convicted of contravening this section, shall be liable to the penalties provided in the preceding section of this Act.

32. It shall not be lawful for any licensed diamond buyer, or cutter, to remove his office or place of business at which he is licensed to deal in or carry on his business as a cutter of diamonds to another place, unless the distributor of stamps shall endorse on the licence of such diamond dealer or cutter a certificate that such licence is transferred to the place to which such diamond dealer or cutter desires to remove his office or place of business; and it shall

not be lawful for any distributor of stamps to give such certificate unless the Resident Magistrate shall have first endorsed on such licence that the place to which it is sought to be transferred, is a fit and proper place for the office or place of business of a licensed dealer or cutter, and any licensed diamond buyer seller or cutter contravening this section, shall be liable to the penalties provided by the thirty-sixth section of this Act.

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33. Every licensed broker or factor in every case in which he concludes a contract of purchase or sale of rough or uncut diamonds, for or on account of any person employing him as such broker or factor, shall deliver to the seller a proper and sufficient broker's bought note stamped as by law required, such broker's note to be in the form M set forth in the second schedule, and shall also deliver to the purchaser a proper and sufficient broker's sold note according to the said schedule, and every registered claimholder, authorised or registered agent of a registered claimholder or joint-stock company, holder of a washing permit or prospecting licence, shall, in every case in which a sale is effected by him personally pass a seller's note, and receive a buyer's note, or otherwise, as the case may be: and every such brokers', sellers', and buyers' note shall respectively set forth all the parties to the transaction in the form M set forth in the second schedule, and shall set forth the weight of the parcel sold, the number of diamonds of the weight of ten carats and upwards, and the price per carat and the amount for which such parcel was sold: Provided that every diamond above the value of one hundred pounds shall be separately described in every such brokers', sellers', and buyers' note: and provided also that every such brokers', sellers', and buyers' note shall be certified as correct by the licensed dealer disposing of the same; and every person convicted of any offence against this section shall be liable to a penalty not exceeding five hundred pounds, and, in default of payment, to be imprisoned with or without hard labour for any period not exceeding five years, and shall in addition be liable to forfeit any licence held by him, and any right of renewal of the same, for such period as the Court may direct.

Broker's notes.

Forms of and particulars to be stated in.

Buyer's and seller's notes.

34. Every banker, dealer, importer, exporter, broker, factor, cutter of diamonds, registered claimholder, accredited and registered agent of any registered claimholder, or joint-stock company, holder of a washing permit or prospecting licence or permit under the sixth section of the Act, shall keep a true and correct register in the English language of all their respective dealings in diamonds, and in which they shall enter, or cause to be entered within twenty-four hours of every transaction—

All persons authorised to deal, &c., to keep records of transactions.

- (a) The date of all purchases, sales, exports, imports or receipts.
- (b) The name of consignor, cutter, prospector, seller, buyer, and broker, or consignee, or owner.

Particulars of records.

No. 48—1882.

- (c) Total weight of each parcel.
- (d) The number of stones of ten carats and upwards in each parcel.
- (e) The price received or paid, or duty on import.
- (f) The weight of any single stone found, received, bought, sold, cut, or consigned (separately or with others), the buyer's valuation of which exceeds one hundred pounds.

And every such register shall be in the form N set forth in the second schedule, and any person so required to keep a register who shall be convicted of neglecting or failing to keep a proper register, as required by this Act, shall be liable to a penalty not exceeding five hundred pounds, and in default of payment to be imprisoned, with or without hard labour, for any period not exceeding five years, or to both such fine and imprisonment, and shall in addition forfeit any licence held by him, or any right of renewal of the same for such period as the Court may direct.

Records to be forwarded monthly to Chief of Police, &c., and produced when required.

35. Every person so required to keep a register shall, within three days after the expiration of each month, forward to the Chief of the Police of the district, or in the Territory of Griqualand West to the Chief of the Detective Department of the territory, a true copy of such register for the previous month, together with a solemn declaration of the correctness thereof and shall also produce and exhibit such register whenever the same may be required in any competent Court on the written order of the Chief of the Police of the district, or of the Chief of the Detective Department as aforesaid; and if he shall refuse or fail to do so, he shall be liable to the penalties in the last preceding section mentioned.

Civil Commissioner or other officer to keep register of all uncut diamonds brought into district.

36. The Civil Commissioner of every district in which this Act shall be in force, or such other officer as may be appointed by the Governor, shall keep a register, showing the weight, description, and value of all rough or uncut diamonds brought or imported into such district, the name of the person bringing or importing the same, and the place whence they are brought or imported, and shall, upon application made, grant to the person bringing or importing such diamonds, a certificate, of registration setting forth all the particulars above-mentioned in the form "N" in the schedule hereunto annexed, upon payment of a registration fee of one-half per cent. on the value of all such diamonds so brought in or imported; and any person who shall bring or import any rough or uncut diamonds into such district without obtaining such certificate of registration, within twenty-four hours of his arrival with, or receipt of such diamonds, shall, upon conviction, be liable to a penalty not exceeding five hundred pounds and in default of payment, to imprisonment with or without hard labour for any term not exceeding five years, or to both such fine and such imprisonment, and shall, in addition, forfeit such diamonds.

Certificate of such registration.

No rough diamonds to be exported before registered.

37. No rough or uncut diamonds shall be exported from any district in which this Act shall be in force, until the weight and

value of the same, and the name of the person exporting them, shall have been entered in a register, to be kept in the form "N" in the schedule hereunto annexed by the Civil Commissioner of such district, or such other officer as may be appointed by the Governor in that behalf, and a registration fee of one-half per cent. on the value of such diamond or diamonds shall have been paid. Any person contravening the provisions of this section, shall be liable to the penalties provided in the third section of this Act.

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38. In the Territory of Griqualand West, the proceeds of such registration fee shall be applied in the following manner:—Three-fourths to be retained by the Government, and to be applied to the purposes mentioned in the sixty-fifth section of this Act, and one-fourth to be administered by a board constituted for the protection of mining interests in the manner set forth in the following section.

Application of registration fees.¹

39. The board mentioned in the last preceding section shall consist of eight members who shall be elected on the 1st day of September next, and thereafter annually in manner following:—Two to be elected by the mining board of the Kimberley Mine, two by the mining board of the De Beer's Mine, two by the mining board of the Du Toit's Pan Mine, and two by the mining board of the Bultfontein Mine.

Constitution of Board for protecting mining interests.

40. In case at any time there shall not be a mining board as aforesaid controlling the affairs of any of the said mines, or in case of a failure to elect as aforesaid, it shall and may be lawful for the Governor to appoint such persons as he may think fit, to be members of the said board, in lieu and instead of such members as otherwise might have been elected by the said mining board or boards, as the case may be, and the Governor may from time to time revoke such appointments, and may appoint other persons in the place of those so removed.

In what cases Governor may appoint members of the Board.

41. Every licensed diamond dealer, or cutter of diamonds, and every holder of a permit granted under the twenty-seventh and twenty-eighth sections of this Act, or the holder of a prospecting licence, shall be bound to exhibit his licence to any person authorised by the Chief of the Police of the district, or the Chief of the Detective Department in Griqualand West, as the case may be, in writing to demand it, and every such licensed person as aforesaid who shall refuse or neglect to produce and exhibit his licence or permit when called upon to do so, by any person exhibiting such authority as aforesaid to demand it shall, for the first offence incur a penalty not exceeding one hundred pounds, and for a subsequent offence a penalty not exceeding three hundred pounds, and shall in addition in any case be liable to forfeit any licence held by him or any renewal of the same, for such period as the Court shall order.

Penalties for refusing to produce licence when called on by proper authority.

42. Every licensed broker or factor shall keep copies or counterfoils of his bought and sold notes, as in the form M, contained in

Counterfoils of broker's notes to be kept and produced when required.

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the second schedule, and shall produce and exhibit such copies or counterfoils to any person authorised by the Chief of the Police of the district, or the Chief of the Detective Department in Griqualand West, as the case may be, to demand them, and every licensed broker or factor refusing or neglecting to do so when called upon by any officer exhibiting his authority to demand them shall incur the penalties provided in the last preceding section.

Permits to buy stones at diamond fields situated 3 miles beyond town or village, &c.

43. It shall be lawful for any Resident Magistrate to grant to any licensed diamond dealer, not being a licensed broker or factor, a permit to buy rough or uncut diamonds at any place within his district at which there shall be any public diamond fields, at a distance of more than three miles from any town or village, or within three miles of which diamond field there shall not be three licensed diamond dealers, not being licensed brokers or factors: provided always that every such permit shall not extend over a period of more than one month, and shall be covered by or written on a stamp of five shillings.

III.—SPECIAL COURTS FOR MINING OFFENCES.

Special Courts may be appointed by Governor.

44. For the purpose of trying offences under the Ordinances of Griqualand West respectively No. 4 of 1877, and No 8 of 1880, committed before the taking effect of this Act, and offences under this Act respectively, the Governor may by proclamation constitute one or more Courts over any area, or for any districts to be defined or named in such proclamation, and every such Court shall be styled a "Special Court." (1)

Constitution of Special Courts.

45. Every Special Court shall consist of three persons of whom at least one (2) shall be a judge of the Supreme Court, and a decision of a majority of the members of such Court shall be the judgment of the Court.

Who to preside.

46. In case more than one judge shall sit in a Special Court the senior judge shall preside, and in case one judge only shall sit such judge shall preside.

Judges of Supreme Court to be ex officio members.

47. Judges of the Supreme Court shall *ex officio* be members of the Special Courts, and it shall be lawful for the Governor by proclamation from time to time to appoint persons not being judges to be members of such Courts respectively. Such last mentioned persons shall sit and take part in the proceedings of such Special Courts when thereto required by any order issued as in the next succeeding section mentioned.

Other persons may be appointed by Governor.

¹ Special Court constituted for Districts of Kimberley, Herbert, Hay and Barkly by Proclamation No. 144, 1882, dated 1st Sept., 1882. By Govt. Notice No. 716, 1888 (Gazett. 28th Aug., 1888), the 1st Sep., 1888, fixed as date on and after which this Special Court shall be constituted in the manner provided by § 2, Act 34, 1888.

² Two of whom shall be Judges of the Supreme Court—see § 2, Act 34, 1888.

48. A Special Court shall be assembled from time to time, and as often as may be necessary, for the trial of any person accused of any offence cognizable by a Special Court by any one of the judges, and every order convening a Special Court shall state the names of the members to constitute such Court, not exceeding three, and every such order may after the making thereof be altered by the judge making the same either as to the time when such Court shall assemble or by omitting one or more members and substituting another or others.

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When and how Special Court to be convened.

49. Every Special Court when assembled may adjourn from time to time as to such Court may be deemed necessary.

Adjournments.

50. Until otherwise ordered by any rules to be made in pursuance of the provisions of this Act, the form and manner of procedure in every such Special Court shall be according to the laws and rules for the time being regulating the practice and procedure in the Courts of Resident Magistrates.

Rules of Magistrate's Courts to apply.

51. The process of the said Court for compelling the appearance of the person accused to answer the charge and of any persons as witnesses may be signed and issued by any Magistrate by whom the accused has been remanded or committed or by the clerk of any such Magistrate, or by the clerk of any Judge or of the Special Court.

How process to be signed.

52. Any person who shall be convicted by the judgment of any such Special Court and sentenced to undergo any punishment may appeal against such conviction either to the Supreme Court or to the High Court of Griqualand, in case such conviction shall take place in any district over which the said High Court exercises jurisdiction as such person may elect: Provided that within four days next after such conviction notice in writing be given by or on behalf of the person convicted to the clerk of such Special Court, or of the Judge presiding at the trial of his intention to appeal, and of the Court to which he elects to appeal, and every such appeal shall be prosecuted within forty-two days after the giving of such notice (unless upon application to either of such Courts further time be given for the prosecution thereof), and if not so prosecuted such conviction and sentence shall be and become final: And when any such appeal is made as aforesaid, the provisions of the forty-seventh section of the Act No. 20 of 1856 in regard to the execution of any sentence of imprisonment exceeding one month, or to pay any fine exceeding five pounds, and the circumstances under which any such sentence may be suspended shall apply, *mutatis mutandis*, to any sentence so appealed against.

Right of appeal to High Court or Supreme Court.

To be prosecuted within 42 days of notice of appeal.

Sect. 47, Act 20 of 1856 to apply.

53. As often as any appeal shall be made to the said High Court, and such Court shall affirm the conviction and sentence of the Special Court appealed from, the person convicted may, with the leave of the said High Court, but not otherwise, appeal to the Court of Appeal. And every appeal allowed as aforesaid to the Court of Appeal shall be prosecuted at the next sitting of such

High Court may give leave to appeal to Court of appeal.

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Court unless upon application duly made further time be allowed for the hearing or prosecution of such case or appeal.

Charges to be brought first before Magistrate.

54. All charges for offences cognizable by a Special Court shall, in the first instance, be brought before a Resident Magistrate having jurisdiction in the district in which the offence has been committed, and such Magistrate shall decide whether a preliminary examination shall be taken or the case be tried before a Special Court. In case a preliminary examination be taken, and the accused be committed for trial, the Attorney-General or Crown Prosecutor, as the case may be, if he determine to prosecute, may remit such case for trial before a Special Court, or may proceed in any other competent Court, as he may deem fit.

Governor to make rules for Special Courts

55. The Governor may from time to time by proclamation to be issued by him establish general rules or orders for regulating the practice and form of procedure in cases pending before such Special Courts, in addition to or instead of the laws and rules regulating the practice and procedure in the Courts of Resident Magistrates.

IV.—RECOVERY OF PENALTIES.

Recovery of fines and penalties.

56. All fines and penalties imposed under the provisions of this Act shall be levied by warrant under the hand of the judge presiding in the Special Court, directed to the messenger of the Court of the Resident Magistrate of the district upon all property of or belonging to the prisoner at the time of his arrest.

Accused persons forbidden to sell or alienate property till case disposed of.

57. It shall not be lawful for any person arrested for any offence against the provisions of this Act to sell, exchange, give, or otherwise alienate any property of which he may be possessed at the time of his arrest whether movable or immovable until he shall have been discharged from custody or acquitted of such offence, or if such person shall be convicted and sentenced to pay any fine, until such fine shall have been paid or recovered; and any such exchange, gift, or other alienation made contrary to the provisions of this section shall be void.

V.—MISCELLANEOUS.

Penalties on servants stealing diamonds, &c.

58. Any servant who shall steal any diamond the property of or in the lawful possession of his master, or shall conceal or retain with intent to convert the same to his own use any rough or uncut diamond, or who shall attempt to commit any of the said offences, or who shall be an accessory or accomplice in the commission of any of the said offences, shall upon conviction be liable to the penalties provided in the third section of this Act: Provided always that all diamonds found in the possession of any servant then or lately employed by any master who is or was at the time of such employment a licensed dealer in or cutter of diamonds, or a registered claimholder, or a registered and accredited agent of a registered claimholder, or the holder of a washing permit; shall

Accessories, &c.

unless and until the contrary be proved by such servant be deemed and taken to be the property of such master if such servant be then in the employment of any master, and may be seized and taken possession of by the said master, or if the servant is not then in the employment of any master shall be deemed and taken to be the property of the last such master as aforesaid by whom such servant was employed within three months, and may be seized and taken possession of by such master.

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Diamonds found on servant presumed to be master's.

59. Any person who shall be convicted of having induced or attempted to induce any servant to steal a diamond from his master, or conceal or retain with intent to appropriate to his own use any diamond which it was the duty of such servant to have delivered to his master shall be liable to the penalties provided in the third section of this Act.

Penalties for inducing servants to steal diamonds.

60. All crimes or offences punishable under any of the Ordinances which are repealed by this Act and committed before the passing of this Act shall be dealt with and punishable under the provisions of the said sections of the repealed Ordinances respectively; and a conviction under any of the provisions of Ordinance No. 21 of 1874, or of Ordinance No. 4 of 1877, or of Ordinance No. 8 of 1880, shall be taken as a previous conviction under the corresponding provisions respectively of Ordinance No. 4 of 1877, Ordinance No. 8 of 1880, or of this Act, in all cases where such previous convictions were obtained on charges which could respectively have been made under the corresponding provisions of Ordinance No. 4 of 1877, No. 8 of 1880, or of this Act.

Punishments may be inflicted under Sections of repealed Ordinances.

Previous convictions.

61. Any person who shall be an accessory either before or after the fact to the contravention of any of the provisions of this Act shall be liable to be charged and dealt with in all respects as the principal.

Accessories may be charged as principals.

62. In the construction of this Act the following words and expressions shall have the meaning hereby assigned to them unless there be something in the context repugnant thereto, that is to say:—

Interpretation clause.

“Dealer” and “deal” shall include buyer, seller, broker, and factor, and any sort of dealing in diamonds.

“Joint-stock company” shall mean a company established for mining purposes only.

“Servant” shall mean any description of servant whether registered or not.

“Public place” shall mean any place except a private residence.

“Resident Magistrate” shall include the additional Magistrate for any district.

“Diamonds” shall mean rough or uncut diamonds only.

“Rough and uncut diamonds” shall in the case of diamond cutters be taken to include diamonds which have been cut, shaped, and polished by them out of the rough.

“Cutter” shall include cleavers and polishers of diamonds.

“The Territory of Griqualand West” shall mean the territory as defined by Sir Henry Barkly's Proclamation No. 67 of 1871.

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“Chief of the Police” shall mean any Commissioner or Inspector of Police, or the Chief Constable of any district.

“Banker” shall mean any manager, cashier, or other officer of a Joint-stock Bank, acting in his capacity as such.

When any form is directed or required to be used, such form shall be as nearly as material, according to the form set forth in second schedule.

When and where Act to come into operation.

63. This Act shall come into operation in the districts forming the late Territory of Griqualand West, upon the promulgation thereof, and in such other districts as the Governor shall from time to time by proclamation declare to be subject thereto, and from a date to be in such proclamation stated.

Governor may make rules for carrying out part 2 of this Act.

64. The Governor may from time to time make regulations for the better administration of part two of this Act, and by such regulations may alter any forms by this Act provided, or provide additional forms: and such forms shall be deemed to be forms by this Act directed to be used.

Substitution of this Act for certain other Ordinances in reading “Prevention of Diamond Thefts Ordinance, 1880,” Sec. 5.

65. The fifth section of the “Prevention of Diamond Thefts Ordinance, 1880,” shall be read and construed as if the words “The Diamond Trade Act, 1882,” were therein inserted, instead of the Ordinances No. 4 of 1877 and No. 8 of 1880, and the fines in the said section referred to to be deducted from the expense of keeping up and maintaining the portion of the police and detective forces for the detection of the illicit traffic in diamonds, shall be deemed to be the fines or penalties recovered under the provisions of this Act.

Officers may be appointed by Governor to discharge duties under this Act imposed on Magistrates.

66. It shall be lawful for the Governor to appoint such officer as he may deem necessary for the discharge of any of the duties by this Act imposed upon any Resident Magistrate, and as often as any such officer shall be appointed he shall be deemed for the purposes of this Act to be the Resident Magistrate, and the several sections of this Act shall be read and construed accordingly.

Short title.

67. This Act may be cited for all purposes as the “Diamond Trade Act, 1882.”

SCHEDULE I.

Date of Ordinance or Proclamation.	Title of Act or Proclamation.	Extent of Repeal.
August 10, 1872, No. 14 . .	Sir Henry Barkly's Master and Servants' Proclamation	Sections 14, 15, and 17.
No. 4 of 1877	Diamond Trade Ordinance, 1877	The whole.
No. 8 of 1880	Diamond Trade Amendment Ordinance, 1880	The whole.

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SCHEDULE II.

No. 48—1882.

A.

FORM OF DIAMOND DEALER'S LICENCE.

[DIAMOND TRADE ACT, 1882.]

I, _____, Distributor of Stamps in _____, on this
 day of _____ 188____, do hereby authorise and empower
 _____, having his office at _____ (who has produced to me
 his Certificate required by Law), to deal in, export, and import rough
 or uncut Diamonds within _____, for _____ end-
 ing on the _____ 188____, and no longer.
 This Licence expires on the _____ day of 188____.

Distributor.

B.

FORM OF DIAMOND DEALER'S CERTIFICATE.

[DIAMOND TRADE ACT, 1882.]

I, _____, Resident Magistrate of _____, do hereby certify
 that _____, whose office is situated at _____
 is a fit and proper person to receive a Licence to deal in, export and
 import rough or uncut Diamonds, and that he is not the holder of a
 Licence to sell intoxicating liquors, or of a Licence to keep a Kafir
 store or Kafir eating-house within _____.

Resident Magistrate's Office,
 _____ day of _____ 188____.
 Resident Magistrate.

C.

FORM OF DIAMOND BROKER'S LICENCE.

[DIAMOND TRADE ACT, 1882.]

I, _____, Distributor of Stamps in _____, on this
 day of _____, 188____, do hereby authorise and empower
 _____ of _____ (who has produced to me the Certificate required by
 Law), to act as a Diamond Broker within _____ for _____
 ending on the _____ day of _____ 188____, and no
 longer.

This Licence expires on the _____ day of _____ 188____.
 Distributor.

D.

FORM OF DIAMOND BROKER'S CERTIFICATE.

[DIAMOND TRADE ACT, 1882.]

I, _____, Resident Magistrate of _____, do hereby
 certify that _____, of _____, is a fit and proper person to
 receive a Licence to act as a Diamond Broker, or Factor, and that he
 is not the holder of a Licence to sell intoxicating liquors or of a
 Licence to keep a Kafir store or Kafir eating-house within _____.

Resident Magistrate.

Resident Magistrate's Office,
 _____ day of _____ 188____.

E.

DIAMOND CUTTER'S LICENCE.

[DIAMOND TRADE ACT, 1882].

I, _____, Distributor of Stamps for _____ on this day of _____, 188____, do hereby authorise and empower _____ having his place of business at _____ (who has produced to me the Certificate required by law), to carry on the trade or business of cutting, cleaving, and polishing rough or uncut Diamonds within _____ for _____ from the _____ day of 188____, and no longer.

This Licence expires on the _____ day of _____, 188____. Distributor.

F.

DIAMOND CUTTER'S CERTIFICATE.

[DIAMOND TRADE ACT, 1882].

I, _____, Resident Magistrate of _____, do hereby certify that _____, of _____, whose place of business is situated at _____, is a fit and proper person to receive a Licence to carry on the trade or business of cutting, cleaving, and polishing rough and uncut Diamonds, and that he is not the holder of a Licence to sell intoxicating liquors, or of a Licence to keep a Kafir store, or a Kafir eating-house within _____

Resident Magistrate's Office, _____ Resident Magistrate.
day of _____ 188____.

G.

RECOGNIZANCE UNDER DIAMOND TRADE ACT, 1882.

On the _____ Day of _____, in the year of Our Lord One Thousand Eight Hundred and Eighty _____, appeared before me, _____ Esq., Resident Magistrate for the District of _____, and acknowledged ourselves to owe Our Lady the Queen, to wit, the said _____ the sum of Five Hundred Pounds Sterling and the said _____ the sum of Five Hundred Pounds Sterling of good and lawful money to be respectively made and levied of our several goods and chattels, lands, and tenements to the use of our said Lady the Queen, her heirs and successors, if the said _____ shall fail in performing the conditions underwritten.

The condition of this recognizance is that if the said _____ shall strictly conform to and abide by all and singular the provisions of the said Diamond Trade Act, 1882, during the time the Licence to be by him obtained under this Act shall be in force, then this Recognizance shall be null and void or else shall remain in full force and effect.

The said _____ and the said _____ and the said _____ and the said _____ do hereby further jointly and severally agree that in the event of the said _____

being convicted of contravening any provision of the said Act, this Recognizance shall *ipso facto* become at once executable without

the necessity of further process, just as if judgment had been obtained upon it.

Taken and acknowledged this day and year above written before me aforesaid.

Resident Magistrate.

H.

No. FORM OF PERMIT.

[Permit granted under Section 27 of Diamond Trade Act, 1882.]

Resident Magistrate's Office, 188 .

Permission is hereby granted unto , of
to purchase (or receive, sell, or deliver)

Diamonds from (or to) of the approximate

weight of

Dated at this day of

188 .
Resident Magistrate of

I.

FORM OF DECLARATION OF PURCHASER OR RECEIVER.

I, , of do solemnly and sincerely declare that I am desirous of purchasing (or receiving) from A.B.

Diamonds of the approximate weight of carats which I require for my own use, and not for the purposes of trade here or elsewhere, and I make this solemn Declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6 of 1845, intituled "An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of Voluntary and Extra-judicial Oaths and Affidavits."

Declared before me, at this day of

188 .
Resident Magistrate of

J.

FORM OF DECLARATION OF OWNER.

I, , of do solemnly and sincerely declare that I am desirous of selling (or delivering) to A.B.

Diamonds of the approximate weight of carats of which I am the lawful and *bona fide* owner (here state how he or she became owner), and that such sale (or delivering) is not for the purposes of trade, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6 of 1845, intituled "An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of Voluntary and Extra-judicial Oaths and Affidavits."

Declared before me, at this day of

188 .
Resident Magistrate of

1988

DIAMOND TRADE.

No. 48—1882.

K.

No.

WASHING PERMIT.

[Permit granted under Section 28 of The Diamond Trade Act, 1882.]

Permission is hereby granted unto _____, of _____, to sell, export, or dispose of the diamonds herein specified and found in the ground herein described.

Dated at _____ this _____ day of _____ 188 _____.

Resident Magistrate of _____

From whom Ground bought.	Date of Purchase.	Number of Loads.	Price paid for Ground.	Loads Washed.	No. of Diamonds of Ten Carats and upwards.	Weight of any single Stone valued above £100.	Total Weight of Parcel.

L.

FORM OF DECLARATION FOR WASHING PERMIT.

I, _____ of _____, do solemnly and sincerely declare that the rough and uncut Diamonds, hereinafter specified, were found by me in _____ loads of Diamondiferous Ground purchased by me on the _____ day of _____ 188 _____, from _____, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6 of 1845, intituled "An Ordinance for substituting declarations in the place of certain Oaths, and for the suppression of Voluntary and Extra-judicial Oaths and Affidavits."

Declared before me at _____, this _____ day of _____ 188 _____.

Resident Magistrate of _____

SPECIFICATION OF DIAMONDS MENTIONED IN THE FOREGOING DECLARATION.

No. of Stones of Ten Carats and upwards.	Weight of any single Stone above the value of £100.	Total Weight of Parcel.

[M.]
 BROKERS', COMPANIES', & OTHER
 LICENSED SELLERS' NOTES OF SALE.

BROKERS', COMPANIES', & OTHER
 LICENSED SELLERS' NOTES OF SALE.

BROKERS', COMPANIES', & OTHER
 LICENSED SELLERS' NOTES OF SALE.

A.

COUNTERFOIL TO BE KEPT BY SELLER OR
 BROKER AS REGISTERED.

No.....
188

Sold for.....
 Sold to.....

B.

NOTE TO BE HANDED BY BROKER TO
 SELLER.

No.....
188

Sold to.....

C.

NOTE TO BE HANDED BY BROKER, DÉALER,
 ETC., TO BUYER.

No.....
188

Bought of.....

DETAILS OF PARCEL, SINGLE
 STONES OF A VALUE ABOVE
 £100 TO BE SPECIFIED.

TOTAL OF
 PARCEL.

DETAILS OF PARCEL, SINGLE
 STONES OF A VALUE ABOVE
 £100 TO BE SPECIFIED.

TOTAL OF
 PARCEL.

DETAILS OF PARCEL, SINGLE
 STONES OF A VALUE ABOVE
 £100 TO BE SPECIFIED.

TOTAL OF
 PARCEL.

No. of Stones 10 cts. each or over.	Carats.	Price.	AMOUNT.			Carats.	AMOUNT.							
			£	s.	d.		£	s.	d.					

No. of Stones 10 cts. each or over.	Carats.	Price.	AMOUNT.			Carats.	AMOUNT.							
			£	s.	d.		£	s.	d.					

No. of Stones 10 cts. each or over.	Carats.	Price.	AMOUNT.			Carats.	AMOUNT.							
			£	s.	d.		£	s.	d.					

Certified correct.

.....
 Licensed Seller or Broker.

Certified correct.

.....
 Licensed Seller or Broker.

Certified correct.

.....
 Licensed Seller or Broker.

DIAMOND TRADE.

1989

No. 1—1883.]

[July 5, 1883.]

No. 2—1883.

Act to apply a Sum not exceeding Four Hundred Thousand Pounds Sterling, towards the Service of the Year ending the 30th day of June, 1884.

[Spent.]

No. 2—1883.]

[August 22, 1883.]

ACT

To Consolidate and Amend the Law relating to Aliens. (1)

WHEREAS it is expedient to consolidate and amend the law relating to the legal condition of aliens: Be it enacted by the Governor of the Cape Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the first schedule to this Act shall be and are hereby wholly repealed: Provided that such repeal shall not, as to any time before the passing of this Act, affect

Repeal (with exceptions) of Laws in Schedule.

(1) Any right required or thing done.

(2) Any liability accrued or accruing.

(3) Any penalty or other punishment incurred, or to be incurred, in respect of any offence committed.

(4) The institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, or punishment as aforesaid.

2. Any person of alien birth, may purchase, acquire, own, and dispose of immovable property in this Colony in like manner as natural-born subjects of Her Majesty: Provided that this section shall not qualify an alien for any (2) office or any franchise which such alien does not now by law possess, nor entitle an alien to any right or privilege except such rights and privileges in respect of immovable property as are hereby expressly given to him.

Aliens may acquire fixed property.

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

Aliens may apply for letters of Naturalization.

4. The Governor may (if he think fit) grant Letters of Naturalization in this Colony to any alien, or to any person who has been naturalized as a British subject elsewhere than in this Colony, who shall apply for naturalization and conform to the provisions of this Act: Provided that no Letters of Naturalization shall be

Governor may grant Letters of Naturalization.

¹ Amended by Act 35, 1889. Extended by Proclamation No. 246 of 1883 to Tembuland; by Proclamation No. 247 of 1883 to Transkei and Griqualand East; and by Proclamation No. 248 of 1883 to Port St. John's.

² Alien cannot be registered as voter. Section 10, Constitution Ordinance. Cannot be elected member of House of Assembly, Section 47 *ibid*, or of Legislative Council, Section 33 *ibid*. Cannot be elected member of Municipality, Act 45 of 1882, Section 16.

No. 2—1888.

granted until ⁽¹⁾ there be delivered to the Colonial Secretary a certificate signed by some Resident Magistrate, Justice of the Peace or Field-cornet to the effect that the applicant is known to the person so signing, and that to the best of such person's belief and knowledge the applicant is a person of good repute who has either never been convicted of and sentenced for treason, murder, culpable homicide, rape, theft, fraud, perjury, or forgery, or, if he has been so convicted and sentenced, that he has received a free pardon.

Aliens having certificates may apply for Letters of Naturalization.

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

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

Declaration of allegiance to be taken.

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

Rights of naturalized aliens.

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

Persons deemed to be naturalized.

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

- (1) Any alien woman in this Colony already married, or who shall hereafter be married to any such natural-born or naturalized subject.
- (2) All minor children alien born of any alien parent who shall be or become naturalized under this or any other Act, and which children shall either be within this Colony at the time of the naturalization of their parent, or shall become resident with such parent in this Colony during minority.

Returns to be published of Letters issued.

9. A return of persons to whom Letters of Naturalization shall have been granted under this Act shall be published in the *Gazette* half-yearly, in the months of January and July, and such return shall show:

- (1) Names of such persons in full.
- (2) Their birth-place.

No. 2—1883.

- (3) Occupation.
- (4) Residence in the Colony.
- (5) Date of the issue of letters.

10. If any person shall wilfully make any false statement in any application made under the provisions of this Act for the purpose of obtaining Letters of Naturalization, he shall, upon conviction, incur the same penalties as are by law provided against persons convicted of wilful and corrupt perjury. And in case Letters of Naturalization shall have been granted such letters shall be void. Penalty for false declaration.

11. Every person obtaining Letters of Naturalization under this Act shall pay for the same a fee, to be collected by means of stamps, of (1) two shillings and sixpence. Fee.

12. The Colonial Secretary shall cause a register to be made and kept of all Letters of Naturalization heretofore granted or hereafter granted under this Act, and shall, upon the application of any person, and upon payment of a fee of one shilling in respect of every name, permit a search to be made for the name of any person upon, or supposed to be upon, the register. Register to be kept.

A certificate under the hand of the Colonial Secretary authenticating the fact of the issue of Letters of Naturalization to any person whose name appears upon the said register may, at the discretion of the Colonial Secretary, be issued upon payment by means of stamps of a fee of five shillings. Every such certificate shall be received as evidence of the facts therein stated. Certificate of authentication.

13. Every Letter of Naturalization and every such certificate as aforesaid shall be admissible in evidence without proof of the signature or seal authenticating the same and shall be *prima facie* evidence of the person named therein being duly naturalized, and of the signature or seal authenticating the same and of the official character of the persons appearing to have signed the same. Evidence.

14. This Act may be cited as the "Aliens Naturalization Act, 1883." Short title.

THE FIRST SCHEDULE.

LAWS REPEALED.

No. and Year.	Title of Act.
No. 8. 1856.	For enabling Persons alien born to hold fixed Property in this Colony.
No. 37. 1881.	For Facilitating the Naturalization of Aliens.
No. 21. 1868.	For further Facilitating the Naturalization of Certain Aliens.

¹ Printed as amended by § 3, Act No. 35, 1889.

THE SECOND SCHEDULE.

FORM OF APPLICATION FOR LETTERS OF NATURALIZATION.

To the Colonial Secretary of
the Cape of Good Hope.

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

1. Name of the applicant (in full).	
2. Birth-place (state fully the name of the place and the country in which the place is situated.)	
3. Age next birthday.	
4. Occupation.	
5. Place of Residence in the Colony.	
6. Length of time during which the applicant has resided in the Colony.	
7. Does the applicant intend, when naturalized, to reside in this Colony?	
(¹)8. Have you ever been convicted and sentenced for any of the following crimes:—Treason, Murder, Culpable Homicide, Rape, Theft, Fraud, Perjury or Forgery, or, if so, have you received a free pardon?	

Dated at _____
the _____ day of _____ 18 ____
Witness: _____
(Signature of Applicant.)

THE THIRD SCHEDULE.

DECLARATION OF ALLEGIANCE.

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

Declared this _____ day of _____ A.B.
Before me: _____ 18 ____
Justice of the Peace.

No. 3—1883.]

[September 6, 1883.]

ACT

To Facilitate the Establishment of Public Cemeteries and to provide for the Management thereof. (1)

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

1. The Governor may from time to time appoint trustees, (2) not being fewer than three nor more than seven, for the management of any public cemetery, and every such appointment shall be notified in the *Government Gazette*. Trustees.

2. The Governor may from time to time remove any trustee of any such cemetery, and upon the removal, death, or resignation of any trustee, appoint another in his place. Removal of trustees.

3. The trustees, for the time being, so appointed, shall have power to acquire, hold and alienate land for the purposes of this Act, and may raise money on mortgage of any land so held. Trustees may hold and mortgage land.

4. The legal estate in all lands held by any such trustees in trust for the purposes of this Act shall vest in the trustees for the time being, and the production of the *Government Gazette* containing a notice of the appointment of any trustee, accompanied by a solemn declaration that such trustee then holds office, shall be sufficient proof of the appointment and capacity of such trustee. Vesting of land in trustees.

5. Grants of land for the establishment of any public cemetery under this Act may be made— Grants may be made of land.

(1) Of Crown land by the Governor, with the concurrence of both Houses of Parliament, as provided by the twelfth section of "The Crown Lands Act, 1878."

(2) Of land vested in any municipality by the council or commissioners of such municipality, proceeding in accordance with the provisions of any law or municipal regulation requiring due notice of the intention to alienate and the consent of the Governor.

6. The commissioners or council of any municipality, any Divisional Council, or any Board of Management created under the "Villages Management Act, 1881," may from funds at the disposal of such Municipality, Divisional Council or Board of Management, grant any sum of money in aid of the establishment, and from time to time in aid of the maintenance of any cemetery established under this Act, any existing law to the contrary notwithstanding. Municipalities, &c., may grant money aids.

7. (3) The trustees of any such cemetery shall, from time to time, have power to do all or any of the following things: Powers of trustees.

¹ See also Part V, Act 4, 1883. Extended by Proclamation No. 15 of 1891 to all the Native Territories.

² See § 17, Act No. 7, 1894.

³ For loans to trustees see Act 29, 1885.

No. 3—1883.

- (1) To enclose any land held in trust for the purposes of this Act with proper and sufficient walls, rails, or fences.
- (2) To erect suitable gates or entrances.
- (3) To lay out and ornament such cemetery in such manner as shall be most suitable and convenient for the burial of the dead.
- (4) To embellish the same with walks, avenues, roads, trees, and shrubs.
- (5) To preserve, maintain, and keep in a cleanly and orderly state and condition, and to cause to be so maintained and kept the whole of any such cemetery, and its walls and fences, and all monuments, tombstones, enclosures, buildings, erections, walks, trees and shrubs therein or belonging thereto.
- (6) To sell under such conditions and restrictions as they shall think proper the exclusive right of burial, or of constructing vaults with the exclusive right of burial therein either in perpetuity or for a limited period, in such parts of such cemetery as may be appropriated for that purpose.
- (7) To fix a scale of fees payable for any burial plot, and on any vault or grave being dug and made, and on any monument or tombstone being erected or placed in any part of any such cemetery.
- (8) To permit any grave to be dug or made in such cemetery, and any monument or tombstone to be erected or placed in any part of such cemetery as they may think fit, upon payment to them of the fees fixed in the scale aforesaid.
- (9) To define the positions of all graves and vaults permitted to be made in such cemetery the depth of the graves and construction of coffins to be admitted into vaults, and the covering of vaults so as to prevent the escape of noxious exhalations.
- (10) To protect the buildings, monuments, tombs, shrubberies, plantations, and enclosures therein and thereof from disturbance or damage.
- (11) To make such arrangements as they may think fit for conveying, or for regulating and facilitating the conveyance of, the bodies of the dead from the place of death to any cemetery.
- (12) To do and perform, and cause to be done and performed, all such acts, matters and things as may be necessary and proper for any of the purposes of this Act.

Restrictions as to vaults.

8. Every vault shall be so constructed that no portion thereof shall be above the level of the earth immediately adjoining or surrounding the said vault.

Provision for burial of the poor.

9. The trustees of every such cemetery shall cause to be set apart a portion thereof for the burial of poor persons free of charge

and shall cause to be buried therein the body of any poor person upon production of an order for that purpose from the Resident Magistrate of the district.

No. 3—1883.

10. The trustees of any cemetery shall have power and authority from time to time to make rules and regulations for the execution of their powers under this Act, for regulating their proceedings, the duties of their servants and officers, and preserving order at and convening their meetings. None of such rules shall be contrary to this or any other Act, nor to the conditions of any grant or transfer of land held by such trustees. All such rules and regulations shall be submitted for the approval of the Governor, and when approved and published in the *Government Gazette*, shall have force and effect.

Trustees may make rules.

11. If the number of trustees appointed shall be three, the powers by this Act conferred may be executed by any two of them, and if the number shall be four or more such powers may be executed by any three of them.

Quorum of trustees

12. The majority of the votes of the members present at any meeting of trustees shall determine all questions which may be discussed or considered at such meeting.

Majority to decide questions.

13. The trustees may choose one of their number to be chairman, and if the votes shall in any case be equally divided the chairman shall have a casting vote in addition to his deliberative vote.

Chairman.

14. When any person desires to erect and place any monument or tombstone in any part of any such cemetery he shall, before permission is given, submit a plan of the monument or tombstone proposed to be erected and placed to the trustees of such cemetery, who may withhold their permission and prevent the erection of any monument which shall appear to them to be inappropriate or unbecoming.

Monuments and tomb-stones.

15. The trustees of any such cemetery shall fix and determine the position of any monument which may be proposed to be erected according to the description, size, and character thereof, having reference to the general plan for ornamenting the cemetery in an appropriate manner.

Position of such to be determined by trustees.

16. If any monument, tomb, or other erection shall have been built or erected contrary to the terms and conditions upon which permission to erect or construct the same was granted, or in case such terms and conditions or the regulations of the cemetery have not been complied with, the trustee may cause such monument, tomb, or other erection to be taken down and removed.

Power to remove the same.

17. Before any body shall be permitted to be interred in any vault, or in any place of burial the exclusive right to which for burial purposes shall have been granted, sold, or let by the trustees as a family or private burial-place, the trustees or any officer or servant employed by them may require satisfactory proof that the person for the time being entitled as owner to the exclusive right

As to burials in places the exclusive right to which has been acquired by individuals.

No. 3—1883.

of burial in such vault or other place has consented, or would not object to such interment taking place therein.

Right to keep up
and maintain tomb-
stones, &c.

18. Any person digging or making any vault, grave or tombstone, or erecting or placing any monument in any public cemetery by and with the permission of the trustees thereof, and upon payment of the prescribed fees, shall, subject to the terms and conditions of such permission, be entitled to maintain and keep up, or to have maintained and kept up, as the case may be, such vault, grave, monument or tombstone for the sole and separate use of such person and his representatives for ever, or for such time as by such terms and conditions may be stipulated.

How chapels may
be erected.

19. When the members of any religious denomination desire at their own expense to build in any such cemetery a suitable mortuary church, or chapel for the performance of the rites and ceremonies in the burial of the dead according to the usages of such denomination, if the plans, specifications, elevations, and models thereof, and other buildings and conveniences thereto be first submitted to and approved by the trustees, such trustees may permit the same to be erected and built within such part of such cemetery as shall be set apart for such denomination upon such terms as may be agreed upon.

Ministers' right of
access to chapels, &c.

20. The minister of any denomination for which any portion of any such cemetery shall be especially set apart may have access and admission to such portion at all times as he shall see fit, subject to any rules to be made by the trustees and approved of by the Governor, and any such minister may freely exercise his spiritual functions therein without hindrance or disturbance of the trustees of such cemetery or any other person; provided that it shall not be competent for such trustees by any rule or regulation or by any act, matter, or thing to interfere directly or indirectly with the orderly performance of any religious ceremony in the burial of the dead according to the usage or practice of the communion to which the deceased may have belonged.

Accounts to be
kept.

21. The trustees of every such cemetery shall keep a full and particular account of all moneys received and expended by them, and shall send an abstract of such account up to the thirtieth day of June next after their appointment, and subsequently to the same date in every year, to the office of the Colonial Secretary. Such account shall be certified to be correct by not fewer than two of such trustees, and shall from time to time contain such particulars as the Governor shall require. The Governor may order an inspection and examination or periodical inspections and examinations of the books, accounts, and vouchers of the trustees of every such cemetery.

Penalty for not keep-
ing said accounts.

22. Every trustee omitting to keep such account, and to send such abstract thereof, to the Colonial Secretary as aforesaid, and every trustee failing to produce the books, accounts, and vouchers aforesaid in obedience to any order made by the Governor shall,

upon conviction, be liable to a penalty not exceeding twenty pounds, to be recovered in the Court of the Resident Magistrate.

No. 3—1883.

23. All burials within any public cemetery shall be registered in a book to be provided by the trustees and kept for that purpose. Such book shall be in such form as may be prescribed by any regulations made under this Act, and shall be regularly kept by some person appointed by the trustees to do that duty; and in such book shall be distinguished in what parts of the cemetery the several bodies (the burials of which are entered therein) are buried.

Registration of burials.

The trustees shall cause to be made at such times, in such manner, and to such officer or person as the Governor may direct, a return ⁽¹⁾ of the names, addresses, dates of death and causes of death so far as ascertained, of the persons whose bodies have been interred in such cemetery.

Returns of deaths and the causes thereof.

24. Any person who shall wantonly or wilfully destroy, or do, or cause to be done, any damage to any monument, vault, tombstone, building, erection, railing, fence, tree, shrub, or plant, in or belonging to any cemetery, shall, upon conviction before any Resident Magistrate of this Colony, be liable for every such offence to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months, or to both such penalty or such imprisonment.

Penalty for wilfully injuring cemeteries, &c.

25. Any person who shall do or cause to be done any injury to any such monument, vault, tombstone, building, erection, railing, shrub, tree, plant, or any other damage to any such cemetery, whether the same be done wilfully or wantonly or otherwise, shall be liable, irrespective of any such penalty as aforesaid, to pay a reasonable sum of money as damages or for compensation, which sum of money shall be recoverable in any Court of competent jurisdiction by the trustees of the cemetery or by any person injured by such damage, but not by both such trustees and such person in respect of the same act or offence.

Damages for injuries not wilful.

26. Any animal which may be impounded under the Pound Laws or Regulations (as the case may be), in force in any place where any such cemetery is situated, found trespassing in any cemetery, may be impounded by the trustees of such cemetery, or by any officer or servant employed by them, and the owner of any animal so impounded shall be liable to pay in lieu of any other trespass money, such sum not exceeding ten shillings in respect of each animal so found as aforesaid as may be prescribed by regulations to be made under the provisions of this Act, exclusive of mileage, herding, or other pound fees, payable according to the laws or regulations applicable to such pound.

Animals found trespassing may be impounded.

27. The fifth section of the "Police Offences Act, ⁽²⁾ 1882," shall be in operation in and within the limits prescribed for every

Cemeteries to be named "public places."

¹ See Act No. 7, 1894, § 17.

² No. 27.

No. 3—1883.

public cemetery, under the management of trustees appointed under this Act, and for the purposes of the said fifth section every part of every such cemetery shall be deemed to be a public place or public street: Provided that in case by this Act any higher punishment or penalty shall be prescribed for any act or offence in the said section mentioned, such higher punishment or penalty may be imposed; and notwithstanding anything contained in the twenty-first section of the said Police Offences Act, all fines and penalties recovered under the said fifth section in respect of any offence committed within any cemetery shall be paid to the trustees of such cemetery.

Trustees and other officers may arrest without warrant persons contravening this Act.

28. Any trustee or any officer or servant of the trustees of any cemetery or any person called to aid or assist any such trustee, officer, or servant may without warrant take into custody any person who shall commit or be in the act of committing any offence against this Act, or any offence mentioned in the fifth section of the "Police Offences Act, (1) 1882," in any such cemetery, and whose name and place of abode shall be unknown to the person so arresting, and the person arrested may be detained until he can be delivered into the custody of a constable or policeman, to be dealt with according to law.

And may prosecute such persons.

29. The trustees of any cemetery shall be authorised to prosecute all persons who may contravene any of the provisions of this Act, and may by any regulations to be made as aforesaid name some officer, servant, or other person to prosecute on their behalf, or may grant any special power or authority to any person for such purpose.

Fines and penalties to go to trustees.

30. All moneys arising from fines and penalties imposed by this Act shall, when recovered, be paid to the trustees of the cemetery in respect whereof such fine or penalty may have been imposed for the purposes of such cemetery.

Existing cemeteries may be brought under operation of this Act.

31. The Council or Commissioners of any Municipality, which has heretofore established or shall hereafter establish any public cemetery may, by regulations to be framed and approved of in the manner by law provided, declare such cemetery to be subject to the provisions of this Act, and thereupon such council or commissioners shall be deemed to be trustees appointed under the provisions of this Act, and shall have and exercise all the rights and powers, and be liable to all the duties and obligations of trustees.

Short title.

32. This Act may be cited as the "Cemeteries Act, 1883."

No. 4—1883.]

[September 6, 1883.

ACT

To Amend the Law relating to Public Health. (1)

WHEREAS it is expedient to amend the law relating to public health: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The laws mentioned in the first schedule hereto to the extent to which the same are therein expressed to be repealed shall be and the same are hereby repealed, except as to any things done, offences committed, or proceedings commenced or pending at the time of the taking effect of this Act.

PART I.—GENERAL PROVISIONS.

2. In the construction of this Act the term “local authority” shall mean

The council or board of commissioners of any municipality;

The board of management of any community in which the “Villages Management Act (2), 1881,” is in operation;

A board consisting of not more than five persons nominated by the Governor for the purpose of carrying the provisions of this Act into effect, within any area to be fixed by the Governor by proclamation;

The Resident Magistrate, or Special Justice of the Peace (if any, or as the case may be,) residing in any town or village which is not a municipality, or in which the said “Villages Management Act” is not in operation, or in which no such board as aforesaid has been appointed to act; and, when there shall be no such Resident Magistrate, Special Justice of the Peace or board, any Justice of the Peace residing in such town or village. The area within which such Resident Magistrate or Special or other Justice of the Peace, as the case may be, shall exercise authority, shall be such as the Governor may by proclamation determine.

The term “quarantine” shall include in its meaning the interdiction of free communication with persons on land infected with disease or suspected of being so infected.

And the term “port officer” shall mean the Port Captain or Harbour Master of any port, or the officer for the time being performing duties usually performed by such officers.

¹ See Acts 3, 1883; 39, 1885; 10, 1884; 41, 1885; 8, 1884; 40, 1889 §§ 208-212; and 31, 1894. Extended by Proclamation No. 179 of 1883 to Port St John's; by Proclamation No. 175 of 1884 to Tembuland and the district of Kentani and Willowvale in Transkei; by Proclamation No. 196 of 1890 to the remaining districts of Transkei and to Griqualand East, and by Proclamation No. 34 of 1895 to East and West Pondoland.

² No 29.

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Municipalities may levy rates.

3. [Repealed by Act No. 41, 1885.]

4. The council or commissioners of every municipality are hereby empowered to levy special rates upon all property liable to be rated for the purpose of defraying any expenses incurred or to be incurred under the provisions of this Act.

Tenants' rates.

When such council or commissioners are authorised to levy tenants' rates, the special rates shall be levied as such, and all such rates shall be imposed, collected, and recovered in the same manner as ordinary rates.

5. [Repealed by Act No. 40, 1889.]

Powers exercised by Governor may be revoked.

6. Any power by this Act authorised to be exercised by the Governor may be exercised from time to time, and any order, regulation or direction to be made or given by the Governor, may be revoked, altered, or varied as occasion may require.

Quarantine to apply to small-pox.

7. The provisions of this Act and any regulations framed under this Act concerning quarantine or contagious or infectious diseases shall extend and apply to small-pox and to such other diseases as the Governor shall by proclamation declare are to be deemed contagious or infectious within the meaning of this Act.

Publication of regulations.

8. All regulations made by the Governor under the provisions of this Act shall be published in the *Government Gazette*, and shall have effect from and after the date of such publication : and such regulations shall be laid before both Houses of Parliament within fourteen days after the publication thereof if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days after the commencement of the next session.

Magistrates' Courts to have jurisdiction under this Act.

9. The Courts of the Resident Magistrates shall have jurisdiction in any prosecution for the contravention of the provisions of this Act, or any order or regulation made under this Act, in respect of any offence committed within the districts of such Magistrates respectively, and in the case of any offence committed in any port or upon the sea within three miles of the shore the Court of the Resident Magistrate of any district in which the person accused shall be found within six months after the commission of the Act or offence charged, shall have such jurisdiction.

Any person shall be deemed to have capacity to prosecute as a private prosecutor any person charged with any offence under this Act.

PART II.—QUARANTINE.

Vessels of every kind subject to provisions of this Act.

10. All vessels, as well as Her Majesty's ships of war, and the ships of war of other nations, as others, arriving in the ports of this Colony, shall be liable to the provisions of this Act, and any regulations made under this Act, concerning quarantine and the prevention of infection.

Notification of infectious disease by Governor and the consequences.

11. The Governor may notify that any place, whether within or beyond the Colony, is infected with any infectious or contagious

disease dangerous to the health of the people. Immediately after such notification

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- (1) All vessels arriving at any port or place in the Colony from or having touched at any such infected place ;
- (2) All vessels and boats receiving any person or thing from or out of any vessel coming from or having touched at any such infected place ;
- (3) All persons or things on board of any vessel coming from or having touched at such infected place, or on board of any such vessel as is above mentioned in sub-section (2) ;

shall be liable to quarantine.

12. Any vessel arriving at any port or place in this Colony from any place within or beyond this Colony having any infectious or contagious disease on board, or on board of which any infectious or contagious disease may have appeared in the course of the voyage, or arriving under circumstances deemed to be suspicious as to infection or contagion, although such vessel shall not have arrived from any place declared to be infected, and any persons and things on board the same, shall be liable to quarantine.

Ships which have had infectious diseases during voyage.

13. All vessels and boats, whether coming from a place declared to be infected, or being otherwise liable to quarantine under the provisions of this Act, and all persons (as well pilots as others) and things, whether coming or brought in such vessels or boats, or going or put on board the same, either before or after the arrival of such vessels or boats at any place in the Colony, shall perform quarantine in such places for such time and in such manner as shall be directed by the Governor, and shall be subject to all the provisions contained in this Act, or in any regulations made under the authority of this Act concerning quarantine.

Vessels, &c., arriving from infected places to be quarantined.

14. Until any vessels and boats, persons and things, liable to quarantine shall respectively have performed, and shall be duly discharged from quarantine, no such persons or things shall come or be brought on shore, or go or be put on board any other vessel or boat in order to be brought or come on shore in any place in this Colony, except in such manner, and in such cases, and by such authority as shall be directed or permitted by the Governor, or by any regulations made under the authority of this Act.

Nothing to be landed till ship discharged from quarantine.

15. Any commander or master of a vessel arriving at any port or place in this Colony from any place beyond, or from, or having touched at any place declared by the Governor to be infected, within the Colony, and any person on board thereof, communicating or attempting to communicate with the shore, or with any other vessel, or with any boat from any vessel, or from the shore, or allowing any person on board so to do, otherwise than by signal, before such vessel shall have received pratique from the port officer or health officer, or other person duly authorised in this Act, and before the health flag has been hoisted in token thereof, and any person from the shore, or from any vessel in any of the ports of

Penalties for breach of quarantine.

No. 4—1883.

this Colony, or from any boat, except the officers authorised under this Act, boarding or going alongside any such vessel arriving in any of the said ports, or receiving into any boat any parcel or package, or other thing whatever, from on board such vessel, previously to such vessel having received pratique, in the mode hereinafter described, shall be liable on conviction to a penalty not exceeding fifty pounds, and, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months.

Port Officers and others boarding vessels to remain on board till pratique granted.

16. If at any time it should be necessary for the port officer to board any vessel entering a port of this Colony, or to allow his boat's crew to board the same, or otherwise personally to communicate with such vessel, with the view of rendering assistance in case of danger, previously to such vessel having received pratique, all such persons who may have so communicated with the said vessel shall remain in quarantine, either on board such vessel, or in their own boat, until such time as the vessel with which they have so communicated may have obtained pratique, on pain of rendering themselves liable to the penalties hereinafter imposed on persons unlawfully communicating with the shore before pratique has been given; and if the vessel with which the port officer, or boat's crew, have communicated as aforesaid, be afterwards placed under quarantine by a competent authority, the said port officer, or boat's crew, shall remain in and be liable to quarantine.

Masters of ships to furnish declaration of health, &c.

17. On the arrival of any vessel in any port of this Colony, the commander or master thereof shall, upon being furnished by the port officer, or health officer, or other person duly authorised, with a printed declaration of health, according to the form in the second schedule hereto, fill up and sign the same, if he feels himself justified from the perfect state of health of every person on board so to do, and shall return the said declaration, so filled up and signed, to the officer as aforesaid; whereupon such vessel may be granted pratique; and the commander or master shall then hoist the union-jack, or flag of the nation to which the vessel belongs, to the main-top-gallant-mast head, as the health flag, in token of such pratique having been duly granted. But no such pratique shall be deemed or taken to be so granted until duly signified by such health flag having been so hoisted.

Penalty for false statement.

18. If the commander or master of any such vessel shall sign and deliver any declaration of health containing any false statement, or false answer to any question therein inserted, such commander or master shall, upon conviction, be liable to a penalty not exceeding two hundred pounds, or in default of payment, to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such penalty and such imprisonment.

If clean bill of health cannot be given inquiry to be made.

19. If any commander or master of a vessel arriving in a port of this Colony should, from the ill state of health of any of the

persons on board of his vessel, or from any other circumstances, not deem himself warranted to sign the declaration of the perfectly healthy state of the vessel, the port officer, or other person as the case may be, shall in every such case make every necessary inquiry into the state of health of the officers, passengers, crew, and others, and if there should be any sick persons on board into the nature and character of their complaints; and shall after such inquiry, either detain the said vessel in quarantine, or give her pratique as to him may appear fitting: Provided that when there may be any reasonable cause of doubt or suspicion, he shall not grant pratique, but shall place the vessel in quarantine, and report thereon, if the vessel is in Table Bay, to the Colonial Secretary, or if in any of the other ports of this Colony, to the Resident Magistrate thereat, or to the Justice of the Peace or other local authority nearest thereto, in order that further medical advice may be obtained.

20. If the port officer or health officer should deem it necessary to place the vessel in quarantine, he shall notify the same to the commander or master thereof, and give him a copy of this Act, and of any regulations made under this Act concerning quarantine, and order him to hoist a yellow flag at the fore-top-gallant-mast head, and shall forthwith report the same to the Colonial Secretary, or other chief local authority as aforesaid of the district in which the port is situated, in order that the necessary measures may be taken for cutting off all communication with such vessel, for such time as may be needful, and, under proper precautions to be superintended by the health officer, or other person duly appointed, for furnishing the said vessel with any supplies she may be in want of; and if the commander or master of any vessel so placed in quarantine have not a yellow flag on board the health officer or port officer shall order one to be furnished forthwith, at the expense of the said commander or master, who shall hoist the same, or cause it to be hoisted, as directed, and to be kept up during the day, so long as the vessel may be detained in quarantine, under a penalty not exceeding twenty pounds; and during the night, the commander or master of any vessel so placed in quarantine shall, in lieu of such yellow flag, cause to be hoisted and kept at the fore-top-gallant mast head, two lighted lanterns, one over the other, under a similar penalty not exceeding twenty pounds.

In case of quarantine, duty of Port Officer.

21. In case of the illness, or other necessary absence, of the health officer, the port officer may give pratique to any vessel whereof the commander or master has signed the health certificate as aforesaid: Provided such vessel has not touched at, or communicated with vessels coming from any infected port, in which case the port officer shall not give pratique, but a competent officer shall be expressly appointed to act for and perform the functions of the health officer.

In what cases Port Officer may give pratique.

No. 4—1883.

Powers of Magistrates and Justices of the Peace where no Health or Port Officer.

22. At any port of this Colony for which no health officer or port officer is appointed, the Resident Magistrate, or any officer of Customs, or in the absence of any such officer, any Justice of the Peace or field-cornet at or near such port, may, in the event of the casual arrival of a vessel thereat, act, or depute some competent person to act, as health officer and port officer; and the said Resident Magistrate, or other officer as aforesaid, and any person by him deputed to act, is hereby authorised and required, as far as circumstances will permit, to perform all the duties assigned by this Act to the health officer and port officer respectively, and is to be considered and obeyed as such.

Power to quarantine.

23. The Resident Magistrate, or in the absence of such officer, any Justice of the Peace, at or near any port of this Colony other than Table Bay, is hereby authorised and required to detain any vessel in quarantine, and to prevent all communication therewith in case of actual necessity (such necessity to be certified by the health officer or other person duly appointed to visit vessels at such port), and shall forthwith report the same to the Colonial Secretary; and the health officers and port officers at the several ports of the Colony are hereby authorised and required, in case of necessity, to place all vessels in quarantine in the manner directed by the provisions of this Act, until report thereof be made to the Colonial Secretary, or to a Resident Magistrate, Justice of the Peace, or other competent local authority as aforesaid.

Masters and others in quarantine to be subject to regulations made by competent officer.

24. All commanders or masters of vessels, and other persons liable to quarantine, who may have been placed in quarantine by a competent officer as aforesaid, and all persons having had any intercourse or communication with them, shall be subject, in respect to such quarantine, during the period they are detained therein, to such orders as they may receive from the health officer, or port officer, or other competent officer acting for them; and the said officers are hereby authorised and required to enforce all due obedience to the said orders, and, in case of necessity, to call in others to their assistance: and any person who is liable to or under quarantine, refusing or neglecting to obey such orders, or attempting to evade the performance of quarantine shall, upon conviction, be liable to a penalty not exceeding twenty pounds, and in default of payment, to imprisonment for a period not exceeding three months.

Guards, and power to use force.

25. If, in the case of any person placed in quarantine, either on board ship, or in any lazaret, or other place allotted for the performance of quarantine, it should be necessary, for the due security of the public health, that guards be placed over such person, either in boats or on shore, it shall be lawful for such guards, if an attempt at escape should be made by any such person so placed in quarantine, to resist the same by open force, and to use their arms in case of absolute necessity; and such guards shall be held justified for the same, in the event of any bodily injury

being inflicted on any such person so attempting to break quarantine.

No. 4—1883.

26. The Governor may do all or any of the following things : Powers to be exercised by the Governor.

- (1) Appoint stations or places for the performance of quarantine where all vessels liable to quarantine, and the crews, passengers, and persons on board thereof shall perform the same.
- (2) Appoint lazarets and other places where the crews, passengers, and other persons, and the things which may be on board the said vessels shall be detained and kept for the performance of quarantine.
- (3) Appoint and remove superintendents of such lazarets, stations, or places, and such other officers as may be necessary for carrying out the provisions of this Act, or any regulations made in pursuance of this Act concerning quarantine.
- (4) Make regulations concerning quarantine and the prevention of infection, and make such orders, and give such directions as shall appear to be necessary to cut off all communication between any person infected, or under the circumstances likely to be infected, with any contagious or infectious disease, and the rest of the inhabitants of the Colony.
- (5) Make such orders and regulations and give such directions as he may deem fit for shortening the time of quarantine to be performed by particular vessels or particular persons and things, or for absolutely or conditionally releasing them or any of them from quarantine.
- (6) Appoint limits around any quarantine station, lazaret, or other places within which it shall not be lawful for any person, or any vessel or boats to go or be brought.
- (7) Attach a penalty for the contravention of any regulation or order made in pursuance of this Act not exceeding twenty pounds, and prescribe a term of imprisonment either with or without hard labour, in default of payment, not exceeding three months.
- (8) Order or direct that all or any of the powers, duties, or acts, authorised or required to be performed by the Governor at any port or place in this Colony may be exercised, performed, or done by any local authority, or by any officer or person appointed by the Governor subject to such restrictions as he may impose.

27. Any person convicted of any of the following acts or offences shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment :

Penalties for offences against this Act.

No. 4—1883.

- (1) If being a person liable to quarantine, he shall wilfully refuse or neglect to repair, when required, to a quarantine station, lazaret or other place appointed for performing quarantine.
- (2) If having been placed in a quarantine station or lazaret, he shall escape or attempt to escape from the same before quarantine has been duly performed.
- (3) If being the master or person in charge of any vessel, liable to perform quarantine, he shall quit, or knowingly permit or suffer any person to quit, such vessel, by going on shore, or by going on board any other vessel, before such quarantine shall be fully performed, unless by licence granted by virtue of any orders or regulations made by the Governor.
- (4) If being the master or person in charge of any vessel, liable to quarantine, he shall not within a reasonable time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed to the place appointed for such vessel and lading to perform quarantine.
- (5) If having come in any vessel liable to quarantine, or having gone on board any such vessel, he shall either before or after the arrival of such vessel at any place within this Colony, quit such vessel (unless by licence granted by virtue of any orders or regulations made by the Governor), by going on shore, or by going on board any other vessel or any boat, with intent to go on shore, before such vessel, so liable to quarantine shall be regularly discharged from the performance thereof.
- (6) If he shall wilfully and without leave go within the limits assigned or appointed by the Governor, around any quarantine station, lazaret, or other place for the performance of quarantine.
- (7) If being a person whose duty it shall be to execute, or carry out any of the provisions of this Act, or any order or regulation made, or direction given under the provisions of this Act concerning quarantine, he shall knowingly or wilfully be guilty of any breach or neglect of his duty.
- (8) If he shall convey, or remove, or secrete, or conceal for the purpose of conveying or removing, anything from any vessel actually performing quarantine, or from any quarantine station, lazaret, or other place where such thing shall be performing quarantine.
- (9) If not being authorised under this Act or otherwise, he shall communicate with any vessel placed under quarantine or with any persons under quarantine on board any vessel or at any quarantine station, lazaret, or other place.

No. 4—1883.

- (10) If being a superintendent or other person in charge of, or a guard over any vessel, person, or thing performing quarantine, he shall connive at or assist in the breach of any of the provisions of this Act or any regulations made under this Act concerning quarantine, or shall desert from his duty.
- (11) If he shall contravene any of the provisions of this Act, or of any order or regulations made by the Governor under the provisions of this Act, concerning quarantine in respect of which no other penalty shall have been expressly provided.

28. Any person may without warrant arrest any person who shall, contrary to the provisions of this Act, or of any order or regulations made under this Act concerning quarantine, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret or place appointed for performing quarantine, for the purpose of taking such person before any Magistrate or Justice of the Peace. Any Resident Magistrate or Justice of the Peace may grant a warrant for apprehending and conveying any such person to the vessel from which he shall have come or have escaped, or to any vessel or lazaret or place appointed for performing quarantine, or for confining such person in any place of safe custody, not being a public prison, until such person can be conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Governor as to the disposal of such person. And until such person shall be conveyed to such place or the Governor shall have given such directions as aforesaid, such Resident Magistrate or Justice of the Peace may make any order that may be deemed necessary in that behalf.

Powers to arrest persons breaking quarantine.

29. Any health officer, or superintendent of any quarantine station or other place where quarantine is to be performed, may prescribe such measures as may be necessary for cleansing, purifying, and disinfecting any vessel in quarantine, and the passengers and crew thereof, and the cargo therein, and may order the destruction of any clothing or materials which cannot be cleansed, purified or disinfected.

Provisions for cleansing and disinfecting.

30. All things liable to quarantine under this Act may be opened and aired in such place and for such time and in such manner as shall be directed by the Governor by any order, or by any regulations made under this Act.

For opening and airing things.

31. During the detention of the crew and passengers of any vessel in quarantine, whether on board or on shore, the commander or master of such vessel shall provide and supply provisions for the said crew and passengers on the same scale as during a voyage. If he shall omit to do so, provisions may be supplied by the superintendent or person in charge of the place at which such vessel is

Supplies to crews and passengers of quarantined ships.

persons on board of his vessel, or from any other circumstances, not deem himself warranted to sign the declaration of the perfectly healthy state of the vessel, the port officer, or other person as the case may be, shall in every such case make every necessary inquiry into the state of health of the officers, passengers, crew, and others, and if there should be any sick persons on board into the nature and character of their complaints; and shall after such inquiry, either detain the said vessel in quarantine, or give her pratique as to him may appear fitting: Provided that when there may be any reasonable cause of doubt or suspicion, he shall not grant pratique, but shall place the vessel in quarantine, and report thereon, if the vessel is in Table Bay, to the Colonial Secretary, or if in any of the other ports of this Colony, to the Resident Magistrate thereat, or to the Justice of the Peace or other local authority nearest thereto, in order that further medical advice may be obtained.

20. If the port officer or health officer should deem it necessary to place the vessel in quarantine, he shall notify the same to the commander or master thereof, and give him a copy of this Act, and of any regulations made under this Act concerning quarantine, and order him to hoist a yellow flag at the fore-top-gallant-mast head, and shall forthwith report the same to the Colonial Secretary, or other chief local authority as aforesaid of the district in which the port is situated, in order that the necessary measures may be taken for cutting off all communication with such vessel, for such time as may be needful, and, under proper precautions to be superintended by the health officer, or other person duly appointed, for furnishing the said vessel with any supplies she may be in want of; and if the commander or master of any vessel so placed in quarantine have not a yellow flag on board the health officer or port officer shall order one to be furnished forthwith, at the expense of the said commander or master, who shall hoist the same, or cause it to be hoisted, as directed, and to be kept up during the day, so long as the vessel may be detained in quarantine, under a penalty not exceeding twenty pounds; and during the night, the commander or master of any vessel so placed in quarantine shall, in lieu of such yellow flag, cause to be hoisted and kept at the fore-top-gallant mast head, two lighted lanterns, one over the other, under a similar penalty not exceeding twenty pounds.

In case of quarantine, duty of Port Officer.

21. In case of the illness, or other necessary absence, of the health officer, the port officer may give pratique to any vessel whereof the commander or master has signed the health certificate as aforesaid: Provided such vessel has not touched at, or communicated with vessels coming from any infected port, in which case the port officer shall not give pratique, but a competent officer shall be expressly appointed to act for and perform the functions of the health officer.

In what cases Port Officer may give pratique.

No. 4—1883.

Powers of Magistrates and Justices of the Peace where no Health or Port Officer.

22. At any port of this Colony for which no health officer or port officer is appointed, the Resident Magistrate, or any officer of Customs, or in the absence of any such officer, any Justice of the Peace or field-cornet at or near such port, may, in the event of the casual arrival of a vessel thereat, act, or depute some competent person to act, as health officer and port officer; and the said Resident Magistrate, or other officer as aforesaid, and any person by him deputed to act, is hereby authorised and required, as far as circumstances will permit, to perform all the duties assigned by this Act to the health officer and port officer respectively, and is to be considered and obeyed as such.

Power to quarantine.

23. The Resident Magistrate, or in the absence of such officer, any Justice of the Peace, at or near any port of this Colony other than Table Bay, is hereby authorised and required to detain any vessel in quarantine, and to prevent all communication therewith in case of actual necessity (such necessity to be certified by the health officer or other person duly appointed to visit vessels at such port), and shall forthwith report the same to the Colonial Secretary; and the health officers and port officers at the several ports of the Colony are hereby authorised and required, in case of necessity, to place all vessels in quarantine in the manner directed by the provisions of this Act, until report thereof be made to the Colonial Secretary, or to a Resident Magistrate, Justice of the Peace, or other competent local authority as aforesaid.

Masters and others in quarantine to be subject to regulations made by competent officer.

24. All commanders or masters of vessels, and other persons liable to quarantine, who may have been placed in quarantine by a competent officer as aforesaid, and all persons having had any intercourse or communication with them, shall be subject, in respect to such quarantine, during the period they are detained therein, to such orders as they may receive from the health officer, or port officer, or other competent officer acting for them; and the said officers are hereby authorised and required to enforce all due obedience to the said orders, and, in case of necessity, to call in others to their assistance: and any person who is liable to or under quarantine, refusing or neglecting to obey such orders, or attempting to evade the performance of quarantine shall, upon conviction, be liable to a penalty not exceeding twenty pounds, and in default of payment, to imprisonment for a period not exceeding three months.

Guards, and power to use force.

25. If, in the case of any person placed in quarantine, either on board ship, or in any lazaret, or other place allotted for the performance of quarantine, it should be necessary, for the due security of the public health, that guards be placed over such person, either in boats or on shore, it shall be lawful for such guards, if an attempt at escape should be made by any such person so placed in quarantine, to resist the same by open force, and to use their arms in case of absolute necessity; and such guards shall be held justified for the same, in the event of any bodily injury

being inflicted on any such person so attempting to break quarantine. No. 4—1883.

26. The Governor may do all or any of the following things : Powers to be exercised by the Governor.

- (1) Appoint stations or places for the performance of quarantine where all vessels liable to quarantine, and the crews, passengers, and persons on board thereof shall perform the same.
- (2) Appoint lazarets and other places where the crews, passengers, and other persons, and the things which may be on board the said vessels shall be detained and kept for the performance of quarantine.
- (3) Appoint and remove superintendents of such lazarets, stations, or places, and such other officers as may be necessary for carrying out the provisions of this Act, or any regulations made in pursuance of this Act concerning quarantine.
- (4) Make regulations concerning quarantine and the prevention of infection, and make such orders, and give such directions as shall appear to be necessary to cut off all communication between any person infected, or under the circumstances likely to be infected, with any contagious or infectious disease, and the rest of the inhabitants of the Colony.
- (5) Make such orders and regulations and give such directions as he may deem fit for shortening the time of quarantine to be performed by particular vessels or particular persons and things, or for absolutely or conditionally releasing them or any of them from quarantine.
- (6) Appoint limits around any quarantine station, lazaret, or other places within which it shall not be lawful for any person, or any vessel or boats to go or be brought.
- (7) Attach a penalty for the contravention of any regulation or order made in pursuance of this Act not exceeding twenty pounds, and prescribe a term of imprisonment either with or without hard labour, in default of payment, not exceeding three months.
- (8) Order or direct that all or any of the powers, duties, or acts, authorised or required to be performed by the Governor at any port or place in this Colony may be exercised, performed, or done by any local authority, or by any officer or person appointed by the Governor subject to such restrictions as he may impose.

27. Any person convicted of any of the following acts or offences shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment : Penalties for offences against this Act.

No. 4—1883.

- (1) If being a person liable to quarantine, he shall wilfully refuse or neglect to repair, when required, to a quarantine station, lazaret or other place appointed for performing quarantine.
- (2) If having been placed in a quarantine station or lazaret, he shall escape or attempt to escape from the same before quarantine has been duly performed.
- (3) If being the master or person in charge of any vessel, liable to perform quarantine, he shall quit, or knowingly permit or suffer any person to quit, such vessel, by going on shore, or by going on board any other vessel, before such quarantine shall be fully performed, unless by licence granted by virtue of any orders or regulations made by the Governor.
- (4) If being the master or person in charge of any vessel, liable to quarantine, he shall not within a reasonable time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed to the place appointed for such vessel and lading to perform quarantine.
- (5) If having come in any vessel liable to quarantine, or having gone on board any such vessel, he shall either before or after the arrival of such vessel at any place within this Colony, quit such vessel (unless by licence granted by virtue of any orders or regulations made by the Governor), by going on shore, or by going on board any other vessel or any boat, with intent to go on shore, before such vessel, so liable to quarantine shall be regularly discharged from the performance thereof.
- (6) If he shall wilfully and without leave go within the limits assigned or appointed by the Governor, around any quarantine station, lazaret, or other place for the performance of quarantine.
- (7) If being a person whose duty it shall be to execute, or carry out any of the provisions of this Act, or any order or regulation made, or direction given under the provisions of this Act concerning quarantine, he shall knowingly or wilfully be guilty of any breach or neglect of his duty.
- (8) If he shall convey, or remove, or secrete, or conceal for the purpose of conveying or removing, anything from any vessel actually performing quarantine, or from any quarantine station, lazaret, or other place where such thing shall be performing quarantine.
- (9) If not being authorised under this Act or otherwise, he shall communicate with any vessel placed under quarantine or with any persons under quarantine on board any vessel or at any quarantine station, lazaret, or other place.

- (10) If being a superintendent or other person in charge of, or a guard over any vessel, person, or thing performing quarantine, he shall connive at or assist in the breach of any of the provisions of this Act or any regulations made under this Act concerning quarantine, or shall desert from his duty.
- (11) If he shall contravene any of the provisions of this Act, or of any order or regulations made by the Governor under the provisions of this Act, concerning quarantine in respect of which no other penalty shall have been expressly provided.

28. Any person may without warrant arrest any person who shall, contrary to the provisions of this Act, or of any order or regulations made under this Act concerning quarantine, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret or place appointed for performing quarantine, for the purpose of taking such person before any Magistrate or Justice of the Peace. Any Resident Magistrate or Justice of the Peace may grant a warrant for apprehending and conveying any such person to the vessel from which he shall have come or have escaped, or to any vessel or lazaret or place appointed for performing quarantine, or for confining such person in any place of safe custody, not being a public prison, until such person can be conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Governor as to the disposal of such person. And until such person shall be conveyed to such place or the Governor shall have given such directions as aforesaid, such Resident Magistrate or Justice of the Peace may make any order that may be deemed necessary in that behalf.

Powers to arrest persons breaking quarantine.

29. Any health officer, or superintendent of any quarantine station or other place where quarantine is to be performed, may prescribe such measures as may be necessary for cleansing, purifying, and disinfecting any vessel in quarantine, and the passengers and crew thereof, and the cargo therein, and may order the destruction of any clothing or materials which cannot be cleansed, purified or disinfected.

Provisions for cleansing and disinfecting.

30. All things liable to quarantine under this Act may be opened and aired in such place and for such time and in such manner as shall be directed by the Governor by any order, or by any regulations made under this Act.

For opening and airing things.

31. During the detention of the crew and passengers of any vessel in quarantine, whether on board or on shore, the commander or master of such vessel shall provide and supply provisions for the said crew and passengers on the same scale as during a voyage. If he shall omit to do so, provisions may be supplied by the superintendent or person in charge of the place at which such vessel is

Supplies to crews and passengers of quarantined ships.

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detained, and the expenses incurred in so doing may be recovered by such superintendent or other person, as a debt due from the commander or master, or the owner, or both, and such debt shall be a charge on the vessel.

PART III.—INFECTIOUS DISEASES AND HOSPITALS.

Regulations to be made or directions given by Governor to local authority in infected places.

32. The Governor may make regulations or give directions for all or any of the following purposes which regulations and directions shall be acted upon by the local authority immediately any portion of the Colony is affected by or threatened with small-pox, or any epidemic, endemic, infectious, or contagious disease :

- (1) For house to house visitation.
- (2) For the speedy interment of the dead.
- (3) For the conduct and direction of the route of funerals.
- (4) For providing medical aid and accommodation.
- (5) For the detention and isolation of persons suffering from or under circumstances likely to be infected with such disease, and for preventing the spread of disease.
- (6) For the promotion of cleansing, ventilation, and disinfection.
- (7) For preventing the overcrowding of any house or part of a house so as to be dangerous or injurious to the health of the inmates, whether or not members of the same family.

Penalty for contravention thereof.

Any person who contravenes any regulation made by the Governor under this section, or wilfully obstructs any person acting under the authority of or in carrying out any such regulations, shall upon conviction be liable to a penalty not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months, or to both such fine and such imprisonment.

Duties of local authority.

33. The local authority shall superintend and see to the execution of such regulations and directions as aforesaid, and shall appoint and pay medical or other officers or persons, and do and provide all such acts, matters and things as may be necessary for mitigating any such disease, and for superintending or aiding in the carrying out of such regulations, or for carrying out the same as the case may require. The local authority may from time to time commence or direct any prosecution or legal proceedings for or in respect of the contravention of this Act or any regulations made under this Act.

Power to order disinfection.

34. Where any local authority is of opinion, on the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice, in writing, to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect such house or part

thereof and articles within a time specified in such notice. If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty not exceeding ten pounds and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default. Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

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35. When any householder knows that a person within the house occupied by him is suffering from small-pox or any other disease declared by the Governor to be infectious, he shall immediately give notice thereof to the local authority of the place on which he dwells. It shall be the duty of the medical practitioner in attendance in such case to inform the householder as early as possible of the infectious nature of the disease. Any person neglecting or refusing to comply with the provisions of this section, shall be liable to a penalty not exceeding ten pounds.

Householder to give notice of small-pox, &c.

36. Any local authority may do any of the following things:

What local authority may do.

- (1) Direct the destruction of any bedding, clothing or other articles which have been exposed to infection from any infectious disease, and may give compensation for the same.
- (2) Provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing, or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.
- (3) Provide and maintain vehicles suitable for the conveyance of persons suffering under any infectious disease, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

37. When any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district any person who is suffering from any infectious disease, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, or who is not under medical treatment by some medical practitioner, may, on a certificate signed by a qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed by order of any Resident Magistrate or Justice of the Peace to such hospital or place at the cost of the local authority. An order under this section may be addressed to any constable or member

Who may be removed to hospitals.

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of a Police Force, and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

Penalties for infected persons exposing themselves.

38. Any person who—

- (1) While suffering from any infectious disease wilfully exposes himself in any street, public place, shop, inn, railway carriage, or public conveyance, or enters any public conveyance without the consent of the owner, conductor or driver thereof, after notifying to such owner, conductor, or driver that he is so suffering; or
- (2) Being in charge of any person so suffering, so exposes such sufferer; or
- (3) Gives, lends, sells, transmits or exposes, any bedding, clothing, rags, or other things which have been exposed to infection from any such disease; unless the same shall have been disinfected to the satisfaction of the local authority,

shall be liable to a penalty not exceeding ten pounds; and in default of payment to imprisonment with or without hard labour for any period not exceeding three months, and a person who while suffering from any such disease, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the Court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance.

Exceptions.

No proceeding under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected, provided such transmission be made in accordance with the instructions of the local authority previously obtained.

Power of summary removal of infected persons found in public places.

39. Any person found in any road, street, or other public place suffering from small-pox, or any disease declared by the Governor to be deemed contagious or infectious, may be summarily removed by any local authority or person authorised to carry the provisions of this Act into operation, to the residence of such diseased person, or if he shall have none, or none in which he could be properly treated for such disease, to any public hospital or lazaret, or to any place appointed by such local authority, for the reception or detention of persons suffering from contagious or infectious disease, and such person may be detained in any such hospital, lazaret, or other place, until it shall be certified by a qualified medical practitioner that he may safely be discharged.

Disinfection of public vehicles.

40. Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance, after it has to his knowledge conveyed any person suffering from an infectious disease; and if he fails to do so he shall be liable to a penalty not exceeding ten pounds; but no such owner or driver

shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section.

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41. Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any infectious disease, without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section, the keeper of any hotel shall be deemed to let for hire part of a house to any person admitted as a guest into such hotel.

Penalties for letting infected premises on hire.

42. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any infectious disease, knowingly makes a false answer to such question, shall be liable to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding three months.

Penalties for false answers.

43. Any local authority may provide hospitals or temporary places for the reception of the sick, or persons who may have come in contact with the sick, and for that purpose may

Powers of local authority to provide hospitals.

- (1) Build such hospitals or places of reception ; or
- (2) Contract for the use of any premises for the purpose of such hospital or place of reception ; or
- (3) Enter into any agreement with any person for the reception of the sick on payment of such annual or other sum as may be agreed upon.

Two or more local authorities may combine in providing a common hospital.

44. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him or from his estate in the event of his dying in such hospital or place.

Expenses by local authority.

45. The officers of any local authority, or any person authorised in writing by any such officer, shall have power to enter on any premises for the purpose of carrying out, or superintending the carrying out, of the provisions of this Act, or any regulations framed under this Act.

Powers of entry, &c.

46. Any person wilfully refusing entrance to any officer of a local authority or any person duly authorised in writing as aforesaid, to any premises, and any person obstructing, or using foul, violent, or insulting language to any such officer or person while in the execution of any of the provisions of this Act, or any regula-

Penalties for resistance.

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tion made under this Act, shall upon conviction, be liable to a penalty not exceeding ten pounds, and, in default of payment, to imprisonment, with or without hard labour, for any period not exceeding three months.

Penalties for non-vaccinated person refusing to be vaccinated.

47. In case of the prevalence of small-pox the local authority may require any person within the limits over which such local authority shall have authority, to give proof that such person has been successfully vaccinated, and if any person who shall not give proof of having been vaccinated, shall refuse to allow himself to be vaccinated, such person shall, upon conviction, be liable successively in respect of each refusal to a penalty not exceeding two pounds, or, in default of payment, to imprisonment for any period not exceeding seven days.

Removal of bodies of persons dying of infectious disease.

48. Where the body of any person who has died of any infectious disease is retained in a room where persons live or sleep, or where any dead body is in such a state as to endanger the health of the inmates of the house or room in which such body is retained, any Resident Magistrate or Justice of the Peace may, upon production of a certificate, signed by a qualified medical practitioner, order the body to be removed at the cost of the local authority to such place as such Magistrate or Justice of the Peace may direct, and may direct the body to be buried within a time to be stated in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so stated, and do bury the same, it shall be the duty of the local authority to cause such body to be buried, but any expense incurred in the removal and burial of the body may be recovered from any person who but for the removal of such body and its burial by the local authority would have been obliged to cause the same to be buried. Any person disobeying or obstructing the execution of any such order made by a Resident Magistrate or Justice of the Peace shall be liable to a penalty not exceeding ten pounds.

When Governor may revoke power of local authority.

49. If at any time it shall appear to the Governor that any local authority has failed or neglected or refused to carry out any of the provisions of this Act, or any regulations made under this Act, which it was the duty of such local authority to carry out, the Governor may declare all the powers and authorities vested in such local authority under this Act, to be thenceforth transferred and vested in such other local authority, or in a board consisting of not more than five persons as he may appoint, and may from time to time revoke, alter, or vary any order or direction made under the provisions of this section.

Duties of District Surgeons and others.

50. All district surgeons and medical officers shall give any information they may require in regard to the diseases referred to in this Act to the local authority forthwith, and shall be bound to attend to or inspect any case or place, or report on any matter relative to this Act, and the district surgeons shall be entitled to charge and receive from the local authority in all such cases a fee

of two shillings and sixpence for each certificate required, and other medical officers a fee of five shillings, actual travelling expenses to be paid in all cases over and above such fees.

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PART IV.—VACCINATION.

51. In this part of this Act the words and expressions following shall have the meanings hereafter respectively attached to them, that is to say :

Interpretation.

The word "parent" shall include the father and mother of a legitimate child, and the mother of an illegitimate child.

The words "medical practitioner" shall mean a medical practitioner authorised to practise in this Colony, under any law now or hereafter to be in force in this Colony.

The term "lymph" shall mean lymph taken from a heifer or from a fully formed vaccine vesicle, on the day week after vaccination, and before any areola has been formed ; the subject from which such vaccine lymph is taken being a healthy infant or child who has not previously been vaccinated, or a healthy young heifer.

52. The Colonial Secretary shall at all times cause to be kept at such places as the Governor shall appoint, a supply of pure lymph for the purpose of furnishing on application and without payment to district surgeons and to medical practitioners such reasonable quantities of such lymph as may be required. The expense of providing, keeping, and supplying such lymph shall be defrayed out of moneys provided by Parliament for the purpose of this Act.

District Surgeons to be supplied with lymph.

53. The Governor may issue regulations providing for the vaccination and revaccination of persons gratuitously by the district surgeons, or persons specially appointed as vaccinators, and for appointing places for the performance of vaccination, and also for giving from time to time notice of the days and hours at which the district surgeon, or other vaccinator appointed, will attend at such place to vaccinate all persons not already successfully vaccinated who may then appear there.

Regulations for gratuitous vaccination.

54. When the operation of vaccination or revaccinating any person over the age of fourteen years is performed by the district surgeon or vaccinator appointed by the Governor without charge to such person, the district surgeon or vaccinator may require such person to attend at the same or some other place on the same day in the following week, in order that such person may be inspected, and the result of the operation ascertained ; and the district surgeon or vaccinator shall, if required, deliver to the person vaccinated or revaccinated who shall attend, a certificate stating the result of the operation. If any such person shall fail to attend, or to permit the district surgeon or vaccinator to ascertain the result of the operation, he shall be liable to a penalty not exceeding ten shillings.

Vaccinated person to attend to be inspected.

Penalty for neglect.

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Children to be vaccinated within one year of birth.

55. The parent of every child born in this Colony after the first day of January, one thousand eight hundred and eighty-four, shall within twelve months after the birth of such child, or when by reason of the death, illness, absence, or inability of the parent or other cause, any other person shall have the custody of such child, such person shall within twelve months after receiving the custody of such child, cause such child to be vaccinated by some medical practitioner. As often as any such child shall be taken to a district surgeon, or person specially appointed by the Governor as vaccinator, such district surgeon or vaccinator shall, subject to any regulations framed by the Governor, vaccinate such child without charge.

Vaccinated child to be produced for inspection a week after vaccination.

56. In every case in which a child shall be vaccinated by a district surgeon or vaccinator appointed by the Governor free of charge, the parent or other person, as the case may be, having custody of such child, shall cause such child to be taken upon the same day in the following week to the district surgeon or vaccinator by whom the operation was performed, in order that he may inspect such child and ascertain by inspection the result of the operation; and if he sees fit take from such child lymph for the performance of other operations; and in the event of the operation being unsuccessful such parent or other person shall, if the district surgeon or vaccinator so direct, cause the child to be forthwith again vaccinated, and subsequently inspected as on the previous occasion.

Unsuccessful vaccination.

57. If any district surgeon, vaccinator specially appointed, or medical practitioner shall be of opinion that any child whom he has three times unsuccessfully vaccinated, is not susceptible of successful vaccination, or that a child, brought to him for vaccination, has had the small-pox, he shall deliver to the parent of such child a certificate according to the fact; and the parent or such person as aforesaid shall thereafter not be required to cause such child to be vaccinated.

Penalty for refusing to have lymph extracted.

58. Every parent or person having the custody of any child under the age of fourteen years who shall neglect to have or cause such child to be vaccinated, or, after vaccination, gratuitously to be inspected according to the provisions in this Act respectively contained, or who shall refuse to permit the district surgeon or vaccinator specially appointed to remove or retain a reasonable quantity of lymph from the arm of any such child gratuitously vaccinated according to the provisions of this part of this Act, and shall not in any of the said cases render a reasonable excuse for such neglect shall, upon conviction, be liable to a penalty not exceeding two pounds.

Duties of Magistrates when children suspected of not being vaccinated.

59. If any Resident Magistrate shall have information or have reason to believe that any child under the age of fourteen years within his district has not been successfully vaccinated, he may cause notice to be given to the parent or person having the custody

of such child to procure its being vaccinated within a period to be stated, not being less than seven days, and if such notice be disregarded such Resident Magistrate may summon such parent or person to appear with the child, before him, at a certain time and place, and if the Resident Magistrate shall find after such examination as he shall deem necessary, that the child has not been vaccinated nor has already had the small-pox he may, if he see fit, make an order directing the child to be vaccinated within a certain time. If at the expiration of such time the child shall not have been vaccinated or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be liable to a penalty not exceeding two pounds. And if any parent or other person as aforesaid, shall fail to appear to any such summons, or to produce such child, such parent or person shall be liable in respect of each act and successively to a penalty not exceeding two pounds.

60. No person who has not been vaccinated shall be appointed, or if appointed prior to the taking effect of this Act, promoted to any office in the public service.

No unvaccinated person eligible for civil service.

61. Every child admitted to any school which shall be maintained or aided by any grant from public funds, shall be vaccinated by the district surgeon or a vaccinator specially appointed as aforesaid, unless such child shall have been previously vaccinated.

Children attending public schools.

62. The Governor may order the inmates of prisons, convict stations, lunatic asylums, reformatories, hospitals, and other places where the poor or sick are received, to be vaccinated upon or after their entrance, and may declare an age after which vaccination or revaccination under this section shall not be compulsory.

Inmates of prisons, &c., &c.

PART V.—CEMETERIES. (1)

63. No cemetery or burial-ground shall hereafter be established or opened in, or within the limits assigned for, any city, town, or village in this Colony without the leave of the Governor previously obtained.

No cemetery to be established without leave from Governor.

64. If it shall be made to appear to the Governor that burials in any cemetery or burial-ground now existing or hereafter to be established are, or are likely to be, injurious to the public health, the Governor may by an order or notice to be published in the *Government Gazette* direct that after a time to be mentioned in such order, not being less than six months from the date thereof, burials in such cemetery or burial-ground shall be discontinued, wholly or subject to any exceptions or qualifications mentioned in the same or any subsequent order or notice, and may from time to time postpone the time mentioned in such order or notice for the

How and when cemeteries may be closed.

¹ See also Act 3, 1883.

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discontinuance of burials, or otherwise alter or vary any such order or notice.

Penalties for burials
after such closing.

65. If after the expiration of the time mentioned in any such order or notice, any person shall bury any body in, or shall act or assist in or shall suffer or permit the burial of any body in any cemetery or burial-ground, or within the limits in which burials have by any such order or notice been ordered to be discontinued or prohibited, such person shall upon conviction be liable to a penalty not exceeding fifty pounds.

Short title.

66. This Act may be cited as the "Public Health Act, 1883."

THE FIRST SCHEDULE.

Number and Year.	Title.	Extent of Repeal.
No. 1, 1856.	For preventing the spread of Contagious or Infectious Diseases.	The whole.
No. 16, 1857.	To Consolidate the Laws relating to Quarantine and Port Regulations.	The Quarantine Regulations enacted by Sections three to eighteen inclusive and the Schedule A.

THE SECOND SCHEDULE.

FORM OF DECLARATION OF HEALTH.

1. Name of vessel and commander or master.
2. From what port and whither bound ?
3. When sailed.
4. At what intermediate ports or places touched on the voyage, and date of sailing thence ?
5. With what vessel communicated during the voyage.
6. Date of each such communication.
7. Did any contagious or infectious disease prevail at the port from which you sailed ? If so, what was the nature of such disease ?
8. If you touched at any port or communicated with any vessel on the voyage was any contagious or infectious disease prevailing at such port, or on board such vessel ? If so state the nature of the disease.
9. Have you any sickness on board at present ? If so, what is that sickness, and what number of cases have you under treatment ?

10. Has any case of small-pox, or any form of eruptive skin disease, fever, scarlatina, plague, cholera, or other infectious or contagious disease, occurred on board during the voyage? If so, state the number of cases, and the dates of attack and convalescence or termination of the first and last cases of the disease.

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11. Have the clothes and bedding used by those persons who have suffered from contagious or infectious disease during the voyage been either destroyed or passed through boiling water?

12. What means, if any, were adopted for preventing the spread of any infectious or contagious disease which occurred during the voyage?

I do hereby declare that the several answers to the questions contained in the above schedule are correct, and that the vessel under my command is in a perfectly healthy state.

Given under my hand this day of 18
Commander or Master.

NOTE.—If the above declaration of health contains any false statement or answer to any question therein inserted, the commander or master signing the same will be liable to a penalty not exceeding £200, or in default of payment, to imprisonment with or without hard labour for a period not exceeding twelve months, or to both such penalty and such imprisonment. If the vessel is not in a healthy state the words “and that the vessel under my command is in a perfectly healthy state” are to be erased.

No. 5—1883.]

[September 6, 1883.]

ACT

To interpret and shorten the language of Acts of Parliament. (1)

WHEREAS it is desirable to repeal “The Acts of Parliament Interpretation Act, 1859,” and to re-enact the substance thereof, with amendments and additions: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. “The Acts of Parliament Interpretation Act, 1859,” shall be and the same is hereby repealed.

Repeal of former Act.

2. In the interpretation of all Acts heretofore passed, or hereafter to be passed by the Parliament of the Cape of Good Hope (including this present Act), and of all bye-laws, rules, regulations, or orders made under the authority of any law, the definitions and other provisions in this Act contained shall be adopted and applied, unless there shall be something in the language or context of any such Act, bye-law, rule, regulation, or order, repugnant to the said definitions and provisions.

All Acts to be interpreted according to definitions in this Act.

3. The terms hereinafter set forth shall be read and taken to mean as follows:—

Definitions of terms.

“Her Majesty” or “The Queen” or any like expression, shall include the heirs and successors of her present Majesty the Queen.

¹ Amended by Act 18, 1891 § 8. Extended by Proclamation No. 80 of 1890 to all the Native Territories.

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- “Governor” shall mean the officer for the time being administering the Government of the Colony: provided that when any act, matter, or thing is by any law directed or required to be done by the Governor it shall mean the Governor with the advice of the Executive Council.
- “Order in Council” shall mean any order made by the Governor with the advice of the Executive Council.
- “Christian Name,” any name prefixed to the surname, whether received at Christian baptism or not.
- “Constitution Ordinance,” the Ordinance enacted on the third day of April, 1852, by His Excellency the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, for constituting a Parliament for the said Colony.
- “Charter of Justice,” the Royal Letters Patent of his late Majesty King William the Fourth, dated the fourth day of May, 1832, for the better and more effectual administration of justice.
- “District,” the area subject to the jurisdiction of the Court of any Resident Magistrate.
- “Division” or “Fiscal Division,” the area under the administration of a Civil Commissioner.
- “Month,” a calendar month.
- “Gazette,” the *Government Gazette*.
- “Affidavit,” “Oath,” and “Swear,” shall include affirmation, declaration, affirming and declaring in the case of persons by any law, now or hereafter to be in force, allowed to declare or affirm instead of swearing.
- “Solemn Declaration,” a declaration made under and by virtue of the provisions of the Oaths and Declarations Act, 1891. (1)
- “Law” shall mean and include any
Act of Parliament,
Government Advertisement or Notice,
Ordinance,
Placaat,
Proclamation,
Regulation or Bye-law made under the authority of any
Law,
Rule of Court,
Or other enactment having the force of law.

Proclamations or
Orders in Council.

4. When any act, matter or thing, is by any law directed or required to be done by the Governor, the notification that such act, matter, or thing has been done may be by Proclamation, under the hand of the Governor, or by Order in Council.

Any such act, matter, or thing or any power authorised to be exercised by the Governor, may be done and exercised from time to time. No. 5—1883.
From time to time.

5. When anything is directed to be done “in writing” it may be done partly in writing and partly in printing. Writing or printing.
inc.

6. When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, New Year’s Day, Good Friday, Easter Monday, Ascension Day, Whit Monday, Her Majesty’s birthday, or any other day appointed by Proclamation of the Governor as a solemn fast or day of thanksgiving, in which case the time shall be reckoned exclusively of the first and of every other such day also. How number of
days to be reckoned.

7. When any bye-laws, regulations, rules, or orders are authorised by any law to be made by the Governor, or by any local authority, public body or person, with the approval of the Governor, such bye-laws, regulations, rules, or orders, shall be published in the *Gazette*, and production of a copy of the *Gazette* containing a proclamation or notice of the making or approval thereof (as the case may be) by the Governor, shall be sufficient evidence of such making or approval. The power to make any such bye-laws, regulations, rules, or orders, shall include the power to alter or amend, and to repeal and make others, provided that the powers conferred upon the Governor by any such law be not exceeded. Copy of *Gazette*,
proof of Bye-laws,
&c.

8. When the Governor is by any Act authorised to make rules, or regulations for any purpose in such Act stated, copies of such rules, orders, or regulations shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament be then sitting; and if Parliament be not then sitting, within thirty days after the commencement of the next Session. Rules, &c., made
by Governor, to be
laid before Parlia-
ment.

9. All Acts of Parliament shall commence and take effect from and after their promulgation in the *Gazette*. Acts to take effect
from promulgation
in *Gazette*.

10. The repeal of any law shall not have the effect of extinguishing any penalty, forfeiture, or liability incurred under such law unless the repealing Act shall so expressly provide, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement or recovery of such penalty, forfeiture, or liability. As to penalties
under repealed Acts.

11. The repeal of any law whereby any former law was repealed shall not have the effect of reviving such lastmentioned law. Repeal of repealed
Act not to revive
former one.

12. When in any Act sections or words in any prior Act are respectively directed to be omitted, or added, or substituted for other sections or words, in all copies of such last-mentioned Act which shall subsequently be printed the sections or words respec- As to reprints of
altered or amended
Acts.

- No. 6—1883. tively directed to be omitted shall be omitted, those directed to be added shall be added, and those directed to be substituted for others shall be so substituted, as the case may be.
- Designation of public officers. 13. When and as often as any public officer is described by his name of office the person designated shall be taken to be the officer for the time being or the person for the time being acting as such officer.
- Singular plural, male female, &c. and 14. Words of the singular number shall include the plural number, and words of the plural number shall include the singular number, and words of the masculine gender shall include females as well as males.
- Short title. 15. This Act may be cited for all purposes as “The Interpretation Act, 1883.”

No. 6—1883.]

[September 6, 1883.]

ACT

To establish Post Office Savings Banks. ⁽¹⁾

- Preamble. WHEREAS it is expedient to afford greater facilities for the deposit of small savings at interest upon the security of the public revenue and to make the General Post Office of the Colony available for that purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Power of Postmaster-General to establish Savings Banks. 1. The Postmaster-General may, with the consent of the Colonial Secretary, establish Post Office Savings Banks and authorise and direct such of his officers as he shall think fit to receive deposits for remittance to the principal office, and to repay the same under such regulations as the Governor may from time to time prescribe in that respect by notice published in the *Government Gazette*.
- How deposits to be made, entered, reported and proved. 2. Every deposit received by any officer of the Postmaster-General appointed for that purpose shall be entered by him at the time in the depositor's book, and the entry shall be attested by him, and by the dated stamp of his office, and the amount of such deposit shall upon the day of such receipt, if there be a daily post, or by the next first post if the mail be dispatched less frequently, be reported by such officer to the Postmaster-General, and the acknowledgment of the Postmaster-General, signified by the officer whom he shall appoint for the purpose, shall be forthwith transmitted to the depositor, and the said acknowledgment shall be conclusive evidence of his claim to the repayment thereof, with the interest thereon, upon demand made by him on the Postmaster-General; and, in order to allow a reasonable time for the receipt of the said acknowledgment, the entry by the proper officer in the depositor's book shall also be conclusive evidence of such claim to

¹ See Acts 4, 1886; 5, 1889. Extended by Proclamation No. 153 of 1884 to Port St. John's; by Proclamation No. 9 of 1885 to Tembuland; and by Proclamation No. 10 of 1885 to Transkei and Griqualand East.

repayment for twenty days from the lodgment of the deposit; and if the said acknowledgment shall not have been received by the depositor through the post within twenty days, and he shall before or upon the expiry thereof, demand the said acknowledgment from the Postmaster-General, then the entry in his book shall be conclusive evidence of such claim during another term of thirty days.

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3. (1) Deposits of one shilling or any number of shillings, or of pounds and shillings, will be received from any depositor at any Post Office Savings Bank, provided the deposits made by such depositor in any Savings Bank year ending on the thirtieth day of June do not exceed one hundred pounds, and provided the total amount standing in such depositor's name in the books of the Postmaster-General do not exceed five hundred pounds, exclusive of interest. When the principal and interest together standing to the credit of any one depositor amount to the sum of six hundred pounds, all interest shall cease so long as the same funds amount to the said sum of six hundred pounds.

Limits of deposits.

4. On demand of a depositor or person legally authorised to claim on account of a depositor, made in such form as shall be prescribed in that behalf, for repayment of any deposit, or any part thereof, the authority of the Postmaster-General for such repayment shall be transmitted to the depositor forthwith, and the depositor shall be absolutely entitled to the repayment of any sum that may be due to him within thirty days, after his demand shall have been made at any Post Office where deposits are received or paid.

How repayments to be obtained.

5. The officers of the Postmaster-General engaged in the receipt or payment of deposits shall not disclose the name of any depositor, nor the amount deposited or withdrawn, except to the Postmaster-General, or to such of his officers as may be appointed to assist in carrying this Act into operation: Provided that nothing herein contained shall be deemed to limit the authority of the Controller and Auditor-General.

Secrecy to be observed.

6. The Postmaster-General shall keep separate accounts of all moneys deposited and paid under this Act, and the Treasurer of the Colony shall from time to time, and as often as the account will permit, invest any moneys to the credit of such account in such manner as the Governor may require or approve of, and may as often as occasion may require, or as the Governor may deem expedient, realise or vary any such investments.

Accounts to be kept, and investments made.

7. The interest payable to depositors shall be at such rate as may from time to time be fixed by the Governor, not exceeding the rate of five pounds per centum per annum; but such interest shall not be calculated on any amount less than one pound, or some multiple thereof, and shall not commence until the first day of the month next following the day of deposit, and shall cease on the first day of the month in which such deposit is withdrawn.

Interest.

- No. 6—1888.
- How calculated. 8. (1) Interest on deposits shall be calculated to the thirtieth day of June in every year, and shall then be added to and become part of the principal money.
- Names and address of depositors. 9. (1) Every depositor on making a first deposit shall be required to specify his names in full, occupation, and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make, and subscribe with his name, or mark if unable to write, the declaration set forth in the schedule hereunto annexed marked "A," to be witnessed by the officer of the Postmaster-General appointed to receive deposits, or by some person known to him, or by some minister of religion in the district in which the depositor resides, or by a Justice of the Peace. If the depositor cannot write, the certificate at the back of the declaration form shall be filled up and witnessed by two persons both over the age of sixteen years.
- Trust deposits. 10. Deposits may be made by a trustee on behalf of another person in the joint names of such trustee and the person on whose account such money shall be so deposited; but repayment of the same, or any part thereof, shall not be made without the receipt of both the said parties, or the executors or administrators and the survivor, in the case of the decease of one of them, whose receipt either personally or by agent appointed by power of attorney, which power of attorney may be executed by an infant of or exceeding the age of fourteen years, shall alone be a valid discharge, except in case of insanity or imbecility of the person on whose behalf the deposits were made, when the Postmaster-General may on proof of the fact to his satisfaction allow repayment to be made to the trustee alone. And in such cases the declaration set forth in the schedule annexed marked "B," shall be signed by the said trustee.
- Deposits for minors. 11. Deposits may be made by, or for the benefit of, any person under twenty-one years of age, and repayment may be made to such minor after the age of seven years in the same manner as if he were of full age. In case of minors under the age of seven years the declaration set forth in the schedule annexed marked "A," shall be signed for and on his behalf by one of the parents or a friend of such depositor.
- Married women 12. Any Postmaster or other officer as aforesaid may pay, under the authority of the Postmaster-General, any sum of money in respect of any deposit made by a married woman, or by a woman who may marry after such deposit, to such woman.
- Deposits by Friendly Societies. 13. The trustees of any friendly society, the rules of which have been certified by the Attorney-General, or of any charitable or provident society approved by the Colonial Secretary, may deposit the funds without restriction as to the maximum amount in the Post Office Savings Bank: Provided that a copy of the rules be

forwarded to the Postmaster-General with the names and addresses of such trustees. And in the case of friendly societies the declaration set forth in the schedule annexed marked "C," shall be signed by one of the trustees, the treasurer, steward, clerk, or other responsible officer, for and on behalf of such society. And in the case of charitable or provident societies, the declaration set forth in the schedule annexed marked "D," shall be signed by one of the trustees, the treasurer, or other responsible officer for and on behalf of such society. (1)

14. In case any depositor in the said Post Office Savings Bank shall die, leaving a sum of money in the Post Office Savings Bank which, with the interest due thereon, shall not exceed in the whole the sum of fifty pounds, and letters of administration be not produced to the Postmaster-General, or if notice in writing of the existence of a will, and intention to take out letters of administration be not given to the Postmaster-General at his principal office within the period of two months from the death of the depositor, or if such notice be given, but such letters of administration be not taken out and produced to the Postmaster-General within the period of three months from the death of the depositor, it shall be lawful for the Postmaster-General, after the expiration of the two or three months as the case may be, with the consent of the Attorney-General, to pay and divide such money to and among such persons as shall appear to be entitled thereto; and every such payment shall be a valid and effectual discharge against any demand or claim made upon the funds of the said Post Office Savings Bank by any other person as being the lawful representative of such depositor; and any such person so claiming as aforesaid shall have his remedy by recourse against the person who shall have received such payments, and not otherwise; and such administration or distribution by the said Postmaster-General shall be entirely free and discharged from all stamps, fees and duties whatsoever: Provided that in case no claims be made on any such money as aforesaid or, if made, shall not be admitted by the said Postmaster-General, or by the determination and adjudication of one of the Judges of the Supreme Court, as hereinafter mentioned then, and in every such case, such money shall, subject to any order made by any such Judge, be paid by the Postmaster-General into the Guardian's Fund to be dealt with by the Master of the Supreme Court as if such money had been paid in by an executor or tutor.

How deposits of
intestates and others
to be dealt with.

15. If any depositor of a sum not exceeding fifty pounds being illegitimate shall die intestate leaving any person who, but for the illegitimacy of such depositor would be entitled to the money due to such deceased depositor, it shall be lawful for the Postmaster-General with the authority in writing to the Attorney-General, to

Illegitimate representatives of deceased depositor.

¹ See §§ 1, 2, Act 4, 1886,

No. 6—1888.

pay the money of such deceased depositor to any one or more of the persons who, in his opinion, would have been entitled to the same, according to the law of succession *ab intestato* if the said depositor had been legitimate.

Account of deposits distributed under Sections 14 or 15 to be forwarded to the Master.

As often as the Postmaster-General shall under the provisions of sections fourteen or fifteen of this Act distribute any sum of money deposited in the Post Office Savings Bank, he shall forward to the Master of the Supreme Court an account shewing the sum deposited and the distribution thereof, and such account shall be filed and registered in the same manner as an account rendered by an executor, but free from any fee or duty.

Certificate of amounts deposited.

16. In all cases wherein a certificate shall be required of the amount of the balance standing in the books of the Post Office Savings Bank for the purpose of obtaining letters of administration, such certificate shall be prepared in the manner set forth in the schedule annexed marked "E."

How disputes between depositor and Postmaster-General to be settled.

17. In case any difference shall arise between the Postmaster-General and any depositor in the said Post Office Savings Bank, or any executor, administrator, next of kin, or creditor, or trustee of a depositor who may become insolvent, or any person claiming to be such executor, administrator, next of kin, creditor, or trustee, or to be entitled to any money deposited in the Post Office Savings Bank, then, and in every such case, the matter so in dispute may be referred, in writing, to the summary decision of one of the Judges of the Supreme Court; and such Judge may inquire into and determine the matter in dispute, and his determination and adjudication on the premises shall be final and conclusive and binding on the said parties: Provided that such Judge may, if he see fit, make such order for further enquiry and determination of the matter in dispute as he may deem necessary.

Governor may make regulations.

18. The Governor may make, and from time to time as he shall see occasion, alter, by notice published in the *Government Gazette*, regulations for superintending, inspecting, and regulating the mode of keeping and examining the accounts of depositors, and with respect to the making of deposits, and to the withdrawal of deposits and interest, and all other matters incidental to the operation of this Act, and all regulations so made shall be binding on the parties interested to the same extent as if such regulations formed part of this Act; and copies of all regulations issued under the authority of this Act shall be laid before Parliament within fourteen days from the date thereof, if Parliament shall then be sitting, and, if not, then within fourteen days from the next re-assembling of Parliament.

Accounts to be laid before Parliament.

19 (1) An account of all deposits received and paid under the authority of this Act, and of the expenses incurred during the Savings Bank year ended the thirtieth of June, together with a

statement of the total amount due at the close of such year, to all depositors shall be laid before both Houses of Parliament within thirty days after the commencement of each annual session thereafter.

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20. All expenses incurred in the execution of this Act shall be paid out of such moneys as Parliament shall provide, and such expenses shall from time to time be repaid as far as may be out of the surplus or profits arising from the administration of the funds of the said Post Office Savings Banks.

Expenses.

21. This Act may be cited as “ The Post Office Savings Banks Act, 1883.”

Short title.

“ A ” (1) (FACE OF FORM.)

Schedule A.

G.P.O.—No. 296.

S.B.—No. 1.

DEPOSITOR'S BOOK.

No.

DECLARATION BY DEPOSITOR ON MAKING FIRST DEPOSIT.

In pursuance of an Act of Parliament,

(Name in full) I,*
 (Residence) of
 (Occupation)

do hereby declare to the Postmaster-General that I am desirous on my own behalf to become a Depositor in the Post Office Savings Bank. I do further hereby declare that I am not directly or indirectly entitled to any sum or sums standing [in my own name, or] in the name or names of any other person or persons in the Books of the said Post Office Savings Bank; and I do hereby also testify my consent that my deposits in the said Post Office Savings Bank shall be managed according to the Regulations thereof.

I also declare that I clearly understand that for every deposit I shall place in the hands of a Postmaster for transmission to the Post Office Savings Bank, I must see that I receive a direct acknowledgment from the Controller of the Savings Bank Department, and that the Postmaster's entry in the Deposit Book is not sufficient without the further receipt from Cape Town.

Witness my hand this day of 18....

Signed by the said Depositor }
 in the presence of me, }

Save and except such benefit as I may be entitled to from being a Member of a Friendly Society legally established, or from such sum

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or sums as may be standing in my name as Trustee, jointly with the name or names, and on behalf of any other Depositor or Depositors.

If the Depositor cannot write, the certificate printed on the back of this form must be filled up and signed in the manner provided.

*In the case of Minors under the age of seven years, the Declaration must be made by one of the parents, or a friend, on behalf of the Minor.

The date on which the Minor will attain the age of seven years must be stated here.

Seven years of age on the.....day of.....
18... before which day the deposits cannot be withdrawn.

“A” (1) (BACK OF FORM.)

Every Depositor on making a first deposit shall be required to specify his Christian name and Surname, occupation, and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make and sign the Statutory Declaration, to be witnessed by the officer of the Postmaster-General appointed to receive deposits or by some person known to him, or by some Minister of Religion in the district in which the depositor resides, or by a Justice of the Peace.

On making the Declaration, and in all cases in which the signature of the depositor is required, if the depositor cannot write, his mark must be affixed in the presence of a witness, and attested by the signature of that witness.

If the depositor cannot write, the following certificate must be signed by two persons, both over the age of sixteen years:—

We, the undersigned, testify that the Declaration printed on the other side was read to the depositor in our presence and in our hearing, and that the depositor stated that he understood the same.

.....	}	Signature.
.....		Occupation.
.....	}	Signature.
.....		Occupation.

“B.” (1) (FACE OF FORM.)

No. 6—1888.
Schedule B.

G.P.O.—No. 297.

S.B.—No. 2.

DEPOSITOR'S BOOK.

.....
No.

DECLARATION BY THE TRUSTEE OF A DEPOSITOR.

In pursuance of an Act of Parliament,

(Name in full) I,

(Residence) of

(Occupation)

do hereby declare to the Postmaster-General that I am desirous of becoming a Depositor in the Post Office Savings Bank, as Trustee of

(Name in full)

(Residence)

(Occupation)

and I do further declare on behalf of myself, and also on behalf of the said

that we are not, either jointly or severally, directly or indirectly, entitled to any sum or sums standing [in our own names, or] in the name or names of any other person or persons in the Books of the said Savings Bank above mentioned.

I also declare that I clearly understand that for every deposit I shall place in the hands of a Postmaster for transmission to the Post Office Savings Bank, I must see that I receive a direct acknowledgment from the Controller of the Savings Bank Department, and that the Postmaster's entry in the Deposit Book is not sufficient without the further receipt from Cape Town.

Witness my hand this day of 18....

Signed by the said Trustee,)
in the presence of me)

Save and except such benefit as I, or he, may be entitled to from being a Member of a Friendly Society legally established, or from such sum or sums as may be standing in my name as a Depositor on my own account, or as Trustee jointly with the name or names, and on behalf of any other Depositor or Depositors.

If the Trustee cannot write the certificate printed on the back of this form must be filled up and signed in the manner provided.

* If the person in trust for whom the account is opened be under seven years of age, the date on which he will attain that age must be stated here.

Seven years of age on the day of
18...., before which day the deposits cannot be withdrawn.

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“ B. ” () (BACK OF FORM.)

Deposits may be made by a trustee on behalf of another person in the joint names of such Trustee and the person on whose account such money shall be so deposited ; but repayments of the same, or any part thereof, shall not be made without the receipt and receipts of both the said parties, or the executors or administrators and survivor, in case of the decease of one of them, whose receipt or receipts either personally or by agent appointed by power of attorney, which power of attorney may be executed by an infant of or exceeding the age of fourteen years, shall alone be a valid discharge except in case of insanity, or imbecility of the party on whose behalf the deposits were made, when the Postmaster-General may, on proof of the fact to his satisfaction allow repayment to be made to the Trustee alone.

Every depositor on making a first deposit shall be required to specify his Christian name and Surname, occupation, and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make and sign the Statutory Declaration to be witnessed by the officer of the Postmaster-General appointed to receive deposits, or by some person known to him, or by some Minister of Religion in the district in which the depositor resides, or by a Justice of the Peace.

On making the declaration, and in all cases in which the signature of the depositor is required, if the depositor cannot write, his mark must be affixed in the presence of a witness, and attested by the signature of that witness.

If the depositor cannot write, the following certificate must be signed by two persons both over the age of sixteen years :—

We, the undersigned, testify that the Declaration printed on the other side was read to the depositor in our presence and in our hearing, and that the depositor stated that he understood the same.

..... { Signature.
 { Occupation.
 { Signature.
 { Occupation.

C.

<p style="text-align: center;"><u>DEPOSITOR'S BOOK</u></p> <p>Place</p> <p>No.</p>	<p style="text-align: center;">DECLARATION.</p> <hr style="width: 10%; margin: 0 auto;"/> <p>I, being the *..... of the Friendly Society called the held at in the Division of and duly do hereby declare that I am desirous on behalf of the Trustees of the said Society, of depositing in the Post Office Savings Bank, the sum of £....., and I</p>
---	--

* Insert "Trustee,"
 "Treasurer," "Ste-
 ward," or "Clerk"
 as the case may be.

+Insert "Enrolled,"
 "Registered"
 or "Certified" as
 the case may be.

herby declare that this sum is the exclusive property of the said Society specified in this Declaration and arises from the contributions of the members of the said Society†.....

‡ Insert "and from Donations" if Donations have been received.

Witness my hand this.....day of.....18..

.....§.....of the said Society. § Insert "Trustee," "Treasurer," "Steward" or "Clerk." Signed in presence of me.....

D.

DEPOSITOR'S BOOK.

DECLARATION.

Place
No.

I,.....being the*.....
of the†.....
held at.....
in the Division of.....
do hereby declare that I am desirous of depositing the sum of £..... in the Post Office Savings Bank on behalf of the said.....

* Insert "Trustee" or "Treasurer."
+ Insert "Charitable Society," "Provident Institution" or "Society," "Charitable Donation or Requests for the Maintenance of Education or Benefit of the Poor" as the case may be.

Witness my hand this.....day of.....18..

†.....of the said.....
Signed in presence of me..... ‡ Insert "Trustee" or "Treasurer."

E.

DEPOSITOR'S BOOK.

POST OFFICE SAVINGS BANK.

Place
No.

It is hereby certified that the Balance standing in the Books of the Post Office Savings Bank to the credit of the Depositor.....
.....of.....numbered as above, on the.....day of.....in the year 18....
amounts in the whole to the sum of.

.....
Controller,
Savings Bank Department,
General Post Office, Cape Town.

Entered.....
Examined.....

2032

FISH PROTECTION.

No. 7—1883.]

[September 12, 1883.

ACT

For the protection of Fish in the Water of the Zwartkops River and its Tidal Creeks, and to prohibit the use of Dynamite and other Explosives for the purpose of catching or destroying Fish in the said River.⁽¹⁾

Preamble.

WHEREAS it is expedient to make provision for regulating the catching of fish by means of nets in the Zwartkops River, and to prohibit the use of dynamite or other explosives for the purpose of catching or destroying fish in the waters of the said river and its tidal creeks (commonly called "spruits"); Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Close season for netting fish.

1. It shall not be lawful for any person to lay down, use or fish with any kind of net in the said Zwartkops River from the sea to the extent of the ebb and flow of the tide, or in any of the tidal creeks thereof, save and except in the months of April, May, and June; and any person committing any such offence shall, upon conviction before the Resident Magistrate of Port Elizabeth or of Uitenhage, either of whom shall be authorised to hear and decide on any charges preferred under this Act, forfeit any net or nets used by him for the purpose of committing such offence, and shall in addition be subject to payment of a penalty not exceeding twenty pounds, and in default of payment to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment. And the said Resident Magistrate may order such net or nets, or any portion thereof, to be destroyed or sold as he shall direct.

Penalty for using dynamite, &c.

2. Any person who shall at any time use dynamite or other explosive substance with intent or in such manner as to catch or destroy fish in the said river or in any of the tidal creeks thereof, shall be liable on conviction before such Magistrate to a fine not exceeding twenty pounds, or in the discretion of the Court to imprisonment with or without hard labour for a term not exceeding three months, or to both such fine and such imprisonment.

Half penalty to go to informer.

3. Of all penalties or fines recovered under this Act, and of all moneys received through any sale of nets directed under the provisions of this Act, one-half shall be paid to the person or persons upon whose information conviction and forfeiture shall have been obtained, and the remainder shall be paid into the Public Treasury.

Short title.

4. This Act may be cited for all purposes as the "Zwartkops River Fish Protection Act, 1883."

¹ See Acts Nos. 10, 1867; 29, 1890; 15, 1893.

No. 8—1883.]

[September. 12, 1883.

ACT

To provide for the Management of Locations in the Division of Stockenstrom. (1)

WHEREAS it is desirable to make better provision for the management of locations in the division of Stockenstrom, not being municipalities: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. In any location in the division of Stockenstrom in which the "Villages Management Act, (2) 1881," shall now be in operation, it shall be lawful for the Governor to declare this Act to be in operation; and in every such location, and in every location in which the "Villages Management Act" shall hereafter be put in operation, the said "Villages Management Act" shall be read and construed as amended by this Act.

Where Act may be proclaimed.

2. In any location in the division of Stockenstrom, in which the provisions of this Act and the said "Villages Management Act" shall together be in operation, every person who is the owner or lessee, under a lease in writing for the space of not less than one year, of an erf or erven within the said location, and whose name shall appear in the list of voters hereinafter provided for, shall be entitled and qualified to vote for the election of members of the Boards of Management.

Who eligible to vote for members of the Board.

3. The Field-cornet of the ward in which such location is situated shall, as soon as possible after the taking effect of this Act, and in the month of May in every year thereafter, prepare or cause to be prepared, a true list, in alphabetical order, of such owners and lessees as in the last section is mentioned, and shall forthwith transmit the said list to the Resident Magistrate of the district: Provided that it shall not be necessary to frame any such list for any location in which the said "Villages Management Act" has already been put in force before the month of May, 1884.

Field-cornets to prepare lists of voters.

4. The said Resident Magistrate shall cause the said list to be affixed to the door of his Court-room, with a notice appended thereto to the effect that at a time and place therein mentioned, which time shall not be less than fourteen days from the date of such notice, a court will be held by him for the purpose of hearing and adjudicating upon objections to the said list and claims to have names added thereto.

Lists to be posted.

5. The said Resident Magistrate shall at such court hear and determine all claims and objections as aforesaid, and may insert the names of persons omitted therefrom, and strike out the names

Resident Magistrate to determine claims.

¹ See Act No. 30, 1894.

² No. 29.

No. 9—1883.

of persons not entitled to appear therein, and the list when so settled and amended shall be the list of voters for the purposes of election of members of the said boards.

In absence of Magistrate, any qualified voter may preside at meeting.

6. At any meeting of voters held for the purposes mentioned in the fifth section of the "Villages Management Act, 1881," any person qualified to vote at such meeting may be elected to preside in the event of no Resident Magistrate or Justice of the Peace being present thereat, and the person so presiding shall have and may exercise all the powers which any Resident Magistrate or Justice of the Peace would have and exercise if present.

Number of votes equal to number of erven possessed.

7. Every person entitled to vote as aforesaid who shall be the proprietor or lessee of more than one erf in any such location shall be entitled to a number of votes in the election of members of the Board of Management for that location, equal to the number of the erven possessed or leased by him.

Owners of part only of an erf.

8. No person who shall be the lessee of a portion of an erf only shall be entitled to be registered as a voter under this Act: but the owner of the erf of which a portion shall be leased shall not, by reason of such lease, be disqualified from being registered.

Lessees.

9. In case the whole of an erf shall be leased under such a lease as in this Act is mentioned, the lessee, and not the owner, shall be entitled to have his name inserted in the said list, and to vote; but in all other cases the owner, and not the lessee, shall be so entitled.

Joint owners.

10. If two or more persons shall be joint proprietors or lessees of any erf, such one of them as may be chosen or deputed for that purpose by the other or others shall appear and vote in respect of such erf; and in case such persons cannot agree, the person to vote shall be determined by lot.

Short title.

11. This Act may be cited as the "Stockenstrom Locations Management Act, 1883."

No. 9—1883.]

[September 12, 1883.]

ACT

To amend the Law relating to Election Petitions, and to the Prevention of Corrupt Practices at Parliamentary Elections.

Preamble.

WHEREAS it is expedient to amend the law relating to election petitions and to the prevention of corrupt practices at the Parliamentary Elections: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. The laws mentioned in the schedule hereto to the extent to which the same are therein expressed to be repealed, and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act shall be and the same are hereby repealed.

2. The following words in this Act shall have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction, that is to say :

No. 9-1883.

Definition of terms used.

- “ Constitution Ordinance ” shall mean the Ordinance mentioned in the said Schedule.
- “ Election ” shall mean an election of a member or members to serve in Parliament.
- “ Candidate ” shall mean any person elected to serve in Parliament, and any person who has received and accepted a requisition as in the thirty-fourth section of the Constitution Ordinance mentioned, and any person who has been nominated as a candidate at an election, with his consent.
- “ Corrupt practices ” or “ corrupt practice ” shall mean bribery, treating, undue influence and personation or any of such offences as now are or may hereafter be defined by Act of Parliament.
- “ Prescribed ” shall mean prescribed by any rule of Court to be made as hereinafter mentioned.

PRESENTATION AND SERVICE OF PETITION.

3. A petition complaining

- (1) Of an undue return or undue election of a member to serve in either House of Parliament by reason of want of qualification, disqualification, corrupt practices, irregularity, or otherwise ; or
- (2) That a member of the Legislative Council who has been elected, has ceased to possess the qualification by law required,

What petitions may be presented, and to what Courts.

may be presented to the Supreme Court, or, in the case of a return or election within the jurisdiction of the Eastern Districts Court or of the High Court of Griqualand, either to the Supreme Court or to the Eastern Districts Court, or High Court of Griqualand, respectively, as the case may be, by

- (1) Some person who voted or who had a right to vote at the election to which the petition relates ; or
- (2) Some person claiming to have had a right to be elected at such election ; or
- (3) Some person alleging himself to have been a candidate at such election ; and such petition is hereinafter referred to as an election petition.

4. With respect to the presentation of an election petition under this Act, the following provisions shall apply :—

Provisions as to such petitions.

- (1) The petition shall be signed by the petitioner or all the petitioners if more than one.
- (2) The petition shall be presented within forty-two days after the result of the election has been proclaimed in the *Government Gazette*, or, as to a petition against a member

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of the Legislative Council who has, since his election, ceased to possess the property qualification by law required, at any time.

(3) Presentation of a petition shall be made by delivering it to the Registrar of the Court to which it is addressed.

(4) At the time of the presentation of the petition, or within seven days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner

(a) To any person summoned as a witness in his behalf, or

(b) To the member whose election or qualification is complained of (who is hereinafter referred to as the respondent) shall be given by or on behalf of the petitioner.

(5) The security shall be to the amount of three hundred pounds; it shall be given either by recognizance, to be entered into by any number of sureties not exceeding four, or by a deposit of money with the Registrar of the Court, or partly in one way and partly in the other.

Service of petition on respondent.

5. Notice in writing of the presentation of a petition under this Act, and of the nature of the proposed security, accompanied with a copy of the petition, shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent, either personally or by leaving the same at his usual or last known dwelling-house or place of business; and it shall be lawful for the respondent where the security is given wholly or partially by recognizance, by notice in writing to be served upon the petitioner in manner aforesaid, within twenty-one days from the date of the service on him of such notice, to object to such recognizance on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

Security.

How objections to security to be dealt with.

6. Any objection made to security given shall be heard and decided on by the Court to which the petition has been presented, or by a judge thereof. If any objection to the security is allowed, it shall be lawful for the petitioner, within a further time to be fixed by the Court or Judge, not exceeding ten days, to remove such objection by a deposit of such sum of money as may be deemed proper by the said Court or Judge, to make the security sufficient.

If security decided to be insufficient.

If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or after objection made on the sufficiency of the security being established, the petition shall be deemed to be at issue.

Registrar of Court to make list of petitions.

7. The Registrar of the Court shall as soon as may be make out a list of petitions under this Act, presented to the Court of which

he is Registrar, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection of any person making application for inspection thereof. Such petitions shall be tried in the order in which they stand in such list, unless the Court shall otherwise order.

TRIAL OF A PETITION.

8. With respect to the trial of election petitions under this Act, the following provisions shall apply :—

Provisions for the trial of election petitions.

- (1) The trial of every election petition shall take place before the Court to which it has been presented, but if it shall be made to appear to such Court that the trial may be more conveniently and properly held elsewhere than at the place where such Court is held, it shall be lawful for such Court to direct that the same shall take place before a Circuit Court.
- (2) Every election petition shall be tried with open doors.
- (3) The trial of election petitions may take place in any civil term, upon any day prescribed by any rule or order of Court: Provided that the Court to which it has been presented, may upon the application of any of the petitioners or respondents, fix any day in or out of term, for such trial or for trial at a Circuit Court.
- (4) Notice of the time and place at which an election petition will be tried shall be given not less than fourteen days before the day on which the trial is to be held.
- (5) The Court before which the trial of any election petition shall take place may adjourn the trial from time to time and from place to place.
- (6) Where, on the trial of an election petition praying the Court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by any one on behalf of the respondent, or that such person was guilty of personation, every vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election. If conclusive evidence cannot be obtained as to the number of votes given for the respondent by such person, there shall be deducted from the total number of votes aforesaid as many votes as such person was lawfully entitled to record at the election.
- (7) At the conclusion of the trial of any election petitions, the Court shall determine whether the respondent was duly elected, or whether any, and if so, what person other than the respondent was or is entitled to be

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declared duly elected; and, in the case of a respondent who is a member of the Legislative Council, and who is alleged to have ceased to possess the qualifications by law required, whether such respondent has ceased to possess such qualifications. If the Court shall determine that the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against the same. If the Court shall determine that the respondent was not duly elected, but that some other person was or is entitled to be declared duly elected, the respondent shall forthwith be deemed to have vacated his seat; and the Court shall forthwith certify such determination to the Governor, who shall thereupon, by proclamation in the *Gazette*, declare such other person duly elected. If the Court shall determine that the respondent was not duly elected, and that no other person was or is entitled to be declared duly elected, or, in the case of a respondent who is a member of the Legislative Council, and is alleged to have ceased to possess the qualification by law required, that he has ceased to possess such qualification, the seat of the respondent shall forthwith be deemed to be vacant, and the Court shall forthwith certify such determination to the Governor, who shall thereupon command, in manner provided by the seventy-third section of the Constitution Ordinance, that a new election shall take place for the purpose of filling up such vacancy, and like proceedings shall take place in regard to such new election as are ordered in regard to elections for filling up vacancies by the said seventy-third section.

- (8) Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Court shall, in addition to such certificate, and at the same time, report in writing to the Governor as follows:
- (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice.
 - (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice.
 - (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.
- (9) The Court may at the same time make a special report to the Governor as to any matters arising in the course of

the trial, an account of which ought in its judgment to be submitted to the Governor.

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- (10) A copy of every certificate and report made by any Court as aforesaid to the Governor shall, as soon as may be, be presented by him to the House of Parliament, the election of a member of which has been the subject of the trial before such Court.

9. If it shall appear to the Judge of any Circuit Court on the trial of an election petition referred to such Court that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the Court, it shall be lawful for the said judge to postpone the determination of the case and the granting of the said certificate until the determination of such question or questions by the Court to which the petition was presented, and for this purpose to reserve any such question or questions for the consideration and determination of such Court.

Questions of law may be reserved.

10. If the Court shall state in the report on the trial of an election petition under this Act that any person has been guilty of corrupt practices or that there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates, such statement, with the evidence taken at the trial, shall be laid before the Attorney-General, with a view to the institution of any prosecution proper to be instituted under the circumstances.

Report affirming corrupt practices to be sent to Attorney-General.

PROCEEDINGS.

11. An election petition under this Act shall be in such form and state such matters as may be prescribed.

Form of petition.

12. Two or more candidates may be made respondents to the same petition, and their case may, for the sake of convenience, be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent.

More than one respondent.

13. When, under this Act, more petitions than one are presented relating to the same election or return, all such petitions shall, in the list of petitions, be bracketed together, and shall be dealt with as one petition, but such petition shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the Court or a judge thereof shall otherwise direct.

Petitions relating to same election to be heard together.

14. On the trial of an election petition under this Act notes shall be taken of the evidence given at the trial, and a copy of such evidence shall accompany the certificate made by the Court to the Governor.

Notes of evidence on trial.

RULES OF COURT.

15. The judges of the Supreme Court acting in pursuance of any Act for the time being regulating the making of general rules of Court, may from time to time make, and alter, rules and orders

Rules under this Act.

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for the effectual execution of this Act, and the regulation of the practice, procedure, and costs of election petitions, and the trial thereof, and the certifying and reporting thereon.

In the absence of rules, Court may make order as to form of proceeding.

16. Until Rules of Court have been made in pursuance of this Act, and so far as such rules do not extend, the Court to which any election petition shall be presented may make such order in regard to the form and manner or time of proceeding as to such Court shall seem fit.

JURISDICTION OF COURTS.

Jurisdiction of the Courts.

17. The Supreme Court and the Eastern Districts Court, and High Court of Griqualand, or any Circuit Court, respectively, shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition pending in or before any such Court, and the proceedings thereon, as such Courts respectively would have if such petition were an ordinary case within the jurisdiction of any such Court.

WITNESSES.

Summoning witnesses.

18. Witnesses shall be summoned and sworn in the same manner as in a trial before any such Court, as is in the preceding section mentioned, and shall be subject to the same penalties for perjury.

Witness summoned may be examined.

19. On the trial of an election petition under this Act the Court before which the petition is to be tried may examine any witness or any person in Court, although such witness or person is not called or examined by any party to the petition. After the examination of a witness as aforesaid by the Court as aforesaid, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Witness not entitled to refuse to answer because he may criminate himself, but protected from consequences of such answer.

20. No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice at or connected with any election then forming the subject of inquiry, on the ground that the answer thereto may criminate or tend to criminate himself: Provided that where any witness shall answer every question relating to any matters aforesaid which he shall be required by the Court to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled to receive from the Court under the hand of the Registrar a certificate stating that such witness was, upon his examination, required by the said Court to answer questions or a question relating to the matters aforesaid, the answer or answers to which criminated or tended to criminate him, and had answered all such questions or question; and if any information, indictment, or action be at any time thereafter pending in any Court against such witness for any offence under "The Corrupt Practices at Elections Prevention Act, (1) 1859," or any other Act for

the prevention of corrupt practices at elections, or for which he might have been prosecuted or proceeded against under any such Act committed by him previous to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the Court shall, on production and proof of such certificate, stay the proceedings in such information, indictment, or action: Provided that no statement made by any person in answer to any question put to him by or before such Court, shall, except in cases of indictment for perjury, be admissible in evidence against him in any proceeding, civil or criminal.

21. The reasonable expenses incurred by any person appearing to give evidence at the trial of an election petition under this Act according to the scale usually allowed to witnesses on the trial of civil actions in the superior Courts of Law in this Colony, may be allowed to such person, and such expenses shall be deemed to be costs of the petition.

Witnesses' expenses.

WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS.

22. An election petition under this Act shall not be withdrawn without the leave of the Court to which it was presented, or of a Circuit Court appointed to try the same, and after such notice has been given as such Court may direct.

Petition not to be withdrawn without leave

23. On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of such election to which the petition relates may apply to the Court to be substituted as a petitioner for the petitioners so desirous of withdrawing the petition.

Substitution of petitioner may be asked.

24. The Court may, if it think fit, substitute as a petitioner any such applicant as aforesaid, and may further, if the proposed withdrawal is in the opinion of the Court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

Court may order substitution.

Security.

25. If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within fourteen days after the order of substitution.

When fresh security required.

26. Subject as aforesaid a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner.

Substituted petitioners.

27. If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Costs of withdrawn petitions

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- Consent of co-petitioners required for withdrawal.
- Abatement by death.
- Consequence of abatement.
- Respondent who has given notice that he will not oppose cannot appear.
- Court to decide as to costs.
- Taxation of costs.
- Neglect to pay witness.
28. When there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.
29. An election petition under this Act shall be abated by the death of the sole petitioner or petitioners, but such abatement shall not affect the liability of the petitioner or petitioners to the payment of costs previously incurred.
30. On the abatement of a petition, any person who might have been a petitioner in respect of the election to which the petition relates may, within twenty-one days after such abatement, apply to the Court to which such petition was presented, or any judge thereof, to be substituted as a petitioner, and such Court or judge may thereupon, if it or he think fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount given as is required in the case of a new petition.
31. A respondent who has given notice that he does not intend to oppose the petition shall not be allowed to appear or to act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Parliament to which he had been elected, pending the result of the trial of the petition, and the Court shall in all cases in which such notice has been given, report the same to the said President of the Legislative Council or the Speaker of the House of Assembly, as the case may be.
- Costs.
32. All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, shall be defrayed by the parties to the petition in such manner and in such proportions as the Court before which the same is tried or to be tried may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.
33. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the superior Courts of this Colony.
34. If any petitioner in an election petition presented under this Act shall neglect or refuse for the space of one month after demand to pay to any person summoned as a witness on his behalf, or of the respondent, any sum certified to be due to him for his costs, charges, or expenses, and if such neglect or refusal be proved to the satisfaction of the Court to which such petition was presented, every person who has entered into a recognizance relating to such

petition under the provisions of this Act, shall be held to have made default in his said recognizance, and the Registrar of the said Court shall thereupon certify such recognizance to be forfeited, and execution may thereupon, by leave of the said Court, be sued out thereon at the suit of any such witness or respondent from time to time as occasion may require.

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PUNISHMENT OF CORRUPT PRACTICES.

35. No voter who within three months before or during any election shall have been retained, hired, or employed for all or any of the purposes of election for reward by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote at such election, and if he shall so vote, he shall be liable upon conviction to a penalty not exceeding fifty pounds, and upon non-payment to imprisonment for any period not exceeding six months.

Election agent and canvasser disqualified from voting.

36. Where it is found by the Court upon an election petition that corrupt practices have been committed by any agent of a candidate for the purpose of procuring the election of such candidate, without the knowledge or consent of such candidate, the election of such candidate if he has been elected, shall be void, and a fresh election shall thereupon be held.

When corruption by agent unknown to candidate.

37. Any person who shall represent himself to be or professes to be authorised to act as the agent of any candidate for the purposes of his election without the express written authority of such candidate, or in the case of sub-agents without the written authority of some agent authorised as aforesaid, shall upon conviction be liable to a penalty not exceeding one hundred pounds and in default to imprisonment with or without hard labour for any period not exceeding six months, or to both such penalty and such imprisonment.

Penalties incurred by unauthorised agents.

38. Where it is found by the Court upon an election petition under this Act, that corrupt practices have been committed by or with the knowledge and consent of any candidate, the election of such candidate, if he has been elected, shall be void, and a fresh election shall thereupon be held, and such candidate shall be incapable of being elected to or of sitting in either House of Parliament during the five years next after the date of his so being found guilty; and he shall further be incapable during the said period of five years

Penalties incurred by candidates cognizant of corruption.

- (1) Of being registered as a voter and voting at any election for members of Parliament in this Colony; and
- (2) Of holding any Divisional Council or Municipal Office; and
- (3) Of holding any judicial office and of being appointed and of acting as a Justice of the Peace.

39. Any person other than a candidate found guilty of corrupt practices at an election by any competent Court shall during the

Penalties for persons other than candidates guilty of corruption.

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five years next after the time at which he is so found guilty, be incapable of being elected to and sitting in Parliament, and also during the said period of five years

- (1) Of being registered as a voter and of voting at any election for members of Parliament in this Colony; and
- (2) Of holding any Divisional Council or Municipal Office; and
- (3) Of holding any judicial office and of being appointed and of acting as a Justice of the Peace.

Penalties for perjury under this Act.

40. If at any time after any person has become disqualified as aforesaid by virtue of this Act, the witnesses or any of them on whose testimony such person shall have so become disqualified shall upon the prosecution of such person be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the Court to which the petition was presented, to order, and the said Court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Power of appeal.

41. Any person found guilty of corrupt practices as aforesaid, or any candidate whose election has been declared void as aforesaid by any Circuit Court, may appeal from the decision of such Circuit Court to the Court of Appeal of the Cape of Good Hope, and such Court of Appeal shall affirm, reverse, or alter the decision of such Circuit Court as justice may require, provided such appeal shall be noted, and prosecuted within the time and according to the manner of proceeding in appeals from Circuit Courts.

MISCELLANEOUS.

Elections only to be questioned under this Act.

42. No election or return to Parliament shall hereafter be questioned except in accordance with the provisions of this Act.

When seat claimed for another person than the respondent.

43. On the trial of a petition under this Act complaining of an undue election or return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election.

Short title.

44. This Act may be cited for all purposes as "The Parliamentary Elections Act, 1883."

(Schedule on next page.)

SCHEDULE.

No. 11—1883.

LAWS REPEALED.

Date.	Title.	Extent of Repeal.
3rd April, 1852. ⁽¹⁾	Ordinance (enacted by His Excellency the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof) for constituting a Parliament for the said Colony.	Sections Sixty-six, Sixty-seven, and Sixty-eight, so much of the Section Sixty-five as relates to the mode of procedure upon a petition against a Member of the Legislative Council for want of qualification, and so much of Section Seventy-three as may be repugnant to or inconsistent with this Act.

No. 10—1883.]

[Sept. 12, 1883.

Act to increase the Duties of Customs.

[Superseded by Act 13, 1884].

No. 11—1883.]

[Sept. 12, 1883.

ACT

To Repeal the Laws relating to the Municipality of Kimberley, and to make other provisions in lieu thereof. ⁽²⁾

WHEREAS the Ordinance No. 17 of 1879, enacted by the Administrator of the then Province of Griqualand West, by and with the consent of the Legislative Council thereof, requires amendment in consequence of the passing of Ordinance No. 21 of 1880, by which confusion and uncertainty have been caused between the Town Corporation of Kimberley and the Mining Boards of Kimberley and De Beer's respectively, so far as the mining area allotted to each is concerned, such mining area in several instances including the public roads and streets of the township, and leaving the buildings and plots of ground sold by the owner of Vooruitzigt Estate on each side of the said roads and streets within the jurisdiction of the corporation: And whereas it is expedient and necessary to set at rest such confusion and uncertainty, and that all the provisions respecting the said corporation of Kimberley be

Preamble.

¹ Constitution Ordinance.² Printed as amended by Acts 30 of 1884, 10 of 1886, and 31, 1887.

- No. 11—1883. contained in one Act : It is therefore expedient to repeal the said Ordinance No. 17 of 1879, and to re-enact the provisions of the said Ordinance or such of them as may be deemed right and proper to continue : Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—
- Repeal of former laws. 1. The Ordinance No. 17, 1879, and No. 10 of 1880, and the Ordinance No. 7 of 1876, of Griqualand West, so far as such last-mentioned Ordinance applies to the Borough of Kimberley, are hereby repealed ; provided, however, that such repeal shall not affect the bye-laws of the corporation at the time of the passing of the said Act in force, but the said bye-laws shall continue to be of force and operation until such time as the same shall be altered or new ones are published under the provision of the Kimberley Borough Act, 1883, or this Act ; and such bye-laws or borough regulations passed or purporting to have been passed under the authority of the Kimberley Borough Act, 1883, shall be taken to be and to have been of equal force and virtue as if the same had been published either under the authority of the various provisions of this Act or of the Kimberley Borough Act, 1883.
- Exceptions. And provided, also, that the present Mayor, councillors, and officers shall, until other persons shall be elected or appointed in their places respectively be, and they are hereby declared to be and to have been the Mayor, councillors, and officers of the Borough of Kimberley created by the said Kimberley Borough Act, 1883, and this Act, and shall during the time aforesaid do and perform all such acts and things, and be vested with all the rights and powers, and be subject to all liabilities which are authorised or required to be done or performed by or are vested in or imposed on the Mayor, councillors, and officers respectively of the borough by the said Acts.
- Extent of Kimberley Borough. 2. From and after the promulgation of this Act the town of Kimberley, including all lands and property within a radius of two miles, measured from the Resident Magistrate's Court-house, situated in Market-square, Kimberley, shall be, and the same is hereby constituted a borough : Provided that in the direction of Du Toit's Pan and Bultfontein the said radius shall be restricted to the ridge running across the Du Toit's Pan Road.
- Body created. Corporate 3. There shall be in the said borough a body corporate, which shall be styled the " Mayor, Councillors and Burgesses of Kimberley," and by that name shall have perpetual succession, and shall have a common seal, and shall by that name sue and be sued, and shall by the council thereof do all acts, and have and enjoy all the rights and privileges, which bodies corporate as such may do and have.
- Its constitution. 4. The council of the borough shall consist of a Mayor and town councillors, to be elected as hereinafter provided ; and it shall be competent for the council to pay from and out of the funds of

the borough to the Mayor as long as he shall hold office, a sum of money not exceeding five hundred pounds sterling per annum as table allowance.

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5. The said borough shall be divided into six wards, to wit:

Division into six wards.

No. 1. Central Ward bounded on the north by a line running from the junction of the Pniel Road and Murray-street, past Kimberley gaol, to a line four hundred and fifty-four feet to the north of the junction of Ward-street and Barkly-street; on the south by a line from the corner of Old De Beer's Road and Market-square, to the junction of Jones-street and Market-square, excluding the buildings on the south of Market-square, and thence by a line running from north to south through Jones-street to the junction of Jones-street and Du Toit's Pan Road, and thence in a westerly direction along the Du Toit's Pan Road and Barry-street to the corner of Reitz-street; on the east by Barkly-street and Market-square, to the junction of Old De Beer's Road and Market-square not including the building on the east side of Market-square; on the west by Pniel Road, Kimberley gaol and Reitz-street.

No. 2. Southern Ward, bounded on the north by the Southern limit of the Central Ward, and including all the land south of Barry-street, east of Jones-street, south of the Market-square and Bean-street, and bounded on the south by the limit of the borough boundaries as aforesaid.

No. 3. Eastern Ward, bounded on the north and south by the limits of the borough boundaries as aforesaid; on the west by Giddy-street, Barkly-street, and Market-square; and the south-west by Bean-street, on the west by Lanyon Terrace and the Gladstone Reserve.

No. 4. Western Ward, bounded on the north by Circular Road and Green-street; on the west and south by the limit of the borough boundaries as aforesaid; on the south-east by Barry-street; on the east by Reitz-street, by the limits of the Central Ward and Pniel Road.

No. 5. Northern Ward, bounded on the north and west by the limit of the borough boundaries as aforesaid; on the south by Green-street and the Circular Road, comprising all stands on the north side of the Circular Road and Lord-street to the junction of Giddy street, the corner of the gaol buildings.

No. 6. Old De Beer's Ward (including the township of Old De Beer's and the Gladstone Reserve), bounded on the north, south and east by the limits of the borough boundaries as aforesaid.

6. The said council may from time to time, if it shall think fit, alter the names and boundaries of the said wards; and may, if

Council may alter boundaries of wards.

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the increase of the population render it necessary, increase the number of the wards from six to any number as to such council may seem expedient, and for that purpose may alter or wholly change the boundaries and limits of any ward or wards then existing: Provided, however, that in case of an increase in the number of wards having taken place, it should afterwards be deemed desirable to reduce such number, it shall be competent for the council to do so: Provided that the number of wards in such borough shall not be reduced below six, and that the reduction shall not take place unless resolved on by a majority of councillors, at a meeting specially convened for that purpose, of which one month's prior notice has been published in such local papers as the council shall select, and at which not less than three-fourths of their number are present, and that such resolution shall receive the sanction of the Governor, and in the event of such reduction, then the boundaries and limits of such wards may be altered or wholly changed: Provided that in every case in which the wards shall be increased as aforesaid, the councillors shall also be increased in number at the next election following the time of such increase of wards, held for the election of councillors, so that there shall be two councillors for every ward, and for each additional ward created as aforesaid; and in every case in which after the wards shall have been increased, they shall again be reduced, then, at the election of councillors next following the time of such reduction, there shall be a proportionate reduction also in the number of such councillors, so that no more than two councillors shall be elected for each ward.

Two Councillors for each ward.

7. Two councillors shall be elected for each ward, in the manner hereinafter provided.

Qualification of voters.

8. Save as hereinafter excepted, every male person of full age, who is the owner or occupier of any immovable property of the value of not less than one hundred pounds, in any ward of the borough, in regard to which property no borough rate shall, at the time of any election of councillors or a councillor of such ward, be due and in arrear, shall be qualified and entitled to vote at such election in respect of such ward; and shall have one vote for each candidate: Provided that at any general election, after the passing and promulgation of this Act, he may give two votes for one candidate for such ward: And provided that the name of such voter shall appear on the Voters' List in manner hereinafter provided.

Joint occupiers.

9. When any immovable property as aforesaid shall be jointly occupied by more persons than one, each of such joint occupiers shall be entitled to vote as aforesaid, in case the value of such immovable property shall be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than one hundred pounds for each and every joint occupier.

Persons disqualified from voting.

10. Persons who have been convicted of treason, murder, rape, theft, arson, fraud, perjury, forgery, or illicit dealing in diamonds,

and who shall not have received a full pardon, shall be disqualified from voting at any such election.

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11. On or before the first day of June in every year, the Town Clerk shall make, or cause to be made, a true roll in alphabetical order of all men qualified to vote at the election of councillors for the borough, setting forth the name of each person at full length, the place of his abode, his business or quality, the nature of his qualification, and the ward or wards in which he is entitled to vote, in the form following :

Roll of voters to be made annually.

List of persons qualified to vote at the Election of Councillors for the Borough of Kimberley.

Name at full length.	Place of abode.	Business or quality.	Nature of Qualification.	Ward or Wards in which he is entitled to vote.

12. The Mayor shall cause a copy of the said roll mentioned in the eleventh section to be made, and shall cause the same to be publicly exhibited at the office of the Town Clerk, or in case of there being no such office, then in some other public place within the borough, and have subjoined to such copy a notice that on a certain day and place, to be therein set forth, and for two days immediately following such day, objections to the said roll shall be heard and determined: Provided that such day so set forth shall be some day before the first day of July of the year then current.

Copy Roll to be exhibited at Town Clerk's Office.

13. The Mayor shall in at least one of the newspapers published within the borough, forthwith notify that such Voters' Roll is so exhibited as aforesaid, and shall also notify the time and place for hearing any such objections, and if there be no newspapers published in the borough, the Mayor shall notify the same by a notice under his hand, and shall cause such notice to be affixed upon the principal door of the Court-house in such borough.

Publication of such exhibition; objections.

14. Every voter of such borough shall, on application during office hours to the Town Clerk, be allowed to copy the said roll or to make extracts therefrom free of any cost or charge.

Voters to have access to Roll.

15. The Mayor and two councillors to be elected by the council for that purpose shall have the power, after hearing such objections in open court, to strike out of the roll the names of all persons not entitled to be thereon, and also to insert in the said roll the names of any persons which have been improperly omitted therefrom.

How objections to be heard, &c.

16. The roll shall be called the Voters' Roll of the borough, and shall be brought into use on the first day of July, and shall continue to be used for one year then next ensuing.

"Voters' Roll."

No. 11—1883.
Qualification of
Councillors.

17. No person shall be eligible to be elected a councillor for any ward who is not a rated owner or occupier of immovable property of the assessed value of not less than two hundred pounds within the borough, or who is the owner or occupier of any such property in regard to which any borough rate shall, at the time of the commencement of such election, be due and in arrear, or who is an unrehabilitated insolvent or whose estate is under assignment or composition, or who is disqualified from voting as in the tenth section of this Act provided, or who has a contract or share or interest in any contract made by or existing with the council, otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which may contract with the council for the lighting or supplying with water, or insuring against fire any property belonging to the said borough: Provided that different premises or properties owned or occupied in immediate succession shall satisfy this section as fully as if they had been one and the same premises or property.

Requisitions neces-
sary.

18. No person shall be deemed a candidate at an election, or qualified to be elected a councillor for any ward, unless he shall have been invited to become such candidate by a requisition signed by at least three qualified voters of such ward, and shall have transmitted such requisition with his acceptance thereof addressed to the Town Clerk and delivered at his office between the hours of 10 a.m. and 3 p.m. at least fourteen days before such election is appointed to take place.

How notice of
election to be given.

19. The Mayor, or in his absence the Town Clerk, shall, twenty-one days before the day appointed for any election, by public notice call upon the burgesses to nominate some fit and proper person or persons to be the councillor or councillors for the ward or wards named in such notice, and shall, at least ten days before the day appointed for the election in each ward, cause a list of the names of the candidates for election, together with the names of the persons who have signed such nomination, to be published in such local papers as the council may select, and to be affixed in some conspicuous place upon or near the Town-hall.

When to take
place.

20. On the second Tuesday in the month of December in every year, an election shall take place of councillors for the said borough, and the councillors as elected in manner hereinafter provided shall take office on the first day of January in the ensuing year, and remain in office for the period of one or more years, as hereinafter provided.

How poll to be
taken.

21. The poll in every ward shall be taken by some person and at a place to be appointed for that purpose by the Mayor, or in case of his absence from the borough of Kimberley, by the Town Clerk: Provided that, as often as at any general election subsequent to the next ensuing general election after the passing and promulgation of this Act, the number of candidates nominated for any ward shall not exceed the number of councillors to be elected

for such ward, no poll shall be necessary for such ward, but the candidates so nominated shall be deemed and taken to be duly elected.

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22. The Mayor or Town Clerk, as the case may be, shall be the returning officer of the said borough.

Returning officer.

23. Every candidate may, if he think fit, appoint a scrutineer to see that the votes are fairly taken and recorded.

Scrutineers.

24. The election shall take place in the following manner:— Every person qualified to vote as in this Act provided, may vote for any candidate in his ward, not being more than the number to be elected for the ward, by delivering to the polling officer a voting paper written by such voter, or caused to be written by him in the presence of the polling officer, containing the christian and surname of the candidate or candidates for whom the elector votes, and signed by the person voting, or by the polling officer at his request, and stating his place of abode, occupation and qualification.

Manner of conducting election.

25. The polling officer shall receive such voting paper, and shall register each vote.

Polling officer to register votes.

26. The poll shall commence at nine o'clock in the forenoon, and shall finally close at five o'clock in the afternoon of the same day.

Duration of poll.

27. No enquiry shall, at any election, be permitted to be made as to the right of any person to vote except as follows: That is to say, the polling officer may himself, or at the request of any qualified voter, put to any voter the following questions, and no other:—Are you the person whose name appears as A. B. No. — on the Voters' Roll? Have all the rates assessed and due upon the property owned or occupied by you been paid? Have you already voted at this election for this ward?

Questions to voters.

28. If any person shall wilfully make a false answer to either of the foregoing questions, he shall be liable to a penalty not exceeding ten pounds.

Penalty for false answer.

29. At the close of the election, the polling officer shall transmit in a sealed envelope the voting papers given for each candidate to the returning officer, who shall ascertain the number of the votes given for each candidate, and the candidate, or so many candidates, being equal to the number to be chosen, as shall have received the greatest number of votes shall be declared duly elected; and such returning officer shall forthwith cause a list of the successful candidates, with the number of the wards for which such persons are elected, to be published in manner hereinbefore in the nineteenth section of this Act provided.

Polling officer to forward voting papers to returning officer.

30. At the next ensuing general election of councillors after the passing and promulgation of this Act, the burgesses appearing on the Voters' Roll shall elect, in manner hereinbefore provided, two councillors for each ward, one of whom, being the one who receives the greater number of votes, shall remain in office for a period of two years and no more; and the other remaining councillor, being

Councillors elected for one or two years, according to majority at first election.

No. 11—1883.

the one who receives the less number of votes, shall remain in office for a period of one year and no more; and in case there are two or more candidates at the head of the poll, having received an equal number of votes, the returning officer shall determine by lot which of such candidates shall take the office for a period of two years and which for a period of one year.

At subsequent
elections Councillors
chosen for two years.

31. At every general election subsequent to the said next ensuing general election, the burgesses appearing on the Voters' Roll shall elect in manner hereinbefore provided, one councillor to fill the vacancy in each ward, and he shall remain in office for a period of two years and no more.

In case of death,
&c., of Councillor.

32. If any councillor shall die, resign, or become insolvent, or compound with his creditors, or assign his estate for the benefit of his creditors, or shall be convicted of any of the offences in the tenth section of this Act mentioned, or shall be absent without leave from the ordinary meetings of the council for a period of one calendar month, his office shall be declared vacant, and another councillor shall be elected in his place and stead, in manner hereinbefore provided, who shall hold office for the remainder of the term for which the councillor who has vacated office, and whom he shall succeed, would otherwise have remained in office; and should any ward fail so to nominate a candidate or candidates as in the nineteenth section provided, the Town Clerk shall within seven days thereafter, again call for nominations, and should any ward fail to nominate a candidate or candidates, as the case may be, on such second call, then such ward shall be disfranchised, so far as the existing vacancy is concerned, for the remainder of the year, of which liability to disfranchisement the Town Clerk shall give due notice in such second call.

In case of equality
of votes.

33. In case of an equality of votes at any election of councillors, the returning officer shall determine by lot which of the persons for whom an equal number of votes shall have been given shall be elected, in case such persons cannot be both or all of them elected.

Mayor to be chosen
by ballot.

34. On the Tuesday following the annual general election of councillors, the councillors for the following year shall meet and shall elect by ballot from among themselves, by a majority of votes, the Mayor of the borough for the following year; and every such Mayor shall enter upon his office on the first day of January next after his election, and shall continue therein for one year, and shall during the year of his office be exempt from serving on any jury summoned in Kimberley: Provided that in the case of an equality of votes at election of Mayor, the question between the candidates so equal shall be determined by lot.

Mayor may resign.

35. It shall be lawful for the Mayor to resign his office: Provided he shall give to the council not less than one calendar month's notice of his intention so to do.

In case of resigna-
tion, &c.

36. If the Mayor shall resign, or shall fail to attend the meetings of the council for a period of one calendar month, without leave,

or shall be convicted of any of the offences in the tenth section of this Act mentioned, the office of Mayor shall be deemed vacant, and the council shall forthwith elect, out of their own number, a successor for the remainder of the year.

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37. An ordinary meeting of the council shall take place at least once in every week, and all meetings of the council shall be open to the public.

Ordinary meetings
once a week.

38. Save where it is otherwise specially provided in this Act, all acts, matters or things hereby authorised or required to be done by the council, and all questions that may come before it, shall be done and decided by the majority of councillors who shall be present at any meeting at which not less than five members of the council shall attend.

Majority to decide
all questions.

39. At every meeting of the council, the Mayor, if present, shall preside, and in case of his absence, the councillors present shall elect a chairman from among themselves, who shall have the power and authority of the Mayor until the Mayor is again present and acting, or until another chairman is appointed.

Quorum.

Mayor to preside,
or Chairman.

40. In case of equality of votes the Mayor or chairman, as the case may be, shall have a second or casting vote.

Casting vote.

41. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and shall be read at the next succeeding meeting, and signed by the person presiding thereat.

Minute book.

42. The Mayor or any three councillors may at any time call a special meeting of the council: Provided that he or they cause a notice of the time and place of such intended meeting, specifying the object thereof, and signed by him or them, or by the Town Clerk, to be served on every councillor, either personally or by leaving the same at his usual place of abode, twelve hours at least before such meeting.

Special meetings.

43. It shall be lawful for the council to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as to the council may seem fit for any purpose which in the judgment of the council would be better managed by means of a committee: Provided always, that the proceedings of the committees shall be regularly entered in a minute book to be kept for that purpose, and reported to the council. The Mayor shall be *ex-officio* member of all such committees.

Committees.

44. It shall be lawful for the council, from time to time, to appoint such fit and proper officers, not being members of the council, as they shall think necessary for enabling them to carry into execution the provisions of this Act, and to pay all the officers so appointed such salaries or remuneration as the council shall deem reasonable, and unless it shall be otherwise stipulated in the contract of service, to remove all such officers upon a notice of not less than one month, or in case of misconduct without any notice.

Officers to be ap-
pointed.

- No. 11 - 1885. 45. No councillor or person holding any office in the gift or disposal of the council shall, directly, or indirectly, have any share or interest in any contract made by or with the council otherwise than as a shareholder in any bank with which such council may transact business, or in any joint-stock company which shall contract with the council for the lighting or supplying with water, or insuring against fire any property belonging to the said borough; and any person contravening the provisions of this section shall, upon conviction, vacate his seat, and be liable to a penalty not exceeding fifty pounds.
- Councillors not to have interest in contracts. Penalty.
- Auditors. 46. On the second Wednesday in the month of January in every year, the council shall appoint from among the burgesses two persons to be auditors to the borough, who shall continue in office until the same day in the following year, and the Town Clerk shall at least seven days previous call for applications from burgesses willing to undertake the duty.
- Disqualifications for the office. 47. No person shall be eligible as an auditor who shall be a councillor, treasurer, clerk, or other officer of the borough, or who shall be an unrehabilitated insolvent, or who shall have been convicted of any crime or offence in the tenth section mentioned, and shall not have received a full pardon for the same.
- In case of resignation, &c. 48. If any auditor shall die, resign, or be declared insolvent or compound with his creditors, or assign his estate for the benefit of his creditors, or be convicted of any crime or offence in the tenth section mentioned, another auditor shall be elected in his stead on a day to be fixed by the Mayor.
- Powers of the Council. 49. The council shall have power and authority to do the following acts on all land within the limits of the borough :
 To make, alter, and keep in repair roads, tramways, streets, thoroughfares, dams, ditches, sewers, drains, and bridges; to dig, deepen, preserve, fence in, and cover or fill up wells, to excavate, construct and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works supplying the borough with water; and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, dig or deepen wells, or to execute any other like works: to take means for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with pipes and utensils; to establish and maintain fire brigades and salvage corps under the control of such officer or officers as may be from time to time appointed by the said Borough Council, with power to do all things necessary to save any building or buildings from destruction by fire; to make regulations for the storing, carriage, and removal of gunpowder, dynamite, kerosene, and other explosives within the borough; to order, establish, hold, alter or remove markets, outspans, and to lease or purchase any land, and to erect, lease, or purchase, or keep in repair any building for any municipal requirement or purpose; to cause all buildings, bridges, and other erections which may be

found to be unsafe to the public to be placed in a state of security, or, if necessary, removed at the expense of the owners of such buildings; to lease, purchase, or erect and maintain such school buildings and manage such schools as the Borough Council shall from time to time think fit, and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such school may be required under any Act in force for this purpose, and to grant annually, half-yearly, or quarterly sums of money in aid of any school now existing or which hereafter may be established within the borough, such sums to be determined in such manner and according to such system as to the Borough Council from time to time may seem good; to appoint an inspector or inspectors of schools; to grant such sums of money in aid of public libraries within the borough as may from time to time be voted by a majority of two-thirds of the Borough Council; to cause all buildings used by the public, capable of containing more than three hundred persons, to be provided with sufficient and proper means of egress in case of fire or other casualty; to regulate from time to time the materials of which all future buildings shall be constructed, the distances, spaces, and character of party walls which shall be left between them, the height the foundation shall be above the level of the surrounding ground, and the height the floor shall be above the same; and no proprietor of any house or building found with insufficient foundations, or with floors lower than the height allowed after the taking effect of the Kimberley Borough Act, 1883, shall be entitled to any compensation for damages caused by flooding from heavy rains or thunderstorms; to assize weights and measures according to the standards in force by law, and to appoint an officer for that purpose; to grant permits and licences for any purpose to be defined by the borough regulations for the time being; to levy dues as hereinafter provided; and by borough regulations duly approved to do any of the following acts, that is to say:—To regulate the time and place for slaughtering cattle, and the state and condition of slaughter houses or slaughter places; to make due provisions for the licensing, confining or killing of dogs, the confining or killing of pigs, goats and fowls; to appoint one or more competent persons to examine meat, fish, or other provisions exposed for sale, and to test or analyse any drinks offered for sale, and who, in case such meat, fish, or other provisions, or beverages be unfit for human food or drink, shall be empowered to cause the same to be destroyed; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be for the advantage and convenience of the borough; to establish and provide for the management of public pounds within the borough limits; to make due provisions for the lighting of the streets, to regulate the width and direction of roads, streets and thoroughfares, to make regulations

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for the licensing of carts, wagons, or other vehicles belonging to residents, whether plying for hire or not, within the limits of the borough; to fix a tariff of charges which the owners or drivers of vehicles plying for hire may make within a radius of four miles from the centre of the market-square; and to order, establish, alter, maintain, or remove, and to make regulations for the maintenance and control of Native Locations, and of locations for Indian immigrants, commonly called "Coolies," at the time of the passing of the said Kimberley Borough Act, 1883, existing or thereafter to be created by the Borough Council; and for the good government and control of natives, coolies and immigrants within the borough; to regulate the proceedings of the council and the duties of their officers and servants, and to preserve order at council meetings; to regulate and licence market guides, market agents, porters, public carriers, carters; to regulate public sales to suppress houses of ill-fame and gaming-houses; to restrain noisome or offensive trades; to compel residents to keep their premises free from offensive or unwholesome matters; to preserve public decency; to prevent the spread of contagious or infectious diseases, and to preserve the public health; to regulate the removal of night-soil, stable litter, filth and refuse from private premises, and from all streets, roads, and public places; to prevent impure water being supplied to the inhabitants; to establish and maintain cemeteries; to plant and preserve trees and shrubs; to grant licences for the making of bricks or for digging or removing clay or gravel, or for quarrying stone, or for cutting grass upon municipal commonage or lands; to fix the number and description of live-stock any inhabitant shall be allowed to keep within the limits of the borough; to grant temporary grazing rights to carriers, travellers, and others frequenting or passing through the municipality or attending the markets thereof; to establish, maintain, and regulate public libraries, museums, botanical gardens, parks, public baths, wash-houses, and place of public recreation; to regulate traffic and processions; provided that no dues or charge for any permit or licence or any punishment or penalty shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the fifty-fifth section of the Kimberley Borough Act, 1883, provided.

Powers of Council
in mining areas.

50. Save and except as is hereinafter in this section and in section seventy-two of the Kimberley Borough Act, 1883, provided, nothing in this Act contained shall be construed so as to authorise the said Borough Council to exercise any of the powers vested in them within any mining area at the time of the passing of the Kimberley Borough Act, 1883, existing, or which may thereafter be created, so as to interfere with the rights and privileges of the claimholders of any mine at such time existing or which may thereafter be proclaimed on their depositing floors, or with the rights of the Government, or any mining board, proprietor or

claimholder of any mine, or any tramways, tipping sites, roads or other works connected with such mine, whether the same at such time existed or shall thereafter be constructed or fixed; provided, nevertheless, that in case the said Borough Council shall deem it necessary for the proper municipal management of the said borough that drains or other public works should be constructed or carried out within such mining area, whether such works are or are not connected with any works situated without such area, or that any other of the duties or powers imposed or conferred upon the said council under the provisions of the Kimberley Borough Act, 1883, or of this Act, shall be performed and carried out within any such area, then and as often as the same shall happen the said Borough Council shall by writing notify to the mining board as is provided in the fifty-eighth section of Act 19 of 1883, or joint-stock company as aforesaid exercising jurisdiction over such mining area or mining works as aforesaid, the nature, accompanied by sufficient particulars, of the work or duty which the said Borough Council may desire to have done or performed, and such mining board or body of persons or joint-stock company as aforesaid shall, within seven days after receipt of such notice, notify its sanction or refusal to do or perform such work or duty as aforesaid; then and in case and as often as the said mining board shall refuse to do the work thought necessary by the said Borough Council, or to sanction the same being done, the matter at issue shall forthwith be referred to arbitration under the provisions of Act No. 6 of 1882, save and except that the period limited by the said Act within which the arbitrators or umpire shall make their or his award shall not exceed seven days from the date of reference: Provided, further, that all such works or duties within any such mining area as aforesaid as may be sanctioned, approved or directed as aforesaid, shall forthwith be performed and carried out by such mining board, or body of persons, or joint-stock company as aforesaid, or by the Borough Council at the expense of such mining board, or body of persons, or joint-stock company as aforesaid, as may be determined by mutual arrangement, or by the award of the said arbitrators or umpire; provided, further, that the said Borough Council shall in no case be or be held liable in damages or otherwise by reason of any injury to person or property within any mining area, whether the same shall arise from flooding, defective drainage, or any other cause whatever, or by reason of such injury outside any mining area, provided the same shall have been caused by accumulation of water, flooding, defective drainage, or other cause within such mining area; provided, further that in case any mining board or body of persons, or joint-stock company as aforesaid, shall neglect to carry out proper sanitation within its mining area to the satisfaction of the sanitary inspector for the time being of the Borough Council nothing in this section contained shall be deemed

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Exceptions.

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to prevent the Borough Council from enforcing such sanitary regulations, and claiming and charging such sanitary dues within such mining area as aforesaid, either as against the mining board or the claimholders and residents in such mining area, as may have been framed by the Borough Council specially for application within such mining area, and duly sanctioned by His Excellency the Governor; and in the event of any mining board ceasing to exist from any reason whatsoever, and no such board of persons as is provided in the fifty-eighth section of Act 19 of 1883 being appointed, or any joint-stock company acquiring the said mine, and who shall have notified to the Borough Council its willingness to discharge the duties herein imposed on mining boards or body of persons, then and in that case the Borough Council shall be vested with the same power as the mining board to carry out the provisions of this section, and the expenses incurred in connection therewith shall be borne by such mining board, or if there be no mining board or such body of persons appointed as aforesaid, by the owners of claims and other property in such mining area as aforesaid *pro rata* according to the assessed value of the claim and other property in such mining area; and provided, further, that in such case as last aforesaid the Borough Council shall have the power from time to time, when necessary, to make an assessment of such claims and other property, and to levy rates thereon; and provided, further, that the proceedings in respect of the said assessment, levy and recovery shall be as far as possible in the manner provided for in respect of the assessing, levying and recovery of rates on other property within the Borough, according to the provisions of this Act and of the Kimberley Borough Act, 1883.

Toll bars, &c., authorised.

51. For the purpose of providing sufficient funds for the construction, maintenance, alteration and repairs of roads, streets and thoroughfares, within the borough, the council is hereby authorised to erect toll-houses, turnpikes, toll-gates, or toll-bars, within the said municipality, and in such places as the said council shall deem most expedient, for the purpose of collecting tolls, and from time to time to fix the rates of such tolls so to be collected, and also to decide on whom or on what carts, wagons or other vehicles such tolls shall be levied, or whether or not such rates shall be levied on horses, oxen or other animals passing through the aforesaid turnpikes, toll-gates, or toll-bars.

Exemptions from tolls.

52. No toll shall be payable by any officer or soldier or member of any volunteer corps being in proper staff or regimental or military uniform, dress or undress, and on duty, or by any member of constabulary or mounted police force, or any burgher force, or any judicial or civil officer, mail carrier, or other Government servant, whilst travelling on public duty; and, further, no more than one toll shall be payable in any one day, to be computed from twelve o'clock on one night until twelve o'clock on the next succeeding night, for and in respect of the same vehicle or animal.

53. A separate account shall be kept of all moneys arising from such tolls, and the same shall be applied solely for the purpose of constructing, maintaining, repairing, altering, and improving roads, streets and thoroughfares within the borough.

No. 11—1883.
Separate account of moneys from tolls.

54. It shall be lawful for the council, at any meeting at which two-thirds of the members shall be present, to frame from time to time all such borough regulations as may be within the powers and authority herein given to the council, and may seem fit for the good rule and government of the borough.

Regulations to be framed.

55. No borough regulation shall be of force to subject any person to a fine, penalty or payment until it shall have been by the council submitted to the Governor, and shall have been approved of by him with the advice of the Executive Council, and published in the *Government Gazette*.

To be gazetted, &c.

56. After any borough regulation shall have been so published as aforesaid, it shall not be necessary in any proceeding founded upon it to prove that two-thirds of the council were present at the meeting at which it was framed, nor shall any evidence be received to prove the contrary.

Due passing of regulations need not be proved.

57. It shall not be competent by any borough regulation, to punish the contravention thereof in any higher or more severe manner than by a fine not exceeding ten pounds: Provided that it shall be competent for any such borough regulation to provide that if the person convicted of contravening the same shall not forthwith pay the fine imposed upon him, he shall be liable to be imprisoned, with or without hard labour, for any period prescribed by such regulation: Provided, moreover, that such period must not exceed three months.

Extent of penalty to be allowed in any regulation.

58. It shall be lawful for the Borough of Kimberley to acquire by grant, transfer, devise, purchase, exchange, or otherwise, any lands or buildings for borough purposes in the district of Kimberley, and to have and to hold the same for the burgesses of Kimberley: Provided that the consent of the Governor and the majority of the burgesses be first had and obtained in all cases where the purchase price for such lands or buildings, or the value of the property exchanged for the same, exceeds the sum of one thousand five hundred pounds: And provided that title shall be issued to the Mayor and councillors for the time being, and the signatures of the Mayor and any two councillors on behalf of such borough shall suffice for the valid execution of all deeds, agreements, notarial or other instruments of grant, transfer, purchase, sale, exchange, mortgage, leasing, letting, hiring, or other transaction relating to such lands as aforesaid.

Power to acquire lands, &c.

59. The council may, with the consent of the Governor, lease any portion of the lands belonging to the borough for any period not exceeding fifty years, with or without the option of purchase, and with or without an undertaking to renew such lease as hereinafter provided at such price and upon such conditions as

Power to lease lands.

- No. 11—1883. may be approved of by the Governor: Provided that the council shall, at least one month previous to such intended lease, cause to be published a full and clear statement of the situation, nature and extent of such land, which shall be sold by public auction.
- To renew leases. 60. The council may, from time to time, renew any such lease for any period not exceeding fifty years: Provided there shall be buildings on the ground of the then value of at least five hundred pounds, in any case in which the lessee shall, two months previous to the expiration of such lease, give notice of his desire or intention so as to renew such lease.
- How rental to be fixed on renewal. 61. The council may, on application for the renewal of any such lease, cause the then annual rental of the lease in respect of which such renewal is sought, exclusive of the buildings thereon, to be estimated either by mutual agreement between the council and the applicant for renewal; or, in case of difference of opinion, then by arbitration.
- Power to borrow debentures. 62. The council may, with the consent of the majority of the burgesses as provided in section eighty-nine of this Act, and of the Governor first had and obtained, raise by debentures, on or by the sale by public competition of any land belonging to the council, any sum of money which shall be necessary in order to carry on any public work, and may exchange any portion of the lands belonging to the council for other lands in the division of Kimberley for public purposes: Provided that the council shall, at least two months previously to such intended sale or mortgage, cause to be published a full and clear statement of the situation, nature, and extent of such land, and the object and purpose for which the money is required.
- Rates may be hypothecated. 63. The council may for any of the purposes of this Act, hypothecate or charge by debentures one-third of the borough rates of the said borough for a period not exceeding ten years in security for any sum of money to be borrowed by the said council: Provided that no sums of money shall be capable of being borrowed under the provisions of this section, except with the previous consent of a majority of the said burgesses as provided in section eighty-nine as aforesaid: Provided, also, that it shall be lawful for the said burgesses to sanction, and after such sanction, for the said council to borrow upon the security of the said rates or property of the borough any sum or sums which may be found necessary not exceeding the sum of ten thousand pounds in any one year.
- Limitation of borrowing powers. 64. Notwithstanding anything in the last two preceding sections contained, it shall be lawful for the Borough Council by resolution of not less than two-thirds of its members, without the consent of the burgesses, for any of the purposes of this Act, to borrow any sum not exceeding two thousand five hundred pounds: Provided, however, that so long as the above sum shall remain unpaid, the borrowing powers under this section shall cease and determine.
- May by resolution borrow to extent of £2,500.

65. All streets, roads, and thoroughfares now in existence and running over land the property of the Government or of private persons or companies within the limits of the borough, and which shall have been already recognised by the council, and all streets, roads, and thoroughfares which may hereafter be established over such property, with the approval of the council, shall be vested in the said council in trust to keep the same open, and as far as may be consistent with the funds at their disposal, in repair for the use and benefit of the burgesses.

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Streets, &c., vested in Council.

66. Every hypothecation aforesaid, or power of attorney for authorising any hypothecation under this Act, shall be under the common seal of the corporation, and shall be executed by the Mayor and two councillors, and countersigned by the Town Clerk.

Common Seal.

67. In case the said council shall require to take or use any land, with or without the buildings, if any, erected thereon, or any frontage or stoep belonging to any premises, for the purpose of making, widening or improving any street, drain, market or public building, or for any other public purpose, or to dig out or carry away any materials belonging to any person or persons within the borough, or to appropriate or make use of any springs, streams, or other supplies of water belonging to any person or persons who shall not be bound in law to allow the Town Council so to do, then, and in that case, it shall be lawful for the said council, and it is hereby authorised and empowered, to treat and agree with every such person or persons for the purchase or hire as the case may be of any such land, buildings, materials, springs, streams, or other supplies of water as aforesaid, and generally to enter into such contract or contracts relative to the obtaining of such land, buildings, materials, springs, streams, or other supplies of water, upon such terms and conditions as the said council shall judge expedient; and in case any such person or persons and the said council shall not agree upon the purchase money, or hire, or other recompense to be respectively given by the one party and accepted by the other, then the amount of recompense or compensation shall be settled by arbitration.

Powers to take lands for certain purposes.

68. For the purposes of any land taken, and of any arbitration under the provisions of this Act, the provisions of "The Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

"Lands and Arbitration Clauses Act" to apply.

69. In case the said council shall, for any purpose in the last preceding section in that behalf mentioned, require to take or use any of the land, with or without the buildings, if any, erected thereon, or to dig or carry away any of the materials, or to appropriate or make use of any springs, streams, or other supplies of water in the last preceding section mentioned, the owner of which shall be absent from the borough and not represented therein by any agent duly accredited, or shall not be discoverable, it shall be lawful for the said council, and it is hereby authorised, to cause a notice to be inserted in such of the local papers, if any,

In case of appropriating lands of absent owners.

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as the council may select, for four successive weeks, describing as accurately as may be the materials, lands, buildings, springs, streams, or other supplies of water which are required to be taken or used, and called by name on the owner of the said land, buildings, materials, springs, streams, or other supplies of water, if known, or if not known, by inserting the before mentioned notice in the manner herein provided, calling upon all persons concerned to take notice that the said council is ready and willing to treat with the owner, or any person duly authorised by him, for the recompense or compensation to be made or paid by the said council for the said land, buildings, materials, springs, streams, or other supplies of water, and requiring such owner to apply within six months from the date of such notice, which shall be the day of its first publication to the said council, stating the recompense or compensation claimed; and if the owner shall so apply within the said period, then the like proceeding in regard to the agreeing for, or otherwise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had been from the first in actual occupation. And in case such owner shall not apply to the said council within the said period, then it shall be lawful for the said council to appoint some competent person, to be approved of by the Civil Commissioner of Kimberley, to appraise the value of the land, buildings, materials, springs, streams, or other supplies of water required, and such persons shall make oath before any Justice of the Peace that he hath, to the best of his judgment, fairly appraised such value, and thereupon it shall and may be lawful for the said council to pay the sum at which such person shall have valued the land, buildings, materials, springs, streams or other supplies of water in question into the Guardian Fund, to the credit of the party or parties entitled thereto, subject to the same provisions, in all respects, which are provided by the Ordinance No. 105, bearing date the 5th July, 1833, in regard to moneys placed in the said fund belonging to absent persons; and the said council upon so paying the said sum shall be authorised and entitled to take or use the said land, buildings, materials, springs, streams, or other supplies of water in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said council sufficient title to the use of or property in the land, buildings, materials, springs, streams, or other supplies of water aforesaid, had been duly done and performed.

Powers of entry on
lands, streets, &c.

70. Notwithstanding anything in this Act contained, and without compensation to the owner, the Borough Council shall at all times have full power and authority, without prejudice, however, to the provisions of the fiftieth section of this Act, to enter upon all streets, roads, and thoroughfares now existing, or hereafter to be constructed within the boundaries of the borough, as well

as upon all land, not being a mining area and not allotted for mining purposes, not built upon, cultivated, or enclosed, within or adjoining the boundaries of such borough, for the purpose of laying pipes and of making and constructing drains, sewers, culverts, and similar works necessary and proper for the sanitary management and efficient drainage of the borough.

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71. The council may appoint and maintain such number of watchmen and street-keepers as to them may seem fit or necessary, and may from time to time make such rules and regulations touching their pay, clothing, allowances and duties, as to them may seem fit.

Watchmen, &c.

72. For the purpose of raising the means for making and repairing the roads, streets, market-places, bridges, drains, sewers, watercourses, reservoirs, wells, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines and appurtenances, for the effecting of all other public works and improvements within the borough; for the purpose of raising the means for effecting the repairs of all such works as the council is hereby empowered to make or to have made; for the maintaining of waterworks, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other current expenses required to be borne by the borough, the council shall have the power to impose, levy, and recover all such market dues, water rates, pound fees, sanitary fees or charges, outspan fees, grazing fees, fees or charges for all such licences which may be granted by them, location fees, dog taxes, charges or expenses for services rendered in the extinction of fires, cemetery fees, and dues on all firewood not being delivered on contract, but being sold or hawked within the limits of the borough exclusive of the public market, and shall be authorised by the said borough regulations as aforesaid, and shall also have the power, as often as shall be deemed necessary and in manner hereinafter and in the Kimberley Borough Act, 1883, provided, to assess the value of all immovable property within the borough, and to levy a rate on such assessment; provided that no rate shall be made or levied by the council unless there shall be present at the meeting at which such rate shall be imposed at least eight members of the said council; and provided, also, that no rate shall be imposed on any immovable property belonging to Her Majesty the Queen and used for public purposes, nor on public prisons, or police stations, almshouses or hospitals, nor any public building appropriated to public worship, nor upon burial-grounds, nor upon buildings and land solely appropriated to the purposes of education, nor upon any claim in the Kimberley or Old De Beer's diamond mines, nor upon any claim in any declared digging or mine within the borough, save and except in such manner and under such condi-

Power to impose rates.

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tions as are in section three of this Act provided: provided, further, that notwithstanding anything in this section or in section three of this Act contained, the said Borough Council shall have the power to assess the value of and to levy and recover rates in respect of all houses and buildings within such mining area, whether the same are used for mining purposes or not; which assessment, levy and recovery shall be, as far as possible, in the manner provided for in respect to the assessment, levying, and recovery of rates on other property within the borough.

Ratepayers.

73. All persons owning or occupying properties within the limits of the borough, excepting such property as is hereinbefore exempted, shall be liable to be rated on account of such property in such manner and to such extent as is hereinafter and in the Kimberley Borough Act, 1883, provided; and provided, further, that in any case where a house, building, or other erection shall have been erected on any land the property of any person not the owner of such house or building or erection, the owner of such land shall be liable to be separately rated in respect of the value of such land, which value shall be computed on the principle that the annual rental receivable by the landlord in respect of such land is six per cent. of such rateable value; and the owner of such house, building, or erection shall be liable to be separately rated in respect of the value of such house, building, or erection; and it shall not be lawful for the owner of such land to enter into any contract with the occupier of such house, building, or erection, whereby the liability of the owner of such land shall be in respect thereof transferred to the owner of such house, building, or erection. And in case such house, building, or erection shall have become abandoned or unoccupied, then the owner of the land on which such building shall have been erected shall further be liable to be rated in respect of such house, building, or erection.

Valuators.

74. For the purpose of valuing all and singular the immovable property situate within the borough, the council shall and may appoint one or more competent appraisers.

Assessment Roll.

75. As soon as any valuation as aforesaid shall be completed, an assessment roll embodying the same shall be compiled, which shall lie in the office of the Town Clerk for the inspection of every owner or occupier of any property included therein, who may, upon all lawful days and at all reasonable times, inspect the same and take extracts therefrom, and the council shall by public notice announce for general information that it will, upon some day and at some hour and place to be fixed in such notice, hold a court for the purpose of hearing and determining objections to such valuation: Provided that such notice shall be published fourteen days at least before the day appointed therein for the holding of such court: Provided, also, that it shall not be necessary in any suit or proceeding for the recovery of any rate, to prove anything further in the nature of due notice of any such valuation as aforesaid than the

publication of the notice aforesaid in one or more of the local newspapers.

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76. Upon the day and at the place and hour mentioned in such notice, the council shall hold a court, and shall hear all objections which may be urged to any valuation by any owner or occupier or other person on his behalf, and shall enquire into the merits of such objections, and for that purpose may take the oath of any person whom it shall see fit to examine (which oath the presiding member of the council is hereby authorised to administer), and shall confirm or correct any valuation objected to: Provided that the said court may be adjourned from time to time upon application made by any person objecting who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

How objections to be heard and determined.

77. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the valuation roll aforesaid, to appeal within twenty-one days against such valuation from the decision of the court in the last preceding section mentioned, to the Court of the Resident Magistrate, and such Court shall inquire into such valuation, provided, however, that if any question of law shall arise as to the principle upon which any valuation has been or should be made, it shall be incumbent on such Resident Magistrate, at the request of the council or party objecting, instead of himself deciding such question, to record such question of law for the decision of the High Court of Griqualand, and such question shall be stated in the form of a special case, the terms of which shall be agreed upon between the respective parties, or, in case of their disagreement, by such Resident Magistrate, and such case shall be argued before and determined by the said Court, and the said Court may make such order as to the costs of such special case as to it shall seem fit, provided no objection shall be taken to the principle of any such assessment or rate, or to the amount payable in respect thereof by any person, unless such person shall have appealed against such assessment or rate; provided, also, that in case any assessment or rate shall have been either wholly or partly upset, varied, or amended by any Court of Appeal, it shall be lawful for the council forthwith to cause to be made when and as often as it shall be necessary, a fresh valuation, assessment, and rate, and for such purpose the various sections of the Kimberley Borough Act, 1883, in respect of the valuation, assessment, and rating of property within the borough shall be held to be as far as may be applicable to such proceedings.

Appeal from decision of Court.

78. The council shall annually, in the month of February, make an estimate of the amount of money required for the purposes aforesaid, and shall assess the rate accordingly, and give public notice thereof in such of the local newspapers, if any, as the

Estimate and Assessment.

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council may select, and shall in like manner, if any further or unforeseen expenditure shall become necessary during the same year, make a supplementary estimate thereof and assess a second or further rate, whereof they shall give public notice in like manner: Provided that it shall not be lawful for the council, in any one year, to levy any rates amounting in the aggregate to more than threepence in the pound on the assessed value of the immovable property, without first obtaining the consent of the majority of the burgesses present at any meeting specially called for the purpose of giving such consent.

When rates payable.

79. Every rate so assessed as aforesaid shall become due and payable upon a certain day to be fixed by the council, of which day and the amount of which rate the said council shall give at least fourteen days' notice in such of the local newspapers as the council may select: Provided that it shall not be necessary, in any suit or proceeding for the recovery of any such rates, to prove anything further as to due notice having been given than the publication of the announcement thereof in one of the newspapers aforesaid.

Recovery of unpaid rates.

80. When the council shall have announced in the local papers the day on which any rate duly assessed under this Act will have become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to any person whom the council may have authorised to receive the same, on or before the day fixed in the said announcement for the payment of the same, on pain of being forthwith liable to legal proceedings, at the suit of the Town Clerk, in the name and on behalf of the Kimberley Borough Council, or other duly authorised person for the recovery of the amount: Provided, also, that any occupier who shall have paid any such rate shall be entitled to recover the same from the owner, unless there be an agreement to the contrary.

Power to sue for rates due by absent owner.

81. The council may, in suing for the recovery of rates, proceed against the owner, or in case of his absence from the borough, his agent or the person receiving rents for him, or the occupier, either separately or both of them, in one or the same action, each for the whole rate, in any competent Court, and may recover the same by the judgment and process of the Court; provided that any person who as occupier may have become liable for any rate as aforesaid, shall be liable for the payment of the same, although he may have ceased to occupy the property in respect of which the rate has been imposed; and provided, further, that nothing herein contained shall affect the liability of any owner of land in clause 5 mentioned in respect of any abandoned or unoccupied house, building, or other erection, but proceedings for the recovery of rates may be taken against such owner in respect of his interest in the land as well as of his interest in such unoccupied or abandoned house, building, or other erection.

List of arrears to be published.

82. The council shall, once in every year, publish in at least one of the local newspapers as the council shall deem fit, a statement

of every sum in arrear, the names of the defaulters, and of the property in respect of which the same is due.

83. The first valuation to be made as aforesaid for the purpose of this Act shall subsist and be in force for one year from the date of the same; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as hereinbefore directed with regard to the first valuation.

84. The Treasurer shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received, and paid out, and of the several matters in respect whereof such sums shall have been received and paid. All such accounts, with all vouchers and papers relating thereto, together with a full abstract or balance sheet thereof made up to the 31st day of December last past and including such day, shall at some time during the month of January in each year, be handed by him to the auditors, and to such members of the council as the Mayor shall name, for the purpose of being examined and audited, and such abstract or balance sheet, when found correct, shall be signed by the auditors, and shall be forthwith published by the Town Clerk in one or more of the local papers.

85. All fines or penalties imposed by this Act, or by any borough regulations made by virtue thereof, shall be prosecuted for in any competent Court by the council, and shall, when recovered, be paid to the Treasurer of the borough for municipal purposes: Provided that no such prosecution as aforesaid shall be commenced later than three months from and after the date of the act or omission upon which such prosecution shall be grounded; and to avoid the provisions of any borough regulation being evaded, it shall be competent for any officer of the local constabulary force, or municipal officer, personally cognizant of the contravention of any such regulation by any person, or on production or delivery to him of an affidavit duly sworn before a Justice of the Peace by any individual containing information that any regulation has, to his knowledge, been contravened, and stating the date of such contravention, unless otherwise provided by any bye-law, to give notice verbally or in writing to such person to appear before the Court of the Resident Magistrate or Police Magistrate for the purpose of having such contravention immediately thereafter heard and determined: and unless such person shall give security for his appearance not exceeding the maximum penalty imposed in and by the said regulation for the offence, such officer shall be justified in detaining him until the hearing of the charge, or he may release such offender with the sanction of the Mayor, or the Town Clerk, or such other officer as the council may authorise, on payment of the penalty provided in such regulation, or such lesser sum as such Mayor, Town Clerk, or such duly authorised officer shall after due enquiry deem to be a sufficient penalty: Provided that in case any person, who shall have given security as aforesaid for his

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Triennial.

Treasurer's
accounts.Fines to be applied
to municipal pur-
poses.

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appearance, shall fail and neglect so to appear, then and in that case the said security shall *ipso facto* be and become forfeited and payable to the Treasurer of the borough.

Dynamite, &c., to be stored only in specially licensed places.

86. The storing of kerosene, dynamite, gunpowder, and other explosive material shall not be permitted, except by Her Majesty's Government, for public purposes in such places as may be approved by Her Majesty's officers, and no other person shall be allowed to keep on any premises or place within the borough a greater quantity of any such material than licensed so to do by the council.

Burial-grounds.

87. So soon as any burial-ground, or portion thereof, within the limits of the borough shall become so crowded as to be likely in the opinion of two-thirds of the council, to become dangerous to the public health, the council shall be empowered to give three months' notice that burials therein shall cease, and after the expiration of the said term of three months, any person causing any interment to be made therein shall be liable, on conviction, to a fine not exceeding fifty pounds, to be recovered in any competent Court.

Penalties for unfenced wells.

88. Any owner or occupier of land within the limits of the borough wherein is any well uncovered or unfenced so as to occasion danger to life, who shall fail, refuse, or neglect, to comply with any written orders from the council, directing him to fill in, cover or fence in such well within the time specified in such notice, shall be liable to a penalty not exceeding ten pounds for every day he shall so fail, neglect, or refuse to comply with such written orders as aforesaid, such penalty to be recovered by the council in any competent Court; and the said council shall be empowered to cause entry to be made on the said land, and to fill up, cover, or fence in such well or wells, and the cost of such works shall, in the first instance, be defrayed out of the funds of the borough, and shall be recoverable from such owner or occupier in addition to such penalty as aforesaid.

How majority of votes of "Burgesses" to be obtained.

89. In every case in which it is by this Act provided that the consent of the majority of ratepayers shall be first had and obtained for the purpose of carrying out any of the provisions hereof, the word "burgesses" shall mean and be understood to refer only to such burgesses as are entitled to vote for councillors under the provisions of this Act; and for the purpose of recording their votes the said burgesses shall be summoned to appear at a public meeting, by notice published in such of the local newspapers, if any, published within the borough, as the council may deem fit, and also by notice affixed in some conspicuous place upon or near the Town-hall, at least twenty-one days previous to the holding of such meeting, which notice shall clearly set forth the object of such meeting and the time and place for holding the same; and at every such meeting it shall be lawful for any two or more of the duly qualified burgesses present to demand a poll of the burgesses entitled to vote, which poll shall be taken on a day to be fixed by

the Mayor, not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in such of the local papers, if any, as the council may deem fit, which poll shall commence at 10 o'clock a.m. and be closed at 3 o'clock p.m. of such day.

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90. All rates assessed under the authority of this Act and of the Kimberley Borough Act, 1883, shall be and be deemed to be a charge upon the property and recoverable as against the present or any future owner or occupier thereof.

Recovery rates.

91. Whenever any day is mentioned in this Act as one upon or before which any act is required to be done, or whenever any day which shall be mentioned in any notice issued under the authority of this Act shall happen to fall upon a Sunday or any public holiday, such day shall be read as if the day succeeding such Sunday or such public holiday had been named.

Sundays and public holidays.

92. The corporation created by this Act shall be subject and liable to every contract, engagement, debt and demand to which the present corporation is liable or subject at the time of the taking effect of this Act, and in like manner shall be vested within and entitled to all rates, assets, and claims, which the present corporation is vested with or entitled to at the time of the taking effect of this Act.

New Corporation liable for debts, &c., of old one.

93. The said borough shall not be excluded from the operation or benefits of any Act or Acts heretofore passed, or which may hereafter be passed, relative to Municipalities or Town Councils and of which Acts the said Borough may desire to avail itself by reason merely that the words "borough" and "Borough Council" do not appear in such Acts.

Borough to have benefit of all municipal Acts, &c.

94. This Act may for all purposes, be cited as the "Kimberley Borough Act, 1883."

Short title.

No. 12—1883.]

[September 19, 1883.

ACT

To Explain and Alter certain Provisions in the Uitenhage Municipality Act, 1877.

WHEREAS, it is desirable to alter in some respects section 35 of Act No. 30 of 1877, called the "Uitenhage Municipality Act, 1877," and to explain a certain proviso in section 60 of the same Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The words "at which two-thirds of the members shall be present," in section 35 of Act No. 30 of 1877, shall be expunged, and such section shall be read as if the said words had never been inserted therein.

Amendment of Sec. 35 of Act 30 of 1877.

2. The proviso in the 60th section of the said Act No. 30 of 1877, exempting from rating and assessment any immovable

Amendment of Sec. 60 of same Act.

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No. 13—1882.

property belonging to Her Majesty the Queen, shall be deemed and taken to refer to land or buildings the property of Her Majesty, or the Colonial Government, other than such property as may be beneficially occupied by individuals in their private capacity.

Short title.

3. This Act may be cited as the "Uitenhage Municipality Amendment Act, 1883."

No. 13—1883.]

[September 26, 1883.]

ACT

To Define and Declare the Powers and Privileges of Parliament.

Preamble.

WHEREAS it is expedient more clearly to define and declare the powers and privileges of Parliament in certain respects: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Schedule of laws repealed.

1. The laws mentioned in the Schedule hereto, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed.

Interpretation clause.

2. In the interpretation of this Act

- (1) The term "President" shall mean and be taken to apply to the officer or member for the time being presiding over the Legislative Council.
- (2) The term "Speaker" shall mean and be taken to apply to the officer or member for the time being presiding over and duly elected as such by the House of Assembly.
- (3) The term "Clerk" shall be taken to mean the officer holding such appointment under the authority or appointment of the said Legislative Council or the President thereof:— or of the House of Assembly or the Speaker thereof.
- (4) The term "House" or "Houses of Parliament" shall mean the Legislative Council and House of Assembly, or either of them.

Power to order the attendance of witnesses.

3. Each House of Parliament and any committee of either House duly authorised by the House to send for persons and papers, may order any person to attend before the House or before such committee as the case may be, and also to produce to such House or committee any paper, book, record or document in the possession or power of such persons.

Such attendance to be notified by summons.

4. Any such order to attend or to produce documents before either House shall be notified to the person required to attend or to produce documents by a summons under the hand of the President or Speaker as the case may be; and any such order to attend or to produce documents before any such committee, shall be notified to the person required to attend or to produce documents

by a summons under the hand of the Clerk of the House, authorised by the chairman of the committee; and in every such summons shall be stated the time when and place where the person summoned is to attend, and the particular documents which he is required to produce, and such summons shall be served on the person mentioned therein either by delivering to him a copy of such summons or by leaving a copy of the same with some adult person at his usual or last known place of abode in the Colony; and there shall be paid or tendered to the person so summoned, if he shall not reside within five miles of the Houses of Parliament, a reasonable sum for his expenses of attendance according to any standing rule or order in that behalf.

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Payment of reasonable expenses.

5. A member of Parliament who shall be summoned to attend before the House, or a committee of the House, of which he is not a member, shall not be at liberty so to attend without the consent of the House of which he is a member, and shall not be bound so to attend without an order of the House of which he is a member.

Attendance of members before either House.

6. If any person ordered to attend or produce any paper, book, record or document to either House or to any committee of either House shall refuse to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the President or Speaker or the chairman of the committee as the case may be, shall report such refusal with the reason thereof, and the House shall thereupon excuse the answering of such question or the production of such paper, book, record or document, or order the answering or production thereof as the circumstances of the case may require.

Objections to answer questions or to produce papers to be reported to and decided by the House.

7. Each House of Parliament may summarily punish for contempt to the extent and according to the standing orders thereof by fine and fees or either; and, in case such fine and fees or either so imposed shall not be immediately paid, by imprisonment in the custody of its own officer in such place as the House may direct until payment shall be made, or for a period not later than until the end of the then existing Session, for or in respect of any of the offences hereinafter enumerated whether committed by a member of the House or by any other person:—

Houses empowered to punish for certain contempts.

- (1) Disobedience to any order of either House or of any committee duly authorised in that behalf to attend or to produce papers, books, records, or documents before the House or such committee unless excused by the House in manner aforesaid.
- (2) Refusing to be examined before or to answer any lawful and relevant question put by the House or any such committee unless excused by the House in manner aforesaid.
- (3) Assaulting, obstructing or insulting any member in coming to or going from the House or on account of his

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behaviour in Parliament or endeavouring to compel any member by force, insult, or menace to declare himself in favour of or against any proposition or matter depending or expected to be brought before either House.

- (4) Sending to a member any threatening letter on account of his behaviour in Parliament.
- (5) Sending a challenge to fight to a member.
- (6) Offering any bribe or attempting to bribe a member.
- (7) Creating or joining in any disturbance in the House or in the vicinity of the House while the same is sitting, whereby the proceedings of such House may be interrupted.
- (8) Any of the contempts from time to time set forth and declared to be such in any standing order of either House.

President or Speaker to issue warrant.

8. For the purpose of punishing any of the contempts aforesaid, the President or Speaker as the case may be, is hereby empowered upon the resolution in that behalf of the House to issue his warrant under his hand, for the apprehension and imprisonment as aforesaid, of any person adjudged by the House guilty of any such contempt, if such fine and fees or either shall not have been paid as aforesaid.

Persons disturbing proceedings of House may be arrested without warrant.

9. Any person creating or joining in any disturbances in the House during its actual sitting, may be apprehended without warrant on the verbal order of the President or Speaker as the case may be, and may be kept in the custody of the officer of the House until a warrant can be made out for the imprisonment of such person in manner aforesaid.

Form of warrant.

10. Every such warrant shall contain a statement that the person therein mentioned has been adjudged guilty of contempt by the House, the President or Speaker whereof shall have issued the same, specifying the nature of such contempt; and every warrant shall be sufficient from which it can be reasonably collected that the person mentioned therein has been adjudged guilty of any of the contempts aforesaid, and no particular form shall be necessary to be observed in such warrants.

Sheriff, constables, and others to assist in execution of warrant or verbal order.

11. The Sheriff and his officers and all constables and other persons are hereby required to assist in the apprehension and detention of any person in pursuance of the verbal order as aforesaid of the President or Speaker as the case may be, and also to be aiding and assisting in the execution of any such warrant as aforesaid, and where any such warrant directs that the person mentioned therein shall be imprisoned in any gaol, the keeper thereof is hereby required to receive such person into his custody in the said gaol, and there to imprison him according to the tenor of the warrant.

Gaoler to imprison.

Doors may be broken open in executing warrant.

12. It shall be lawful for any person charged with or assisting in the execution of any warrant under the hands of the President or Speaker, issued under the authority of this Act, to break open

in the day time all doors of places where the person for whose apprehension such warrant was issued is concealed.

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13. If any person before either House, or before any committee of either House, shall after being duly cautioned as to his liability to punishment under this section give a wilfully and corruptly false answer to any lawful and relevant question material to this subject of inquiry which shall be put to him during the course of any examination, he shall be guilty of an offence, and shall be liable on conviction to be punished in the same manner as though he had been convicted of wilful and corrupt perjury.

Wilfully false answers how punished.

14. The rules and orders from time to time required in the execution of, or to give effect to, the provisions of this Act shall be framed and adopted by either House; but the same shall not become binding and of force until approved by the Governor, under and subject to the provisions of the seventy-eighth section of the Constitution Ordinance.

Rules and orders to be framed subject to the Governor's approval.

15. No member of Parliament in actual attendance on either House shall, during such attendance, be required to serve on any jury, or to attend as a witness in any Court, other than the Supreme Court, in any civil suit or proceeding; and no such suit or proceeding in which such member shall be a party defendant shall be brought to trial in any Court other than the Supreme Court during such attendance. The certificate of the President of the Legislative Council or the Speaker of the House of Assembly, as the case may be, shall be deemed sufficient proof that any such member is in such attendance as aforesaid.

Members exempt from service as jurors or witnesses, and from civil suits in any Courts, other than the Supreme Court, while attending in Parliament.

And whereas the House of Assembly, on the report of its Public Accounts Committee resolved to exercise the sole supervision over the necessary expenditure incidental to its own internal economy: Be it enacted:

16. The provisions of the Audit Act of 1875 (except as hereinafter mentioned), shall not apply or extend to the audit or control of the accounts and appropriations of the House of Assembly; and the audit (1) by the Speaker of the accounts of all payments and receipts in reference to all matters affecting the service of the House of Assembly shall be taken to be in all respects good and effectual, anything contained in any Act to the contrary notwithstanding: Provided that the Public Accounts Committee of the House of Assembly shall exercise in regard thereto such powers and give such directions as may from time to time be authorised by any order of the House of Assembly.

Provisions for final audit by the Speaker.

17. After the passing of the Annual Appropriation Act, the notification by the Controller and Auditor-General, and the authorisation and approval by him of requisitions for expenditure required to be given and issued to the several Ministers respectively, as set forth in the seventh section of the Audit Act of 1875, shall, for

Speaker's requisition for Expenditure authorised.

¹ To include all "Joint Parliamentary Expenses"—See § 15, Act 32, 1888.

No. 14—1883.

the purposes of this Act, apply to and include the Speaker, precisely as if he had been named therein.

Speaker to act not
withstanding Dissolu-
tion of Parliament

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

This Act not to
affect the rights and
privileges of Parlia-
ment.

19. Nothing in this Act contained shall be deemed or taken to affect or abridge the rights and privileges of Parliament in any manner whatever.

Short title.

20. This Act may be cited for all purposes as the "Powers and Privileges of Parliament Act, 1883."

SCHEDULE OF LAWS REPEALED.

No. and Year.	Title.	Extent of Repeal.
1. 3rd April, 1852.	The Constitution Ordinance.	The proviso to the 78th Section and so much of said Section as may be inconsistent with this Act.
2. No. 30, 1875.	Audit Act.	So much as may be repugnant to or inconsistent with this Act.

No. 14—1883.]

[September 27, 1883.]

ACT

To Authorise the Borough Council of Kimberley to Raise a Loan for certain Municipal Purposes.

Preamble.

WHEREAS it is expedient to empower and enable the Borough Council of Kimberley to borrow money for the purpose of paying existing liabilities and effecting local improvements, and to levy rates for the repayment of the amount so borrowed with interest,

And whereas at a public meeting of the burgesses of Kimberley, convened for that purpose on the 11th day of June, 1883, it was resolved that the said council be authorised to borrow a sum not exceeding one hundred thousand pounds sterling for such purposes,

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

Borough Council
empowered to bor-
row to amount of
£75,000.

1. The Borough Council heretofore known as the Municipality of Kimberley is hereby authorised and empowered to borrow and take up at interest on debentures or otherwise from time to time

such sum or sums of money as may be needed for the purposes in the preamble to this Act mentioned, not exceeding in the whole the sum of seventy-five thousand pounds sterling: Provided that after payment of existing debts the said council shall in all cases convene a meeting of ratepayers, by notice of not less than seven days (in at least one of the local papers), and obtain the sanction and approval of such ratepayers in manner as is now or hereafter may be provided by any Municipal Ordinance or Borough Act now in force or hereafter to be enacted, before expending on any public works any balance of the moneys to be raised under this Act.

2. It shall be lawful for the said council to impose, for the purpose of providing for the payment of the interest, and also for the payment of the annual contribution in repayment of the principal as hereinafter described of the money or moneys aforesaid, special rate or rates upon the immovable property situate within the borough or municipality of Kimberley, and liable to be rated for borough or municipal purposes; and every rate or tax so imposed by the said council shall be of the same force and effect, and be levied in the same manner as if it had been a tax or rate imposed under the provisions of the Kimberley Municipality Amendment Ordinance, 1879, or of any subsequent Act passed for the purpose of repealing or amending the said Ordinance, or in lieu thereof.

Special rates may be imposed.

3. As a fund for the payment of interest and gradual extinction of the loan or loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the special rate or rates as aforesaid, an annual sum sufficient to pay the interest on the amount of such loan or loans, or the balance thereof, and a further sum equal to four pounds per centum on the total amount of the capital sum of such loan or loans, so long as any portion of the money to be raised as aforesaid shall remain unpaid, and the amount yielded by the said sum of four pounds per centum shall be applied annually in paying of the debentures (if debentures be issued), or otherwise in part discharge of the loan. Should debentures be issued the said debentures shall be numbered in rotation, and the selection of debentures for repayment shall be by an annual drawing to be made and determined by lot by the Mayor in public at a meeting of the Borough Council.

Sinking fund provided for.

4. It shall be lawful for the said council to apply to the payment of the interest and principal, or interest or principal of the money or moneys aforesaid, any funds or moneys coming to the said council from any source whatever, and not specially appropriated or required for any other object.

General funds may be used for paying interest or principal.

5. The council shall keep, or cause to be kept, a separate and distinct account of all moneys borrowed under this Act; and of the expenditure of such moneys for the purposes aforesaid: And the said council shall yearly, so long as any part of the debt contracted under the authority of this Act shall be owing, prepare and deposit in the Town Office of Kimberley, for the inspection at all

Separate accounts of moneys raised.

No. 15—1883.

reasonable times of ratepayers, an account showing the particulars aforesaid, and giving any other information which the said council may deem it necessary or expedient to impart: Provided that every such account so to be prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said council not later than the first day of March in the year next succeeding.

Provisions of "Public Bodies Debts Act, 1867" to apply.

6. All moneys borrowed for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, (1) 1867:" Provided, however, that it shall be lawful for the High Court of Griqualand, in case any petition shall be presented to such Court under the provisions of the said Act, for enforcing payment of any judgment for the recovery of money borrowed under the provisions of this Act, to assess and impose such rates exceeding one penny in the pound as to such Court shall seem fit, anything in the third section of the said "Public Bodies Debts Act, 1867," to the contrary notwithstanding.

Costs to be paid out of moneys borrowed.

7. The necessary costs, charges and expenses of obtaining this Act, and of obtaining suitable plans, drawings, designs and specifications, and all costs of raising the loans or other expenses incurred in carrying out the provisions of this Act, shall be paid by the said council out of the moneys so to be borrowed as aforesaid.

Short title.

8. This Act may be cited as the "Kimberley Borough Council Loan Act, 1883."

No. 15—1883.](²)

[September 27, 1883.

ACT

To Amend the "Mineral Lands Leasing Act, 1877."

Preamble.

WHEREAS it is expedient to amend the Act No. 9 of 1877, entitled the "Mineral Lands Leasing Act, 1877": Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repealing certain words in sec. 2, Act No. 9 of 1877, and inserting other words therein

1. The second section of the said Act No. 9 of 1877 shall be read as if the words "for a term not exceeding thirty-one years" therein appearing were omitted therefrom, and the words "for such term as the Governor may prescribe" inserted in lieu of the words so omitted.

Repealing sec. 3, Act No. 9 of 1877.

2. The third section of the said Act No. 9 of 1877 is hereby repealed.

Short title.

3. This Act may be cited as the "Mineral Lands Leasing Amendment Act, 1883."

¹ No. 11.

² Extended by Proclamation No. 83 of 1888 to Transkei; by Proclamation No. 62 of 1890 to Griqualand East; and by Proclamation No. 63 of 1890 to Tembuland.

No. 16—1883.]

[September 27, 1883.

ACT

To Authorise a Company styled the Cape Central Railways (Limited) to Construct a Line of Railway from Worcester *via* Robertson to Roodewal (Kogman's Kloof). (1)

WHEREAS the House of Assembly did, on the 8th June, 1882, resolve as follows:—"That this House is of opinion that the extension of a Branch Line of Railway from Worcester *via* Robertson to Roodewal in that division, is desirable and necessary for the development of the trade of Robertson, Montagu, Swellendam, Riversdale and part of Caledon, and should be commenced at an early date, and that the Government be requested to undertake this work as soon as possible":

Preamble.

And whereas Government is unprepared to immediately construct the said line of railway, but have intimated their willingness to recommend the granting of a subsidy and other facilities to any company who will undertake to construct the same:

And whereas a company styled the Cape Central Railways (Limited), duly registered with a capital of one million pounds sterling, is willing, and has been formed to undertake the construction and working of the said railway: and whereas it is expedient that the said company should be authorised to construct, equip and work the said railway upon the terms in this Act contained:

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

1. The Company styled the Cape Central Railways (Limited), whereof Sir Alfred Slade, Bart., Ernest Villiers, the Honourable Wellington Patrick Talbot, Lord Chetwynd, Spencer Chapman, John Dick Peddie, M.P., John R. Cuthbert are directors, shall be, and is hereby authorised and empowered to construct, equip, maintain, and work a railway similar to railway lines already constructed in this Colony on a gauge of not less than three feet six inches wide, and at a gradient of not more than one in forty, at a junction with the Beaufort West Extension Railway at or near Worcester, and thence *via* Robertson to Roodewal in that division, as shown by the plans duly lodged with the Clerk of the House of Assembly, save and except in so far as the said plans may be inconsistent with any of the provisions of this Act, or any deviation or alteration therefrom as hereinafter provided.

Cape Central Railways Company authorised to construct and work line of railway as shown on plans.

2. The said railway shall commence at such a convenient junction point with the Beaufort West Extension Railway at Worcester as may be hereafter agreed between the Commissioner

Route of railway and powers of deviation.

¹ See Act 32, 1886, and 37, 1894.

No. 16-1588.

of Crown Lands and Public Works and the directors, thence across lands belonging to the Consistory of the Dutch Reformed Church at Worcester, and thence across or over or near the following lands and farms that is to say:—Worcester Commonage, Roodewal, Nooitgedacht, Witte Kop, Wilge Rivier, Lot 221, Naude's Dam, Kole Fontein, Lange Vallei, Middelburg, Outspan, Hex Rivier or aan de Gooree, Gooree aan de Breede Rivier, Gooree's Hoogte, Zand Rivier, Outspan (Robertson), Over het Roode Zand, Goedemoed, Riet Vallei, Kraaibosch Vlakte (otherwise Kraalbosch Vlakte), Zandvliet, Goree, Roodewal Outspan at Koogman's Kloof: Provided always that it shall be lawful for the said company to deviate from and vary the said line, as shown by the said plans, at the request of any owner or owners through whose lands the said line may pass, or to such extent as may be allowed by the said Commissioner of Crown Lands and Public Works upon the request of the directors.

Powers to enter upon any lands for purpose of survey.

3. The directors may, by any person thereto duly authorised in writing, enter upon any land for the purpose of surveying the same and of probing and boring in order to ascertain the nature of the soil, or of setting out the line of railway, making full compensation to the occupier of the said land for any damage thereby occasioned, the same to be recoverable by action brought in any competent Court within three months from the date when such damage is alleged to have been committed.

Power to take Crown lands for construction and maintenance of line.

4. The directors may, with the consent of the Commissioner of Crown Lands and Public Works, enter upon and take possession of and hold and retain for the purposes of this Act, free of charge, so much of any Crown land as shall be required for the construction and maintenance of the said railway, or any other purposes relating to the execution of this Act, and also with the like consent, may enter upon any Crown land lying convenient to the said railway, and dig for, excavate, and carry away, all stones, clay or other material required for the purposes of the said railway free of charge: Provided that nothing in this Act contained shall establish any servitude in favour of the said company upon any such land not being land reasonably required for the actual working of the said railway which may hereafter be sold or leased by the Colonial Government to any purchaser or lessee thereof.

Powers conferred by Road Act No. 9 of 1858 given to the Directors.

5. All and singular the powers which are by the Public Roads Act No. 9, 1858, bestowed upon the commissioners of roads in regard to taking and acquiring lands and materials necessary for the making or repairing of any such main road as in the said Act is mentioned, or of any works in connection therewith, are hereby bestowed upon the directors, precisely as if the said powers were, *mutatis mutandis*, herein again set forth, and as if the said railway were a public road: Provided that the extent of the land taken for the railway shall not exceed in width fifty feet for the formation line, and sufficient additional width required for the slopes,

drainage, stations, approach roads, and all other works, matters and things which may be requisite or necessary for the efficient construction, maintenance and working of the said railway.

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6. The provisions of the fifty-sixth and fifty-seventh sections of the said Act No. 9 of 1858 shall, *mutatis mutandis*, extend and apply to the said railway.

Also protection of sections 56 and 57 of the same Act.

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road, it shall be lawful for the directors to make and carry the said railway across such street or road either by means of a level crossing or by means of a convenient and sufficient bridge or viaduct over or under the said street or road: And said directors shall be bound to make all such cuttings, embankments, and approaches with all such culverts and drains, and all such repairs, as may be requisite to make good the street or road across, or over, or under the said railway, at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments, and approaches, culverts and drains as aforesaid.

Provisions in case railway crosses any street or road.

8. Nothing in this Act contained shall prevent any streets or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places: Provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings.

Streets or roads may cross railway.

9. It shall be lawful for the directors to exercise all and singular the powers by this Act conferred upon them by or through an agent in this Colony, duly appointed: Provided that notice of every appointment of any such agent, and of his name and address in this Colony, shall from time to time be published in the *Gazette*.

Directors may act by duly appointed agents.

10. The said railway, or any portion thereof, shall not be opened for traffic until it shall have been certified to the Governor by some officer to be by him appointed, that the same is sufficiently completed for the safe conveyance of passengers: Provided that in the event of any difference arising between the officer so appointed and the company, such difference or dispute shall be settled by arbitration.

Railway not to be opened until certificate of Government officer obtained.

11. Upon the completion of the said railway, or any portion thereof as aforesaid, the directors shall enjoy all the privileges, and be subject to all the conditions conferred by and contained in Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861."

Regulations of Railways Act, 1861, to apply.

12. The provisions of the Act No. 37 of 1879 shall apply, *mutatis mutandis*, to opening gates or leaving the same unclosed or unfastened whether the same be done by the owners or occupiers of land adjoining the railway, or by any other person.

Regulations as to gates, &c.

13. All plant and material required for the construction and equipment of the said railway and its appurtenances shall be carried and conveyed over the existing Government lines of railway

Conveyance of plant, &c., on Government lines of railway.

No. 16—1888.

at a rate not exceeding one penny and one half-penny per ton per mile.

On completion of the railway to Robertson Governor to pay to the directors the sum of £50,000.

14. So soon as the said railway is constructed as far as Robertson, and the Government officer shall have certified that such portion of the said line is sufficiently completed for the safe conveyance of passengers as hereinbefore mentioned, the Governor is hereby authorised to pay to the directors the sum of fifty thousand pounds.

On completion to Roodewal a further sum of £25,000.

And on the completion of the said line to Roodewal, and after the granting of the Government officer's certificate that the whole line is sufficiently completed for the safe conveyance of passengers as hereinbefore mentioned, then the Governor is hereby authorised and empowered to pay to the directors of the said company or their agent the further sum of twenty-five thousand pounds.

Time for completing railway.

15. The directors shall be bound and are hereby required to finish and complete the said railway within three years, reckoned from the date of the first commencement of the works thereof, so that the said railway may be opened for the public conveyance of goods: Provided that the said company shall be bound to commence the said railway not later than one year from and after the taking effect of this Act: Failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Telegraph or telephone to be constructed subject to Act 20 of 1861.

16. The directors are hereby further authorised and empowered to construct, erect and work for the purposes of the said railway and no other, a telegraph and telephone, or either, along or near the line of railway, subject to the provision of the Act No. 20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

After twenty years Government may purchase the railway, telegraph or telephone.

17. At any time after the expiration of twenty years from the date of opening for public traffic the said railway or any section thereof, the Colonial Government shall have the right, if so disposed, to purchase from the directors, on giving six months' notice to this effect in three consecutive issues of the *Gazette* of the Colony, and the directors shall be bound six months after date of the first publication of the said notice to sell to the Colonial Government the said railway, and also all buildings and plots of land acquired by the company and used in connection with the working of the said railway, together with all rolling stock, engines, carriages, plant, machinery and every matter or thing belonging to or connected with the said railway, as also any telegraph or telephone and apparatus, wire, instruments, and every matter or thing connected with the working therewith in possession of the company under this Act, upon such terms as may be agreed upon between the company and the Colonial Government, and, failing such agreement, at a price to be settled by arbitration. (1)

Arbitration provided for.

¹ See § 13, Act 37, 1894.

18. For the purposes of any land taken, or any arbitration under this Act, the provisions of the "Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

No. 17—1883.
Lands and Arbitration Clauses Act incorporated.

19. The directors shall and may sue and be sued within this Colony by the name or style of the "Cape Central Railways (Limited)," and the service of process upon the agent of the said company, at his office or place of business in this Colony, shall be good service of such process.

Name or style of Company.

20. In this Act, save where there is anything inconsistent herewith, the following terms shall have the meanings set against them respectively:

Interpretation of terms.

(1) "The Company," the Company styled the Cape Central Railway (Limited).

(2) "The Directors," the directors for the time being of the said company.

21. This Act may be cited for all purposes as "The Cape Central Railways Act, 1883."

Short title.

No. 17—1883.]

[September 27, 1883.

ACT

To enable the Municipal Council of Port Elizabeth to remove the Native Strangers' Location from its present site, and to sell the Ground forming the said site.

WHEREAS on the 27th June, 1855, a grant was issued to the Board of Commissioners of the Municipality of Port Elizabeth for the time being, created under and by virtue of the provisions of the Ordinance No. 9, 1836, entitled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the local regulations of each shall be founded," of a certain piece of land situate within the limits of the said municipality, containing five morgen and three hundred and five square rods and eighty square feet, bounded, at the date of the said grant, on the south-east by an open space between the said land and the Hottentots' Location, and on all sides by the Town Grazing Grounds, as per diagram attached to the said grant, with full powers and authority thenceforth to possess the same in perpetuity, and with permission to dispose of or alienate the same, or any part or parts thereof, on lease for any time not exceeding twenty-one years, in such manner and in all respects as to the trustees for the time being should seem best fitted to promote the object of the said grant, on condition that the said land be held in trust as a site for a Strangers' Location, where Hottentots, Fingoes, Kafirs, and other strangers visiting Port Elizabeth may temporarily reside, and for no other purpose; and that the rents,

Preamble.

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issues, and profits of the same be paid into the municipal chest at Port Elizabeth, and be applied for the municipal purposes of the said town, and that no part of the said land be leased for a term exceeding twenty-one years, subject, however, to all such duties and regulations as were then or should in future be established with regard to such lands.

And whereas by Act No. 31 of 1860, entitled "An Act for constituting the Town of Port Elizabeth a Municipality," the said Ordinance No. 9, 1836, so far as the same related to the municipality of Port Elizabeth, was repealed; and by the fortieth section of the said Act it was enacted that all land or immovable property theretofore vested in the commissioners of the municipality should, after the passing of the said Act, be transferred to and vested in the council of the municipality of Port Elizabeth.

And whereas by Act No. 14 of 1868 the aforesaid Act No. 31 of 1860 was repealed; and by the fortieth section of the said first mentioned Act it is enacted that all property which should, at the time of the taking effect thereof, be vested in the Town Council of Port Elizabeth, elected under the said Act No. 31 of 1860, should, upon and from and after the 1st January, 1869, be vested in the council elected under the aforesaid Act No. 14 of 1868, upon the like trusts and purposes for which the same was originally granted or transferred.

And whereas the Town Council of Port Elizabeth, elected under the said Act No. 14 of 1868, who are now by virtue of the provisions of the fortieth section of the said Act the lawful trustees of the said piece of land, are desirous of having the condition upon which the same is now held by them removed, and authority given to them to sell the said land, and to remove the present site for a Strangers' Location to another and more convenient site in the vicinity thereof, which has already been granted for that purpose: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The Town Council of Port Elizabeth are hereby authorised to remove the Natives at present residing on the piece of land or location in the preamble to this Act described to the site granted for a new Native Strangers' Location by the Governor of this Colony, by virtue of a title deed with a diagram annexed bearing date the twelfth day of March, one thousand eight hundred and eighty-three; and any Native occupying a hut or other dwelling on the said location who shall refuse to remove after a written notice of ninety days, signed by the Town Clerk, for the time being, of the Town Council of Port Elizabeth calling upon him to do so, has been duly served upon him, shall and may be ejected by process of law, to be sued out in the Court of the Resident Magistrate for the district of Port Elizabeth, at the suit of the said Town Clerk, provided that such removal shall be to suitable ground on the new

Removal of natives from existing Strangers' Location to new location authorised.

In case of refusal may be ejected by process of law.

site, of an equal area to that occupied at the time of such removal.

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2. All Natives who shall erect or reside in any hut or other building upon the said new site, or who shall occupy the same, shall be subject to all such municipal regulations as are now in force, or which shall hereafter become and be of force or effect with reference to such site, and shall be liable to pay to the Town Council such ground rent as may be fixed by the municipal regulations, except as hereinafter provided.

Natives on new site to be subject to municipal regulations.

3. Every head of a family who shall have resided upon the now existing location for a period of not less than three years, shall be entitled to have granted to him a separate and individual title to land within the new site as a building plot of forty feet by sixty feet at an annual quitrent instead and in lieu of the ground rent mentioned in the last section, not exceeding thirty shillings; the holder of any such title shall be entitled to sell and transfer the land held under it to any other person being a Native but to none others: Provided, however, that no such sale or transfer shall be made without the consent of the said council of the municipality thereto being first had and obtained in writing: Provided further that the plot or portion of ground in the present location occupied by the Native so removing shall after his removal become the property of the Town Council, and cease to be liable to any claim or condition under the grant.

Privileges claimable by residents on existing locations.

4. The Town Council shall make compensation to the owners of any huts, dwelling-houses, or other buildings on the present site or location which shall be pulled down or removed by the said council, for the value of the same, to be ascertained by a competent appraiser, to be approved of by the Civil Commissioner of the division, and in case the owners of such huts, dwelling-houses, or other buildings shall refuse to accept payment of the value so ascertained, the amount of compensation to be paid to such owners shall be settled by arbitration. For the purpose of every such arbitration the provisions of the "Lands and Arbitration Clauses Act, 1882," shall apply: Provided, however, that no compensation shall be awarded to strangers who shall have come upon, or in respect to any huts or buildings which shall have been erected upon the present site or location after the passing of this Act.

Compensation to owners of huts, houses or other buildings.

Arbitration.

5. Should it happen, by reason of the enforced removal of any of the Natives described in the first section of this Act, that in the opinion of the trustees or other proprietary body owning any church or school building to which such Natives may have been attached, any loss or damage may accrue, such trustees or other proprietary body may, if they think fit, claim compensation therefor from the Town Council, and unless the amount of such compensation be mutually agreed upon, it shall be ascertained by arbitration, as provided in the fourth section of this Act.

Compensation for churches and school buildings.

6. In case the Town Council shall exercise the authority hereby in the first section of this Act bestowed on them, the condition

Town Council empowered to sell and alienate existing location.

No. 18—1883.

upon which the said piece of land is now held in trust by the said council, namely, as a site for a Strangers' Location, where Hottentots, Fingoes, Kafirs, and other strangers visiting Port Elizabeth may temporarily reside, shall be cancelled and revoked, and the said council shall thenceforth hold the said piece of land free and discharged from the said condition, and may sell and alienate the same, or any part thereof, as if the condition contained in the grant of the said piece of land had never existed.

Proceeds of sale to be applied, after compensation, to erection of new buildings.

7. The proceeds arising from the sale of any portion of the said piece of land, after payment of the amount of compensation aforesaid, shall be applied to the erection, by the Town Council, on the new site, of buildings or dwellings suitable for the occupation of Native strangers.

Short title.

8. This Act may be cited for all purposes as the "Port Elizabeth Native Strangers' Location Act, 1883."

No. 18—1883.]

[September 27, 1883.]

ACT

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

Preamble.

WHEREAS it is expedient to amend "The Cape of Good Hope General Loans Act, (1) 1881," and to make further provision for declaring the terms and conditions applicable to loans authorised to be raised by the Parliament of the Cape of Good Hope: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of enactments.

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

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

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

Expenses of raising loan.

3. [Repealed by Act No. 17, 1888.]
4. The charges necessarily incurred in raising any loan including discount (if any), commission (if any), and all incidental expenses, shall in future be a first charge against the amount raised: and in the case of a loan raised for any public work, such charges shall be deemed to form part of the cost of such work.

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

No. 19—1883.
Powers of Governor in investing Sinking Fund.

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

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

Title and construction of Act.

No. 19—1883.]

[September 27, 1883.

ACT

For the Establishment, Working and Management of Alluvial Digging and Mines of Precious Stones and Minerals.⁽¹⁾

WHEREAS it is expedient to amend and consolidate the laws relating to alluvial diggings and mines within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The several Ordinances, Proclamations, Resolutions of the Legislative Council of Griqualand West, and Government Notices, specified in the first Schedule to this Act, and all and singular the provisions of any other Act, Ordinance, Proclamation, Regulation, Notice, or Order of whatever nature, which may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Repeal of repugnant Ordinances and Acts.

DIVISION I.

2. Any person, save as hereinafter excepted, shall be at liberty to take out, at the office of the Civil Commissioner for the division within which the prospecting licence hereinafter referred to shall be applied for, a licence to prospect or search for precious stones or minerals on Crown lands or on lands the title to which is subject

Application for prospecting licence.

¹ See Acts 22, 1885; 18, 1886; 44, 1887; 10, 1888; 12, 1889; 31, 1893; 18, 1894.

No. 19—1883.

to a reservation to the Crown of precious stones and minerals within such division; which licence shall be in the form in the second schedule to this Act, and shall bear a stamp of the value of one pound sterling for each month.

Extent of licence.

3. A prospecting licence shall give the right to prospect and search for precious stones and minerals on Crown lands, or lands subject to a reservation to the Crown of precious stones and minerals on the land specified in such licences and on the spot to be selected by such prospector as hereinafter provided, and for the period mentioned, without the consent of the owner or proprietor of such lands as aforesaid; and no one shall be allowed to prospect or search for precious stones or minerals on Crown lands, or lands subject to a reservation of precious stones and minerals to the Crown, without obtaining such licence.

Grazing right secured to holder of licence.

4. Every holder of a prospecting licence shall have the right of grazing for six horses or mules, or for sixteen oxen, and of taking wood and water for his domestic use, on payment to the prospector or occupier of the land where such licence is exercised, of ten shillings per diem.

Bond to be entered into by holder of licence.

5. Every person taking out a prospecting licence shall enter into a bond for the sum of two hundred pounds, with sureties to be approved of by the Civil Commissioner in the sum of one hundred pounds each, for the due and proper repair of any surface damage done by him on any land of right occupied by any quitrent tenant or lessee.

Notice of issue of licence to be served on owner of property

6. Any person applying for a prospecting licence shall be bound to specify the farm and as near as may be the place where he is desirous of searching for precious stones or minerals; and the Civil Commissioner shall immediately on his granting a prospecting licence to such applicant as aforesaid, cause a written notice of the granting of such licence to be sent and delivered to the owner or occupier of the farm or place where such licence is to be exercised, or to be left at his last known place of residence, and shall also cause a written notice of the granting of such licence to be posted outside the office of such Civil Commissioner.

List of persons desirous of subscribing their names below that of the licensed prospector to be opened at the Civil Commissioner's office.

7. After the posting of such notice the Civil Commissioner shall cause to be opened, at his office, a list of such persons as may wish to subscribe their names under the name of the licensed prospector aforesaid, in manner hereinafter provided. And any person shall, on personal application, at the office of the Civil Commissioner aforesaid, at all reasonable times, between the time of the posting of such notice as aforesaid and the proclaiming of the place subject to such prospecting licence as aforesaid, either as an alluvial digging or mine as hereinafter provided, and, on payment of a fee of two shillings and sixpence, be entitled to subscribe his name on the list aforesaid below the name of the licensed prospector and the name of the last subscriber, if any, in a book to be kept at the office of the Civil Commissioner for the purpose aforesaid, and such

list shall be headed with the name of the prospector and the farm or place where he shall be entitled to prospect.

8. It shall be the duty of any person who shall find any precious stones or minerals whilst prospecting under such licence, forthwith to make a solemn declaration of the finding of the same, and to lodge such declaration with the Civil Commissioner of the division, and any person who shall fail to do so shall be liable, upon conviction thereof before any Magistrate, to forfeit his licence, and to pay a fine not exceeding fifty pounds sterling; and in default of payment to be imprisoned with or without hard labour for any period not exceeding six months.

9. Any holder of a prospecting licence under the provisions of this Act who shall prove to the satisfaction of the Civil Commissioner that he has found any precious stones or minerals under such licence, shall be entitled to select twenty claims⁽¹⁾ at the place where such precious stones or minerals shall have been found, and shall receive a certificate from the Civil Commissioner that he is so entitled: Provided, however, in no case shall more than one certificate be granted for any one such place as aforesaid.

10. No person shall be entitled under a prospecting licence to dig or search for minerals or precious stones within five hundred yards of the place where any person shall be at the time digging or searching for minerals or precious stones under and by virtue of a prospecting licence without his consent, and any person contravening this section shall be liable to a penalty not exceeding fifty pounds, and in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

11. Every person searching for precious stones or minerals by virtue of a prospecting licence shall exhibit such licence on being required to do so by the owner or occupier of the farm or place on which he is so searching, and on his failure or refusal so to do he may be treated by such owner or occupier as an ordinary trespasser; and no person shall be entitled under such prospecting licence as aforesaid to dig or search for precious stones or materials within two hundred yards of any house or building occupied or used by the owner or occupier of the property, nor upon any land under cultivation or required for the purposes of irrigation, without the consent in writing of such owner or occupier, nor upon any diggings which have been duly declared abandoned as hereinafter provided.

12. So soon as a prospector has lodged a declaration of the finding of precious stones or minerals, the Civil Commissioner shall, with all convenient speed, cause a notice of such declaration to be posted outside his office, which notice shall clearly describe the place where the precious stones or minerals have been found and the name of the declarant, and thereupon the prospector's right to prevent any one from searching for precious stones or minerals

No. 19—1888.

Declaration to be made by successful prospector.

Successful prospector entitled to privilege of selecting claims.

Limit of area under prospecting licence.

Licence to prospect to be produced to the owner of property, whenever called for.

Notice of finding precious stones, &c., to be made by Civil Commissioner and securing prospector's right.

¹ See § 2 sub § (b) Act 10, 1888.

No. 19—1888.

within a radius of five hundred yards, as hereinbefore provided, shall cease and determine.

Governor to take steps to test value of any site.

13. The Governor after the lodging of such declaration as aforesaid may take such steps as he may deem fit for the purpose of testing the character and the payable qualities of the place on which precious stones or minerals have been declared to have been found, and for this purpose may appoint such duly qualified person on such salary or allowance as he may think fit, and may authorise the expenditure of such sums of money as shall be deemed necessary for the purposes of such testing as aforesaid.

Penalty for making false declaration.

14. Any person who shall make such declaration as aforesaid whilst prospecting or otherwise, well knowing that the precious stones or minerals declared to have been found were by himself or by some other person placed or deposited in or on the spot, or in the soil or stuff dug out, or removed from the spot in which such declarant was prospecting, or where the discovery of such precious stones or minerals is declared as aforesaid to have been made, and were not naturally situated in or on the spot or in the soil or stuff where they were declared to have been found or discovered, or well knowing that the said precious stones or minerals were not found or discovered in or on the place where they were declared to have been found or discovered, shall upon conviction be liable to such punishment as is by law provided for the crime of perjury.

The placing of minerals, &c., on places where not naturally found, punishable as fraud.

15. Any person who shall wilfully place or deposit, or be accessory to the wilfully placing or depositing of any precious stones or minerals in any spot or place for the purpose of inducing any person to make such solemn declaration as aforesaid, or for the purpose of misleading the Governor as to the payable nature of a spot or place where precious stones or minerals have been declared to have been found, and previous to such spot being proclaimed an alluvial digging or mine, or being let out on a lease as hereinafter provided, shall be guilty of the crime of contravening the provisions of this Act, and shall upon conviction thereof suffer such punishment as shall be by law provided for the crime of fraud.

Persons so chargeable with fraud shall be deemed guilty unless the contrary be proved.

16. In any proceedings taken for the contravention of the last preceding section, if the accused person shall be proved to have placed or deposited or to have been accessory to the placing or depositing of any precious stone or mineral in any place where the finding thereof would be likely to lead any person to make a declaration of the finding of the same, or would tend to mislead the Governor, he shall be taken to have so placed or deposited such precious stone or mineral in contravention of the last preceding section, unless he shall produce satisfactory evidence to the contrary.

DIVISION II.⁽¹⁾

No. 19—1883.

17. Every place shall be deemed and taken to be an alluvial digging or mine, as the case may be, which has been or shall be duly declared as such respectively. Definition of alluvial digging or mine.

18. Whenever precious stones or minerals shall be discovered in or upon Crown lands, or upon property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, and the Governor shall be satisfied that precious stones or minerals do exist in payable quantities, it shall be lawful for the Governor to declare that such area as shall be described, shall be an alluvial digging or mine as the case may be, and the Governor shall be empowered to make all such rules, orders, regulations of bye-laws as he may deem necessary or expedient for the proper laying out, surveying, enlargement or contraction of any mining areas and depositing floors in connection with such alluvial digging or mine, as also for the expropriation of and compensation for cultivated lands or buildings which may be included in any area so proclaimed, and generally all matters and things connected with the proper and efficient working of such digging or mine. Governor's power to declare an area an alluvial digging or mine.

19. At every alluvial digging or mine the Governor may appoint such inspectors, registrars, or other officers, as may be deemed requisite, who shall receive such salaries or allowances out of the public funds as may be deemed necessary, and whose duties and authorities shall be fixed and determined from time to time by the Governor. Appointment of inspectors, &c.

20. ⁽²⁾ Every claimholder not holding a title under the provisions of Griqualand West Ordinance No. 6 of 1880, shall receive a certificate of registration in the form contained in the third schedule to this Act: Provided that no firm or joint-stock company shall be entitled to be registered as holding claims except in the name or names of not more than two persons resident at the alluvial digging or mine in which such claims shall be situated as the duly accredited agent or agents of such firm or joint-stock company, and such agent or agents shall be responsible for all matters connected with the claim or claims for which he or they shall be so registered, exactly as if such claim or claims were registered in his or their own name or names as his or their property: And provided further that no claimholder in any alluvial digging shall be bound to accept a title under the provisions of the Griqualand West Ordinance No. 6 of 1880, aforesaid, in place of the certificate of registration hereinafter provided for. Certificates of registration to be issued.

21. Every certificate of the registration of a claim or portion of a claim, in any alluvial digging, shall be written on or covered by Stamp chargeable for certificate of registration.

¹ See §§ 1 *et seq.* Act 18, 1886.

² See § 4 Act 12, 1889.

- No. 19-1893. a stamp of not exceeding ten shillings, and in every mine the certificate of such registration shall be covered by a stamp of ten shillings for each month for which each claim or portion of a claim is registered, payable in advance. ⁽¹⁾
- Hypothecation of claims. 22. Any claimholder desirous of hypothecating his holding in any alluvial digging or mine may effect such hypothecation at the office of the Registrar of Claims, and the same shall be duly entered in a book to be kept for that purpose, and a certificate of hypothecation shall be granted in the form contained in the fourth schedule to this Act.
- Stamp chargeable for such hypothecation. 23. Every certificate of hypothecation shall bear a stamp of two shillings and sixpence for every claim or portion of a claim hypothecated in any alluvial digging or mine.
- Stamp chargeable for certificate of transfer. 24. Every certificate of transfer of a claim or portion of a claim in any digging or mine, shall bear a stamp of not less than two shillings and six pence, but if the sum for which such claim is sold shall be more than fifty pounds, then the certificate shall bear stamps, being for transfer duty, at the rate of ten shillings for every hundred pounds or portion of one hundred pounds of the purchase money, but in no case shall transfer dues exceed the sum of fifty pounds in respect of any one claim or portion of a claim.
- Conditions under which transfer shall be made. 25. No transfer of any claim shall be made until the same shall have been registered by the proper officer duly appointed in that behalf, and no such registration shall be made until all rates, liens, licence moneys, royalties or rents due and payable in respect of the property to be transferred shall have been paid.
- Stamps of 10s. per £100 chargeable for certificate of transfer when claims held by two or more persons. 26. In all cases where two or more claimholders in any alluvial digging ⁽²⁾ or diggings shall amalgamate their respective claims, the certificate of the transfer effected for the purpose of carrying out such amalgamation shall bear stamps at the rate of ten shillings for every hundred pounds or portion of one hundred pounds of the assessed value, or if there shall be no assessment, of the declared value of the claims so amalgamated: Provided that the amount of stamps shall in no case exceed the sum of twenty-five pounds.
- Stamp of 5s. per £100 chargeable in certain cases. 27. In all cases where two or more claimholders in any ⁽²⁾ mine or mines shall amalgamate their respective claims, the provisions hereinbefore enacted in the last preceding section, with respect to similar cases at an alluvial digging or diggings ⁽²⁾ shall apply *mutatis mutandis* to such mine or mines; save and except that in any such case the certificate, or deed of transfer granted under the provisions of Griqualand West Ordinance No. 6, 1880, shall bear stamps at the rate of five shillings for every hundred pounds of the assessed or declared value, and that the stamps aforesaid or transfer duty shall in no case exceed the sum of two hundred pounds.

¹ See § 4, Act 18, 1886.² Printed as amended by § 1, Act No. 13, 1888.

28. The inspector of any alluvial digging or other officer duly appointed in that behalf, is hereby empowered to ask, demand, sue for, recover and receive all licence moneys, royalties, rents or transfer dues in respect of any claims in such digging; and to declare as abandoned any claims in respect whereof any such licence moneys, royalties or rents shall be in arrear for a space of thirty days.

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Inspector to receive licence moneys or dues.

29. In the event of any claim in an alluvial digging situate on Crown lands, or upon property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, becoming submerged in consequence of the rising of any river near to which or on the bed of which such claim is situated, and in the event of such claim by reason thereof becoming practically unworkable, the registered owner of such claim shall, if such claim be practically unworkable on the day when the monthly licence money, royalty, or rent is due and payable, be relieved from the payment of the ordinary monthly licence money as aforesaid in respect of such claim for the next ensuing month; and in lieu thereof the inspector shall grant him a certificate of reservation, bearing a stamp of one shilling for the next ensuing calendar month, and in like manner from month to month; which certificate shall entitle him to be registered for each month, so long as the said claim shall continue to be so submerged.

Release of liability of claimholder in case of floods.

30. (1) Any alluvial digging or mine situate on Crown lands, or on private property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, in which digging or mining operations shall not be and shall not have been for a period of twelve weeks carried on in five claims in all in such digging or mine, to the satisfaction of the inspector and in respect of which the licences on not less than one-tenth of all the claims in such digging or mine shall not have been paid for a period of two months, may be proclaimed abandoned; and shall forthwith on such proclamation be closed: but such digging or mine may at any time, under and subject to the provisions of this Act, be again proclaimed an alluvial digging or mine, as the case may be.

Claims declared as abandoned.

31. It shall at all times be lawful for the Governor to grant a lease of any abandoned alluvial digging or mine or any portion thereof when the same is situate on Crown lands or property the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, after the same has been declared abandoned, and to frame regulations for the granting of such leases, and in any lease so granted the following terms and conditions shall, amongst others, be inserted:

Governor may grant lease of abandoned claims.

- (a) The lease shall be for a term of five years, with a right of renewal from time to time at the option of the lessee.
- (b) The rent reserved shall be a royalty of not less than one pound per centum on the gross amount realized by the

¹ See § 4, Act 12, 1889.

No. 19—1883.

sale of precious stones or minerals yielded by the property leased, to be paid from time to time as the same are sold; and payment of the sum at the rate of not less than four-pounds per month per morgen or portion of a morgen so leased, which latter amount shall be payable half-yearly in advance.

- (c) The lease shall be granted solely for the purpose of digging or mining operations.
- (d) The lessee shall be bound during the term of his lease, to carry on digging or mining operations, to the satisfaction of the inspector, due regard being had to the special circumstances of each case.
- (e) The lessee shall have power to sub-let subject to the approval of the Governor, and any such sub-lease shall be registered under the provisions of the Griqualand West Ordinance, No. 16 of 1880.

Provided that in the case of any abandoned mine being situate on property the title to which is subject to a reservation of minerals and precious stones in favour of the Crown, the lessee as aforesaid shall be entitled to occupy a sufficient area for depositing floors and sites for reef-tipping or other mining purposes beyond the margin of the mine proper, and the proprietor of such property shall be entitled to receive from the lessee by way of compensation for the ground required or leased with such abandoned mine as aforesaid, such sum as may be determined by mutual agreement or by arbitration.

Governor may grant lease of crown lands in which minerals, &c., exist.

32. Whenever it shall be shown to the satisfaction of the Governor, that precious stones or minerals occur in any tract or area of alluvial deposit upon Crown land or on property the title to which is subject to a reservation of precious stones or minerals in favour of the Crown, and if, after due publication of the application for the lease of such tract or area, there shall not have been received by the Inspector of Claims for the district, before a time specified in the notice, applications from ten or more duly qualified miners for mining claims in such tract or area, it shall be lawful for the Governor to grant a lease of such tract or area, and also of sufficient ground adjoining thereto as shall be deemed necessary for the working of the same to the person making application therefor, upon similar terms and conditions as those in the last preceding section set forth.

Compensation to owners of property where crown reservation exists.

33. The owner of any property the title to which is subject to a reservation to the Crown of precious stones or minerals, and on which any alluvial digging is declared, or any abandoned alluvial digging or mine, or tract or area as aforesaid is leased for digging operations, shall (1) be entitled to demand and receive from the Public Treasury as full compensation for any surface damage he-

may sustain or may have sustained by the declaring and opening of such digging half of the licence moneys, rents or royalties collected by the Government in respect of such digging, or leases, as aforesaid: And the persons appointed in that behalf shall be bound to keep books showing the amount of all such moneys, and shall account for and pay over to such owner at the end of every half year all sums of money due to such owner as aforesaid, and shall afford to such owner, at all reasonable times, inspection of such books.

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34. For the purpose of working any mine situated on Crown land or on private property the title to which is subject to a reservation of precious stones or minerals in favour of the Crown, the Commissioner shall be and hereby is empowered to cause the claims in such mine to be surveyed by some duly qualified person, as also a sufficient area around such mine, for the purpose of depositing floors, tipping sites and all other matters and things connected with the proper and efficient working of the mine; and to frame a plan of the said survey, which plan shall lie at the office of the Civil Commissioner of the division in which such mine is situate, and shall be open for public inspection at all reasonable times. The area so surveyed may from time to time be altered and enlarged at the discretion of the said Commissioner as the necessities of the mine may require.

Survey of mines.

35. To every licensed claim in any mine which may hereafter be established under the provisions of this Act there shall be attached the right to use and occupy one acre of ground hereinafter called a depositing site, in the neighbourhood of or in proximity to such mine (but so as not to encroach on a reserve of two hundred yards around the margin of such mine) for the purpose of depositing soil, reef or shaly ground, and for the purpose of sinking wells, laying tramways or doing and performing other works, matters and things in connection with mining operations; and in respect of every such depositing site the owner of the soil shall be entitled to charge a sum not exceeding one pound per month, payable in advance.

Depositng areas.

36. It shall at all times be lawful for the Governor to make such rules and regulations for the election of diggers' committees at all alluvial diggings⁽¹⁾ or mines as he may deem fit, and to define from time to time as occasion may require, the duties, powers, functions and authorities of such diggers' committees, and to make rules for the guidance of the same.

Governor to make rules for diggers' Committees.

37. The Governor may direct that one diggers' committee shall be elected for one or more alluvial diggings or mines⁽²⁾ as he may deem advisable, and in such manner as he may deem fit.

Governor to direct mode of election of such Committees.

38. The Governor may at any time direct that any diggers' committee shall be abolished or dissolved.

Governor may abolish Committee.

¹ Printed as amended by § 14 Act 10, 1888.² Printed as amended by Act 10, 1888, § 14.

No. 19—1883.

DIVISION III.

Mining Boards,
election and qualifi-
cation of.

39. Whenever a mine shall be or shall have been declared as such it shall be lawful for the Commissioner to order the election of a mining board, and (subject to the provisions hereinafter contained) to frame all such rules and regulations as he may deem expedient for the more efficient management and control of such mine and of mining areas by such mining board, and each mining board shall elect a chairman and frame rules for its own guidance in its proceedings, and bye-laws for the management of the mine and mining area of the mine for which it is elected, and for the payment of a chairman and officers of the board, which rules and bye-laws shall have legal force and effect on being promulgated in the *Government Gazette*, with the approval of the Governor and Executive Council, and shall remain in full force and effect, and shall govern every mining board or any body for the time being invested with the powers of a mining board, and the mine for which they are passed, until cancelled, altered, or amended, by any mining board, or representative body having proper authority so to cancel, alter, or amend the same. The Governor may from time to time fix and determine the number and mode of election of members of any such mining board. The following persons shall be qualified as members of mining boards, to wit :

- (a) Claimholders, in the mine for which such board is to be elected.
- (b) Directors or nominees of companies holding claims as aforesaid.
- (c) Registered accredited agents of holders of claims as aforesaid.
- (d) Resident nominees of companies having their head office beyond the boundaries of any portion of the Colony in which this Act shall be in force.

Who qualified to
vote for members of
Mining Board.

40. Save as hereinafter excepted every *bonâ fide* holder of rateable claim property in the mine, and every duly authorised representative of such *bonâ fide* holder, or of any company *bonâ fide* holding rateable claim property in the mine, shall be entitled to vote for candidates to be elected for the mining board in manner hereinafter provided. The assessed value of rateable claim property in any mine at the time of election, whether such assessment has been made under any Act, Ordinance, or legal enactment in force previous to the framing of this Act, or whether the same has been made under the provisions of this Act, shall be divided by the number of claims registered in such mine, and the amount so arrived at shall be the unit voting power and unit value, and shall carry one vote. Any voter possessing either individually or in his representative character, claim property assessed as aforesaid at double the value of such unit voting power, shall be entitled to two votes ; if possessing property aforesaid of treble such unit

value, he shall be entitled to three votes, and so on in like proportion.

No. 19—1883.

41. Any person holding or representing property in the mine which is assessed at a value below the unit value or voting power aforesaid, may unite with any other person or persons in a like position, and such united or amalgamated value shall carry a right to vote to the number of unit values or voting powers made up by such amalgamation. No vote shall be given in respect of any property in a mine the rates upon which shall be in arrear and unpaid for a period of six calendar months; or which shall be held or owned by any person who shall be insolvent, or shall have assigned his estate for the benefit of his creditors. Any member of a mining board deriving his qualification from any such property, shall, *ipso facto*, cease to be qualified or to hold office as a member of such mining board.

Holders of property may unite to acquire property qualification to vote.

42. All voting for candidates may be cumulative, and each voter shall be entitled to multiply the number of votes he is entitled to, according to the number of unit values as aforesaid, by the number of members to be elected, and may distribute such votes amongst the candidates as he may think fit.

Conditions for voting.

43. As soon as possible after the taking effect of this Act, an assessment of the claims in every mine shall take place, and thereafter in the same month of each year a fresh assessment shall be made. In case any assessment of any mine exists at the time of the passing and promulgation of this Act, such assessment shall remain in full force and effect, until an assessment of such mine under the provisions of this Act shall have been made.

Assessment of claims.

44. All existing resolutions, rules, regulations, or bye-laws having the force of law at any mine at the time of the passing and promulgation of this Act shall, in so far as they are not inconsistent with or repugnant to any of the provisions of this Act continue in full force and effect, until cancelled, altered, or amended by any resolution, rule, regulation, or bye-law, made or passed, respectively, under the provisions of this Act.

Existing bye-laws, &c., to be retained until altered under this Act.

45. For the purpose of assessing the value of claim property in a mine for rating purposes, two competent persons shall be appointed as assessors, one by the mining board and the other by the Commissioner, and the said assessors as soon as they shall have been so appointed, and shall have accepted office, and before proceeding to their duties as assessors shall choose a referee. There shall be a fresh election or appointment of assessors, and a referee under the provisions of this Act for each assessment to be made; provided that the same assessors or assessor or referee may be appointed in manner herein provided for any subsequent assessment.

Mode of assessment of value of claim property.

46. In the event of there being no mining board in existence at any mine, and no assessment of the rateable claim property in such mine upon which the election of a mining board can proceed, it

Under certain circumstances Commissioner may appoint assessor.

- No. 19—1883. shall be lawful for the Commissioner to appoint a person or persons for the purpose of making such assessment.
- Referee, power of Commissioner to appoint. 47. In the event of the assessors so appointed as aforesaid, failing or refusing to appoint a referee, within one week after the acceptance of such appointment, the Commissioner shall have power to appoint a referee. Every referee shall, if the assessors fail or refuse to assess the value of the claim property in any mine for which they may be appointed, or any portion of such property, proceed to assess the value of such property or portion thereof.
- Power to take evidence by assessor. 48. The assessors, or assessor, or referee, as the case may be, shall have power to summon witnesses and take evidence upon oath, the decision of the assessors, or in case of dispute, of the referee, or in case there be only one assessor as hereinbefore provided, then of such assessor, as to the assessment of any claim property in any mine, shall be final, subject only to the powers of appeal granted by the eleventh section of Act No. 40 of 1882, and which said section is hereby incorporated with this Act.
- Duration of assessment. 49. All assessments made under the provisions of this Act for any mine shall remain in full force and effect until another and fresh assessment shall have been made for such mine.
- Defrayment of expenses of assessment. 50. The expenses incurred in connection with the assessment of any mine shall be borne by the mining board of such mine, or if there be no mining board by the owners of claim property in such mine *pro rata*, according to the assessed value of the claims in such mine. As soon as any assessment or valuation as aforesaid shall have been completed, an assessment roll embodying the same shall be compiled and placed in the office of the mining board, or in case there be no mining board, then outside the office of the Resident Magistrate for the district in which such mine is situated, for the inspection of any owners of property in the mine at all lawful and reasonable times, and a day or days fixed by the assessors to hear and consider objections thereto.
- Rates may be levied by mining boards or claims. 51. Every mining board shall be empowered to levy from time to time rates for the general purposes of the mine upon the claims in the mine, and to fix tariffs for the removal of reef and water from the mine or the margin thereof, and the rates so levied, and the tariffs so fixed, shall be passed as bye-laws: Provided that reasonable notice, to the satisfaction of the Commissioner, shall in all cases be given of the intention of any mining board to submit any such bye-laws to the Governor for his approval.
- Rates may be levied on property in mining areas. 52. Every mining board shall be empowered to levy from time to time rates upon all property in the mining areas, used or held to be used for mining purposes, and all moneys so received by rates shall be applied to the general purposes of the mine.
- Notice of rate to be made public. 53. When any rate is duly levied, the mining board shall give reasonable public notice of the day on which the same shall become due and payable, and all persons liable to pay the same shall do so on or before the day fixed in the said notice.

54. All rules, regulations, bye-laws framed under the provisions of this Act shall, on due promulgation in the *Gazette*, have the full force and effect of law: Provided that the same may be at all times repealed, altered, or amended by means of other rules, regulations, or bye-laws framed and promulgated as aforesaid.

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Regulations under Act to have force of law on publication in *Government Gazette*.

55. All claim property in any mine shall be exempted from the payment of any Divisional Council or Municipal rate.

Exemption from divisional or municipal rates.

56. The Governor may upon petition from the majority of voters for the mining board, representing not less than half of the assessed property in the mine, dissolve the mining board, and may, by notice in the *Gazette*, direct the election of a new mining board for such mine, or appoint a board in terms of the provisions of the fifty-eighth section of this Act.

Power of Governor to dissolve mining board.

57. No resolutions of any mining board shall have any force or effect unless a quorum to be fixed by bye-laws approved by the Governor be present and assisting at the passing thereof, and in every case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote.

Voting at mining boards.

58. If any mining board shall not for a period of two months have a sufficient quorum for the transaction of business, or shall not for the same period meet for the transaction of business, or shall for a like period fail, neglect, or refuse to deal with the requirements of the inspector, or to submit the same to arbitration as hereinafter provided, such mining board shall *ipso facto* be dissolved, and in case of such dissolution, or in case there shall not be for other reasons any mining board in existence, it shall be lawful for the Governor to appoint a board of three persons, of whom the inspector shall *ex-officio* be a member and chairman, and who shall have all the power and exercise all the duties of a mining board, and shall do all things necessary for the working of the mine until such time as the Governor may direct that a mining board or another mining board shall be elected, and such board so elected shall have taken office.

Dissolution of mining board and appointment of a board by Governor.

59. In the event of nine-tenths in assessed value of any mine becoming the property of one person, or firm, or partnership, or company, the mining board then existing shall be dissolved, and no fresh mining board, whilst the mine is so held, shall be elected or appointed.

When greater part of mine becomes private property mining board to be dissolved.

60. In case any mining board shall cease to exist or shall have ceased to exist, or shall be dissolved under the provisions of either of the two last preceding sections and until the election of a fresh mining board, it shall be lawful for any person having any claim against such board to continue any action already instituted or to commence legal proceedings against the members of the outgoing or last subsisting mining board, as representing such board, and to proceed with such proceedings to the final end and determination of the same just as if such mining board had not ceased to exist or been dissolved, and such person shall have the same remedies at

Settlement of claims against mining boards.

No. 19—1883.

law as if such mining board were duly constituted under the provisions of this Act. And in the event of the election of a fresh mining board or the appointment of a board in terms of the fifty-eighth section, such mining board shall stand and be in the same position as regards outstanding liabilities as the outgoing mining board, and all actions previously instituted shall be continued and carried on against such fresh mining board, or board appointed as aforesaid, without interruption of any kind.

Borrowing powers
of mining boards.

61. Every mining board shall be and hereby is empowered to borrow from time to time such sum or sums of money as may be required for the purpose of liquidating debts incurred or for the due and efficient working of the mine under its control, on debentures, or otherwise, upon security of special rates to be levied upon the claims under its control and on such terms and conditions as may be agreed on: Provided that the sanction and approval of the same by registered holders of claims in such mine representing not less than three-fifths of the assessed value of such mine, shall previously have been obtained by the mining board at a meeting of claimholders to be specially called for that purpose by public notice of not less than fourteen days in the *Gazette* and local newspapers (if any), or in such other manner as the Governor may from time to time order and direct.

Proceedings against
mining board under
"Public Bodies
Debts Act"

62. In the event of proceedings being taken under the "Public Bodies Debts Act," 1867, upon any judgment obtained against any diggers' committee, mining board, or board appointed under the provisions of this Act, in respect of any debt or liability contracted for any loan or moneys raised or any other debt lawfully incurred, either before or (1) after the passing of this Act by such committee or board, the third section of the said "Public Bodies Debts Act" shall be read and construed as if both the provisos therein contained were omitted therefrom.

Mining Boards al-
ready in existence
not affected by Act
until re-elected un-
der its provisions.

63. Any duly elected mining board at any mine which shall be in office at the time of the taking effect of this Act shall remain in office and exercise all powers and perform all duties by this Act provided to be exercised and performed by a mining board elected under the provisions of this Act, until such times as a mining board shall be elected and take office under the provisions of this Act: Provided that the Governor shall forthwith order that any mine for which there is a mining board existing at the time of the passing of this Act, shall proceed to elect a fresh mining board under the provisions of this Act: And as soon as such mining board shall be duly elected, he shall proclaim some day, being not less than ten clear days from the date of election of such fresh mining board, when such mining board shall take office, and the original or existing mining board shall cease to exist, and such fresh mining board shall hold office until the thirty-first

December in this year, and thereafter the term of office of each successive mining board, shall be until the thirty-first December in the year for which it may be elected: Provided that every mining board shall retain office until its successor has been duly elected, and shall exercise the same duties and powers as theretofore.

64. In the event of any mining board, body or officer for the time being representing the claimholders of any mine recovering judgment in any competent Court against any defaulting claimholder for liens registered or for arrear rates, and the claim property in respect of which liens shall be registered or rates shall be so in arrear, shall be attached in execution of the judgment aforesaid, the said board shall be empowered to buy in such claims at the execution sale for any sum not exceeding the amount of liens or arrear rates and taxed costs under levy.

7. Purchase of claims at execution sales by boards.

65. From and after the promulgation of this Act, a claim in any mine shall be considered as abandoned whenever the same shall have been abandoned in accordance with any rule, regulation, ordinance, or law heretofore in force, or when the registered holder (1) of the same shall give notice in writing to the inspector, or if held under the provisions of Griqualand West Ordinance No. 6 of 1880, to the Registrar of Deeds, of his intention to abandon the same.

Definition of abandoned claims.

66. Any claim legally abandoned or purchased in terms of the sixty-fourth section shall be the property of the mining board, body, or officer for the time being representing the claimholders at the mine where such abandoned claim is situate, and such board, body, or officer shall, saving all lawful demands of any creditor holding a lien against such claim, and subject to the provisions of the last preceding section, be entitled to dispose of, hold, or otherwise deal with the same, as he or they may deem expedient for the benefit of the mine generally, but shall not be liable for any registration fees, taxes or charges in respect of such claim, nor to work down or make safe the same, unless the bye-laws of any mine shall determine otherwise: Provided that any neighbouring claimholder shall be entitled to work down and make safe any claim so purchased or abandoned at his own expense should he desire to do so on being served with a notice by the inspector or other officer appointed in that behalf that such claim is dangerous to life or limb, and shall be entitled to register a lien for the value of the work so done according to the tariff fixed by the mining board as hereinbefore provided against such claim.

Power of boards, &c., to dispose of claims, or otherwise, for benefit of mine.

67. Any person entitled under the provisions of this Act, or of any ordinance, rule, regulation or bye-law now in force, or which may hereafter be promulgated to register a lien against any claim or claims in any mine shall apply to and obtain a warrant in that

Granting of certificates to persons entitled to register a lien against claim.

No. 19—1888.

behalf from the inspector of the mine in which such claim or claims shall be situated, which warrant shall be filed in the office of the Registrar of Claims; and the registrar or other officer duly appointed in that behalf, shall grant to such person a certificate in the form contained in the fifth schedule to this Act, and every such certificate shall bear a stamp of ten shillings.

Liens, existing or registered, to be recoverable in any competent court.

68. All existing liens and all liens which shall be registered hereafter against any claim or property in any mine, shall entitle the persons in whose favour such liens are registered to recover the amount thereof by action in any competent Court from the owner or registered holder of such claim or property: Provided, however, that no greater sum shall be recoverable under or by virtue of any lien than the amount which may be realized by the sale of the claim or property against which the same is registered, and such claim or property shall alone be liable to be taken or sold in execution of any judgment given in any such action aforesaid.

Provisions in event of expansion or divergence of mineral soil; registered claimholders to pay to Government 2½ per cent. on the gross returns.

69. In the event of its being discovered at any depth from the surface of any mine, that the soil containing precious stones or minerals shall expand or diverge in any direction, the registered claimholders in such mine shall be entitled to follow such soil in all its dips, angles, and variations, and the soil containing precious stones or minerals lying outside of the actual declared boundaries of claims at the time of the discovery of such expansion or divergence shall be held to be the common property of the then registered claimholders in such mine, and shall be worked at the expense and for the benefit of such claimholders in *pro rata* shares and proportions according to the assessed value of the several holdings in such mine; provided that the then registered claimholders in such mine shall pay to the Government, or person in whom the reservation of precious stones and minerals is vested, an amount equal to two and a half per centum on the gross returns of all precious stones or minerals found in such additional area of soil as aforesaid: provided, always, that in case of any mine under the control of any mining board, body, officer, or company, it shall be the duty of any person who shall make the discovery of the mine expanding or diverging beyond the known or declared boundaries, to notify the same to the Registrar of Claims or other officer charged with the duty of registering claims within seven days from such discovery, and the registrar shall thereupon post a certificate of such information on the office door of the Registrar of Claims, and shall forward written notice thereof to the mining board, body, officer, or company, who shall be, and hereby is, empowered to test the alleged discovery, and should the same be verified, shall forthwith convene a meeting of claimholders for the purpose of considering in what manner such divergence or expansion of additional area shall be worked or dealt with, claimholders voting on the basis of the provisions of the fortieth section of this Act: provided, further, that the person so discovering the divergence or expansion

of additional area aforesaid shall be entitled to claim from the mining board, body, officer, or company, a refund of all reasonable costs, charges and expenses to which he may be put in sinking shafts, tunnels, or works necessary for the purpose of reporting the nature of the mine at such greater depth; and should such person neglect or refuse to notify the discovery by him of any divergence or expansion of the mine within the time limited as aforesaid, he shall not be entitled to claim any refund of moneys laid out by him as aforesaid, and shall, in addition, be liable to a penalty not exceeding five hundred pounds sterling, to be recovered by the mining board, body, officer, or company in any competent Court; and provided, lastly, that any claimholder shall be at liberty at the meeting called by the mining board, body, officer, or company on the notification of the Registrar of Mines or other officer as aforesaid, to decline forthwith to share in the expenses or profits derived for the working and development of any such divergence or expansion of additional areas so discovered; and such claimholder so electing not to share as aforesaid, shall not be entitled to take part or vote at such meeting or in any further proceedings connected with such additional area.

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Penalty for neglect to notify any divergence or expansion of mine.

70. The following order of preference for amounts which may now be due and owing or may hereafter become due and owing upon or in respect of any claim in any digging or mine, is hereby established, viz:—

Order of preference for amounts due on any claim.

1. Claim licences,
2. Rates and dues lawfully imposed in respect of such claim or claims,
3. Expenses of work done by any diggers' committee or mining board by order of the inspector,
4. Liens for work done to or on claims by virtue of this Act or any bye-law,
5. Conventional hypothecations,
6. Fines or penalties recovered in any Court in respect of such claim or claims.

71. It shall be lawful for the Governor from time to time to proclaim rules and regulations concerning the granting of miners' certificates, entitling persons to hold and work claims in any alluvial digging or mine, and to fix the fees to be charged for such certificates, and concerning the manner of working claims and machinery at any digging or mine, and for the regulation of all works within the mining area, in so far as the protection of life and limb is concerned, and generally for the proper management of all diggings and mines, and to fix the penalties for the breach of such rules and regulations not exceeding those in the next succeeding section mentioned, and such rules and regulations shall on being proclaimed, have the force and effect of law at the digging or mine referred to in such proclamation as aforesaid, until the same are cancelled, altered or amended by any subsequent

Governor may proclaim regulations, &c., for working of claims and machinery.

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proclamation made under and by virtue of the provisions of this section.

Penalty for mining or digging without prospecting licence.

72. Any person mining or digging for precious stones or minerals without a prospecting licence, or without a claim licence, on Crown land or on private property containing a reservation of minerals in favour of the Crown, shall on conviction, be liable to a penalty not exceeding one hundred pounds, and, in default of payment, to imprisonment, with or without hard labour, for a period not exceeding twelve months; and any person who may be convicted before a competent Court of contravening any of the regulations framed under the provisions of this Act shall be liable to such penalties as may be by the said regulations prescribed, not in any case exceeding one hundred pounds, or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months.

Transfer dues, limit of.

73. The transfer dues payable under the provisions of the Griqualand West Ordinance No. 6 of 1880 shall in no case exceed the transfer dues payable under the provisions of this Act, anything in any Ordinance, Act, Proclamation or legal enactment to the contrary notwithstanding.

Recovery of fines, &c., by law.

74. All fines and penalties imposed under the provisions of this Act or of any rules, regulations or bye-laws to be framed and proclaimed in manner hereinbefore provided shall be recoverable in the Court of the Resident Magistrate for the district in which such digging or mine is situate.

By or against whom actions are to be brought.

75. All actions brought by or against a diggers' committee or mining board shall be brought by or against the chairman of such committee or board.

DIVISION IV.

Alluvial diggings or mines upon private properties where there is no express reservation in favour of the Crown.

76. Whenever any alluvial digging or mine shall have been already opened or shall be opened to the extent hereinafter defined upon any land the property of any private owner, the title to which land is not subject to any express reservation of precious stones or minerals in favour of the Crown, or whenever any precious stones and minerals shall be discovered upon any land as aforesaid and the owner of such land shall desire to establish an alluvial digging or mine on such property, and shall have sold or let or given licence to work mining or digging claims on such property exceeding in number twenty-four such claims, or to search for precious stones or minerals on such property over a surface or surfaces to an extent of twenty thousand square feet in all or upwards, such claims or licences in each case to be worked by any number of persons exceeding seventy in all, or whenever in the vicinity of any claims worked on such private property as aforesaid a population shall be settled for the time being of upwards of one hundred persons, the place where such claims or such licences shall be worked, or shall lie to be worked, shall be deemed to be an alluvial

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digging or mine, and may be proclaimed and defined as such in like manner as if the same were situate on Crown land, save that the amount of licence money, rent, or royalty to be paid for each claim shall be fixed by the owner of such property as aforesaid.

77. The proprietor of any private property the title to which is not subject to any reservation of precious stones or minerals in favour of the Crown, and on which any alluvial digging or mine may under the provisions of this Act be proclaimed, shall contribute ten per cent. of any licence moneys, rents, or royalties received by him in respect of such digging or mine for the purpose of defraying the public expenditure necessary for the maintenance of order and good government, and the protection of life and limb, within the defined limits of such digging or mine or mining area, and shall keep proper books, showing the amount of all such moneys received by him as aforesaid; and in case no such books are kept by such proprietor or such books are irregularly kept, then and in that event such proprietor shall pay such sums as may be necessary to defray the public expenditure as aforesaid, whether such proprietor has received out of the licence moneys, rents or royalties payable in respect of claims sufficient to defray such expenditure or not; provided that nothing in this Act shall be taken to interfere with or affect any existing agreement entered into between the Government and any owner of such private property as aforesaid respecting the amount to be paid by such owner for the purpose of defraying the expenditure necessary for the maintenance of order and good government at any alluvial digging or mine situate on such property as aforesaid.

Contribution by private proprietors on which diggings or mines are proclaimed.

78. [Repealed by Act No. 12, 1889, § 2.]

79. Save as hereinbefore stated, all the provisions of this Act relating to mines and diggings upon Crown land, or land the title to which is subject to a reservation of minerals or precious stones in favour of the Crown, shall be held applicable to all duly proclaimed mines and diggings situate upon land the title to which is not subject to such reservation as aforesaid.

Act to apply to mines on lands not subject to reservation of minerals.

DIVISION V.

80. [Repealed by Act 44, 1887.]

81. In the interpretation of this Act unless repugnant to the context the following words and expressions shall have the meaning following:

Construction and interpretation.

The word "claimholder" shall be taken to include partnerships and joint-stock companies.

Save all existing rights, the word "claim" shall be taken to mean any portion of ground assigned for mining purposes of a size to be from time to time proclaimed by the Governor.

The words "reef or shaly ground" shall be taken to apply to the shale rock or soil outside and around diamondiferous

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claims, and shall not include what is commonly known as "floating shale," or shale and rock in or covering the actual claims.

The word "minerals" shall be held to mean gold, silver, or platinum.

The word "Commissioner" shall mean the Commissioner of Crown Lands and Public Works.

Short title.

82. This Act may be cited for all purposes as "The Precious Stones and Minerals Mining Act, 1883."

THE FIRST SCHEDULE.

Enactment.	Title.	Extent of Repeal.
Proclamation by Governor Sir H. Barkly, No. 71, dated October 27, 1871.	Establishing Diamond Diggings, Office of Inspector of Claims, Diggers' Committees, and their duties and powers.	The whole
Griqualand West Ordinance No. 10, 1874.	Ordinance to provide more effectually for the working of Diggings and Mines in the Province of Griqualand West.	The whole
Griqualand West Ordinance No. 14, 1874.	Ordinance to regulate and define the manner of voting for the election of Members of Mining Boards under the provisions of the sixth section of Ordinance No. 10 of 1874.	The whole
Government Notice by the Commissioners administering the Government of Griqualand West, No. 62, 28th November, 1871.	Giving Inspectors and Sub-Inspectors of Mines powers to grant interdicts.	The whole
Griqualand West Government Notice No. 332, 9th December, 1876.	Publishing Resolution of Legislative Council cancelling Clause 2, Section V, and Clause 1, Section VI, of Schedule to Ordinance No. 10 of 1874.	The whole
Griqualand West Government Notice No. 156, September 6th, 1877.	Publishing Resolution of Legislative Council repealing Clause 9, Section VI, of Schedule to Ordinance No. 10 of 1874, and Government Notice No. 182 of 1876.	The whole

Enactments.	Title.	Extent of Repeal.
Griqualand West Ordinance No. 12 of 1876.	Ordinance to repeal the 18th Clause of Section 1 of the Schedule to Ordinance No. 10 of 1874.	The whole
Griqualand West Ordinance No. 15 of 1879.	Ordinance to declare the applicability to the Du Toit's Pan Mine and Bultfontein Digging of a certain portion of the Rules and Regulations contained in the Schedule to Ordinance No. 10 of 1874, from the date of the promulgation of the said Ordinance, and to continue the same in force.	The whole
Griqualand West Proclamation No. 8, dated September 30th, 1880.	Promulgating Amended Schedule to Ordinance No. 10 of 1874.	The whole
Griqualand West Ordinance No. 6, 1880.	Ordinance to provide fixity of Tenure in certain Mines and Diggings in the Province.	Section V.
Griqualand West Government Notice No. 86, 7th May, 1877.	Publishing Resolution of Legislative Council enacting addition of Clause 9 to Section V, of the Schedule to Ordinance No. 10 of 1874.	The whole

SECOND SCHEDULE.

Prospecting Licence.

Civil Commissioner's Office,

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Whereas A. B. has duly complied with the provisions of Section No. _____ of Act No. _____, of 188____, licence is hereby granted to him to search and prospect for precious stones and minerals on the farm _____ within the Division of _____ for the period of _____ months from _____ to _____

Note:—This licence does not give any right to prospect on private property where there is no reservation of precious stones or minerals in favour of the Crown, without the consent of the owner of such private property; nor within five hundred yards of any person already prospecting and searching for minerals or precious stones under or by virtue of a prospecting licence, without his consent; nor

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within two hundred yards of any house or building occupied or used by the owner or occupier of the property; nor upon any land under cultivation, without the written consent of such owner or occupier; nor upon any duly declared abandoned digging.

THIRD SCHEDULE.

Form of Recognizance.

Before me _____ Distributor of Stamps for _____ on the _____ day of _____ 18____, A.B., residing at _____ acknowledges himself to be indebted to our Sovereign Lady the Queen in the sum of two hundred pounds, and C.D. and E.F. severally acknowledge themselves to be indebted to our said Sovereign Lady the Queen in the sum of one hundred pounds, to be levied upon their and each of their goods and lands, upon condition that if the said A.B. shall make due and proper repair of any surface damage done by him on any land upon which he shall have obtained a licence to prospect for precious stones or minerals, of right occupied by any quitrent tenant or lessee, then this recognizance shall be void, or else to remain in full force.

FOURTH SCHEDULE.

Certificate of Registration.

This is to certify that _____ of _____ is the registered holder of Claim No. _____ alluvial digging (or mine, as the case may be), and that the licence money for the same has been paid in advance up to the _____, 18____. Office of the Registrar of Claims of _____ Alluvial Digging (or mine, as the case may be).

Registrar.

FIFTH SCHEDULE.

Certificate of Hypothecation.

This is to certify that Claim No. _____ in the Alluvial Digging (or mine, as the case may be), has this day been hypothecated by _____ of _____ for the sum of £ _____

Office of the Registrar of Claims of _____ Alluvial Digging (or mine, as the case may be).

Registrar.

SIXTH SCHEDULE.

Certificate of Lien.

This is to certify that _____ of _____ is the registered holder of a lien against Claim No. _____ situated in the _____ Mine in the sum of £ _____

Office of the Registrar of Claims of _____ Mine,

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Registrar.

No. 20—1883.]

[September 27, 1883.]

ACT

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

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

Preamble.

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

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

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

Interest and capital
charged on general
revenue.

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

Debentures payable
at par.

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

Account of money
received and expended
to be kept.

5. The provisions of "The Cape of Good Hope General Loan Act (1), 1881," shall not be deemed to apply to the loans authorised by this Act.

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

6. The short title of this Act shall be "The Temporary Loans Act, 1883."

Short title.

No. 21—1883.]

[September 27, 1883.

ACT

To Authorise the Raising of Money for certain Public Purposes.

Preamble.

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

Power to borrow
£1,942,048.

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

Short title.

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

SCHEDULE.

1. For carrying on and improving the Harbour Works of East London	£100,000
2. For carrying on and improving the Harbour Works of the Kowie	40,000
3. For the Houses of Parliament	100,000
4. For the Railway Bridge over the Orange River near Hope Town	60,000
5. For Loans under the 'Local Works Loans Act, 1882.'	130,000
6. For Public Buildings, Magistrate's Court, and Offices at Port Elizabeth	10,000
7. For repayment, in part, of sums advanced from Revenue	1,500,000
8. For Compensation to be paid to Europeans who sustained loss in consequence of the action of Colonial Forces during the late Basuto Rebellion	2,048
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	£1,942,048

No. 22—1883.]

[September 27, 1883.

Act for applying a Sum not exceeding Sixty-nine Thousand One Hundred and Fifty-five Pounds Four Shillings and Tenpence Sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 23—1883.]

[September 27, 1883.

ACT

To Enable the Port Elizabeth Harbour Board to make Regulations for the better Management of the Port and Harbour of Port Elizabeth. ⁽¹⁾

WHEREAS no sufficient power is vested in the Port Elizabeth Harbour Board to make regulations for the general management of the said harbour and the quays and jetties thereof, or regulations having for their object the imposition of certain duties and charges upon the landing and shipping of goods at wharves and jetties, and to fix the rate of tonnage by measurement or weight of such goods, and to impose charges upon steam tugs, steam launches, passenger, cargo and other boats plying for hire within the said harbour, and for regulating the rates which the owners thereof shall be entitled to charge, and for the inspection of such tugs, launches, or boats, and the machinery and gear thereof, and for regulating the number of passengers which may be carried therein, and for imposing penalties for the breach of any such regulations: And whereas it is desirable that such powers should be supplied:

Preamble.

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

1. It shall be lawful for the Commissioners of the Port Elizabeth Harbour Board, with the approval of the Governor, to make all regulations necessary for attaining the objects in the preamble to this Act mentioned, and to pay all costs and charges of enforcing the same. Any person contravening any such regulations shall be liable on conviction to such penalties as may be fixed and declared in such regulations not exceeding a fine of ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Commissioners of Port Elizabeth Harbour Board to have power to make regulations.

Penalty for contravention of regulations.

2. This Act may be cited as the "Port Elizabeth Harbour Board Regulations Act, 1883."

Short title.

No. 24—1883.]

[September 27, 1883.

Act to provide for the command of the Colonial Forces during any vacancy in the office of Commandant-General, and for the Amalgamation of the Wings of the "Cape Mounted Riflemen."

[Repealed by Act 32, 1892.]

¹ See Act 21, 1882.

2110 PORT ELIZABETH HARBOUR BOARD LOAN.

No. 25—1883.]

[September 27, 1883.

ACT

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

Preamble.

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

Power to raise loan of £100,000.

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

Application of moneys.

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

Short title.

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

No. 26—1883.]

[September 27, 1883.

ACT

For Raising a further Sum of Fifty Thousand Pounds Sterling for carrying on certain Harbour Works at Port Elizabeth. (2)

Preamble.

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

Power to Governor to raise £50,000.

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

¹ Further sums raised by Acts 38 of 1885, 25 of 1886, 19 of 1888, 22 of 1889, 22 of 1892, 20 of 1893, 6 of 1894.

² See § 10, Act 16, 1894.

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

No. 27—1883.
Money to be entrusted to Port Elizabeth Harbour Board.

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

Short title.

No. 27—1883.]

[September 27, 1883.

ACT

For Establishing an Incorporated Law Society for the Colony of the Cape of Good Hope.⁽¹⁾

WHEREAS it is expedient for the maintenance and advancement of sound legal learning and correct and uniform practice and discipline amongst the members of the professions of Attorneys and Notaries in this Colony, and also for the superintendence of the professional training, studies and examination of persons hereafter desiring to be admitted to practise in such professions, and for the regulation of their admission thereto, and for promoting the formation of a Law Library at Cape Town, to establish and incorporate a society at the Cape of Good Hope for the promotion of the said objects :

1 reamble.

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

1. A society consisting of a president, a vice-president, a council and members shall be established at the Cape of Good Hope, consisting of attorneys and notaries duly authorised to practise as such in the said Colony, and shall be a body politic and corporate by the name of "The Law Society of the Cape of Good Hope," and by such name shall have perpetual succession, and shall adopt and have a common seal, and shall be capable both of purchasing and holding property, movable and immovable, and of selling, mortgaging, transferring, leasing or otherwise disposing of any such property, and of suing and being sued in its corporate capacity, and of doing all other matters and things incidental or appertaining to a body politic: Provided that it shall not be lawful for the said society to sell, mortgage, transfer, lease or otherwise dispose of any immovable property to which it may become entitled without the approbation and concurrence of two-thirds of the members present at a general meeting.

Incorporation of and authorities conferred on "The Law Society of the Cape of Good Hope."

2. The council of the said society, including the president and the vice-president, shall consist of nine members, exclusive of such

Constitution of the council. of

¹ See Act 30, 1892.

No. 27—1883.

ex officio members as are hereinafter provided for. The first president of the society shall be Charles Aken Fairbridge, and the first vice-president shall be Casper Hendrik van Zyl, and John Robertson Reid, John Blake Buissinne, Henry Knight Tredgold, Frederick Samuel Phillipson Stow, Edward Philip Solomon, William Edward Moore and Charles Christian de Villiers, shall be the first members of the council of the said society, and shall hold office until the election of new officers as hereinafter provided.

Mode of electing members.

And it shall and may be made lawful for the president so appointed to receive and consider applications from attorneys and notaries desirous of becoming members, and for a majority of the members of the said council present at a meeting to be convened by the president, after three weeks' notice, to agree or refuse to enrol the applicants as members of the society: Provided, however, that such refusal shall not debar the rejected candidate from again applying to be enrolled, or from being enrolled as a member of the society, after the first general meeting hereinafter mentioned:

Minute book to be kept.

Provided, also, that the president shall cause true and proper minutes of the proceedings at such meetings to be recorded in a book kept for the purpose, including the names of all persons enrolled, as well as those refused. So soon as convenient after there shall have been enrolled in the manner aforesaid members sufficient to make up the number of the members of the society, including the president, vice-president, and the council aforesaid, to twenty-five, it shall be the duty of the president, by notice in the *Government Gazette* of not less than six weeks, to convene a general meeting of all the members aforesaid for the purpose of electing a council in the place of the council appointed by this Act. And as soon as may be after the election of the new council aforesaid, the said council shall proceed to the election from among its members of a new president and vice-president, it being expressly provided that the existing president, vice-president and council shall remain in office and exercise all their functions until the final election and appointment of the new president, vice-president and council, whereupon their appointment shall cease, and thereafter every election of a new council, and every election by such new council of a president and vice-president, shall take place in exactly the same manner and after the same notice as is by this section determined for the election of the first new council and president and vice-president. At any meeting it shall be competent for members residing more than twenty-five miles from the place where the meeting is held to vote by proxy, but no person residing within twenty-five miles of such place shall be allowed to vote by proxy. No person not being an attorney shall have the privilege of becoming a member of the council.

Election of President and Vice-President.

3. The president, vice-president and council so first appointed shall continue in office three years. At all meetings of the council four members, including the president or vice-president,

Duration of office of first President &c.

or other presiding member, shall form a quorum. At least ten members of the society shall be required to form a quorum at any meeting.

No. 27—18:3.

4. At the expiration of three years from the date of their taking office the president, vice-president and council shall retire from office, and be succeeded by a new president, vice-president and council, to be elected in the manner provided by the second section of this Act: Provided, however, that the president, vice-president and members of the council retiring as aforesaid, or any of them, shall be eligible for re-election.

Fresh election at the end of three years.

5. The vice-president shall, in the absence of the president, perform all duties and functions appertaining to the office of the president, and preside at the meetings of the council: Provided that any meeting of such council at which neither the president nor the vice-president shall be present may elect its own chairman.

President of meetings.

6. In case any member of the said council shall die or resign or be absent from the Colony for the space of six months, or be absent from six consecutive meetings of the council, his office shall become vacant. All vacancies occurring under the provisions of this section shall be filled by election at a duly convened meeting of the society, and any member so elected to fill any such vacancy shall be elected to hold office until the expiration of the term during which the person in whose place he shall have been elected would have been entitled to hold office.

In case of office becoming vacant.

7. The president and vice-president shall respectively continue in office for three years, unless during that period he shall die, resign, or cease to be a member of the council, or be absent from the Colony for the space of six months, in any of which cases his office shall become vacant and another member of the council be elected in his room and stead, who shall continue in office until the expiration of the term during which his predecessor would have been entitled to continue in office.

Duration of office of elected President, &c.

8. The said council shall have power from time to time at their meetings, to be held at the times and places to be directed by the bye-laws of the society, to appoint and elect in the manner to be directed by such bye-laws, such persons as they shall think fit, being attorneys or notaries practising within the said Colony, or being persons who shall have so practised and shall have voluntarily retired from such practice (not being barristers or advocates), to be members of the society.

Who eligible to be elected members of the society.

9. In case any member of the society shall in consequence of the order of any Court of competent jurisdiction be rendered incapable by reason of mal-practice or other professional misconduct of practising in the Courts of Justice of this Colony or any of them, or as a notary in this Colony, such person shall forthwith cease to be a member of the society.

Who shall cease to be members.

10. Subject and without prejudice to the powers hereinafter vested in the general meetings of the society, the council shall have

Powers of the council.

No. 27—1883.

the sole and entire management of the society and of the income and property thereof for the uses, purposes and benefit of the society, and shall have the sole and exclusive right of nominating and appointing a secretary, treasurer, librarian, lecturer, and such other officers, clerks, attendants and servants as they may deem necessary or useful to the society, and of removing them if they shall think fit, and shall prescribe their respective duties: And it shall and may be lawful for the council or any three or more of them to assemble and meet together as often as they shall think fit until the passing of the bye-laws of the society, and from and after the passing of such bye-laws, at such times and places as shall be directed by the said bye-laws, and from time to time to do all such acts as shall appear to them or the majority of the council then present necessary or fitting to be done in order to carry into full operation and effect the object and purposes of the society: Provided always that the same be not inconsistent with or repugnant to this Act or any existing bye-law, ordinance, or regulation made, ordered, or agreed upon at any special general meeting of the society, or the laws and statutes of this Colony.

Bye-Laws.

11. At any general meeting it shall and may be lawful for the members of the society, or such of them as shall be then present, to ordain and make such and so many bye-laws, rules, orders and ordinances as to them or the major part of them shall seem necessary, convenient and proper for the good government of the society and of the members and affairs thereof, and the manner in which any vacancy in the council shall be supplied, and for regulating the times and places at which meetings of the council shall be held, and the manner of appointing or admitting persons to be members of the society, and of removing or expelling members from the society, and for convening the ordinary or any special meetings of the members, and for establishing, maintaining, and regulating the use of a law library, and generally for carrying out the objects for which the society is founded, with reasonable penalties and fines to be contained in such bye-laws on the offenders for non-performance of or for disobedience to the same, and the said bye-laws, rules, orders, ordinances, penalties and fines, or any of them, from time to time to alter, change or annul as the said general meeting shall think requisite; provided all such bye-laws, rules, orders, ordinances, penalties and fines be reasonable and not repugnant or contrary to the laws or statutes of this Colony, and provided they be approved by the Attorney-General for the time being.

When first general meeting to be held.

12. A general meeting of the members of the society shall be held within three calendar months after the election of the first president, vice-president and council, for the making and ordaining of bye-laws, rules, orders and ordinances for the government of the society; and an annual meeting shall thereafter be held at Cape Town in the month of June in every year, or as soon there-

Annual meeting.

after as conveniently may be, for the said purposes and for other purposes of the society; and other meetings shall be held from time to time as occasion shall require. All meetings, other than the annual general meetings of the members of the society shall be held at such times and places as shall be determined by the majority of the members of the society present, in person or by proxy, at meetings held for the purpose of deciding when and where such meetings shall be held: Provided that members not present shall have the right to vote by proxy on the question of the time when and the place where such meetings shall be held.

13. At all general meetings the president of the society, if he shall be present, and if not, then the vice-president, and in the absence of the president and vice-president then some one of the members of the council to be chosen by the council, and in the absence of the president, vice-president, and all the members of the council, then some member of the society, to be chosen at the meeting shall preside as chairman.

14.(1) Subject to the exemptions allowed by this Act or by regulations made under the authority thereof, no person shall, after the taking effect thereof, be admitted to practise as an attorney or notary, except upon production to and registration with the council and the Registrar of the Court to which application for admission shall be made of a certificate of having passed one of the examinations in law and jurisprudence referred to in the third section of the Act 12 of 1858 of the University of the Cape of Good Hope, and a true copy of all articles of clerkship shall be registered with the council of the society, and a fee of two guineas paid for such registration within three months of the execution of such articles: Provided, however, that nothing in this Act shall apply to the admission or registration of the articles of any person who shall have been articulated with a view to admission as an attorney or notary previous to the taking effect hereof.

15.(1) Such of the provisions of this Act as affect the admission of persons to practise as attorneys shall apply *mutatis mutandis* to persons applying to the Eastern Districts Court or the High Court of Griqualand for admission to practise as attorneys; and all the laws regulating the admission of attorneys in the Supreme Court shall apply to persons seeking to be admitted as such in the Eastern Districts Court or the High Court of Griqualand, and anything repugnant to or inconsistent with the said provisions in any existing Proclamation, Ordinance, or Act contained shall be, and the same is hereby repealed. Subject to such exemptions as are in this Act mentioned, no person applying after the taking effect of this Act to the Supreme Court, or the Eastern Districts Court, or the High Court of Griqualand for admission as an

No. 27—1893.

Proxies.

Who to preside,

Before admission as attorneys all candidates must pass one of the University Law Examinations.

Provisions to apply to candidates for admission to E.D. Court and High Court of Griqualand.

No. 27—1888.

attorney shall be entitled to an order for such admission until he shall have lodged with the Registrar of such of the above mentioned Courts as he shall apply to, a certificate from the council of the society of his having duly complied with the provisions of the fourteenth section hereof, or those hereinafter in the eighteenth section mentioned.

Fees for certificate from society.

16. For every certificate lodged with or obtained from the said council, the person to whom the same refers shall pay to the society such fees⁽¹⁾ in respect of the same as may from time to time be determined by regulations, to be made by the council in accordance with the provisions of this Act: Provided that such fees shall not exceed the sum of one guinea.

In what cases certificate not required.

17. A certificate of having passed the examination prescribed by section XIV of this Act shall not be required from any person exempted by the tenth section of the Solicitors' Act, 1877, of the Imperial Parliament (40 & 41 Vic., Chap. 25).

Attorneys, &c., of United Kingdom not required to produce council's certificate.

18. No person practising or entitled to practise in the United Kingdom of Great Britain and Ireland, as attorneys, or solicitors, or writers to the signet in Scotland, shall be required to produce a certificate of having passed the examination prescribed by the fourteenth section of this Act, but every such person shall produce to and register with the council of the society sufficient proof of his legal authority to practise in England, Scotland, or Ireland and shall, upon payment of the fee as provided for in the sixteenth section hereof, obtain a certificate from the council and lodge the same with the Registrar of the Court as provided in the fifteenth section hereof.

Existing rules, &c., as to such attorneys, &c., to continue.

19. Save as in the eighteenth section hereof appears nothing in this Act shall affect the acts, rules and regulations now in force respecting the admission of English, Scotch and Irish solicitors and writers to the signet to practise in the Courts of this Colony.

Notice of application to admit, suspend, &c., attorneys to be given to council.

20. Due notice shall be given to the council of the society of all applications to the Court to admit, suspend, or strike off the roll any attorney or notary, and the society shall be entitled to appear and be heard either in opposition to or in support of any such application.

Proceedings in regard to any member of society suspected of misconduct.

21. If it shall appear to the council, or be represented to them by a requisition in writing signed by two or more members of the society, that there is reason to suppose that any member of the society has been guilty of conduct which in the absence of satisfactory explanation would render him unfit to remain a member of the society, the council shall send to such member a statement in writing of the conduct imputed to him, and shall appoint a special meeting of the council for the consideration of the subject. At least twenty-one days' notice of such meeting shall be given to such member in order that he may be present and be heard if he

¹ See § 3 Act 30, 1892 and § 6.

shall think fit. If at such meeting or any adjournment thereof the council shall be of opinion that such member ought to be excluded from the society, they shall state their opinion thereon in the form of a report to be laid before a special general meeting of the society, and such member shall be liable by the order and resolution of the majority of such meeting to be excluded from the society, and immediately upon such order or resolution being passed he shall cease to be a member thereof. But no order shall be made at any such meeting for the exclusion of any member unless ten members at least shall be present at the time appointed for the chair to be taken at such meeting, or within half an hour afterwards. But it shall be competent to call another meeting to consider the same question of the expulsion of such member.

No. 27—1883.

22. If the council shall become cognizant of any professional or alleged professional misconduct of any attorney or notary, whether such attorney or notary be a member of the said Law Society or not, after due examination into the circumstances, and in case there is in their opinion, or in the opinion of a majority of them, a *prima facie* case against such attorney or notary, it shall be incumbent on the president, on behalf of the said society, to bring the circumstances to the notice of the Supreme Court by application thereto for the striking off the rolls or other punishment of the accused party, of which due notice shall be given to him, and the members of such council in the *bona fide* exercise of their duty and discretion herein shall not be liable to any action or suit for damages for defamation of character, libel, or any other cause at the hands of any party against whom any such application shall have been unsuccessfully made.

In case of attorneys, &c., not members of the society.

23. The Eastern Districts Law Society, as now established under articles of association of 15th January, 1883, shall within three months after the passing of this Act file and register in the office of the Registrar of the Supreme Court, a true and correct copy duly certified by the president of the said society of said articles of association; and any other Law Society hereafter to be established within this Colony, shall in like manner, within three months after the execution of the like or similar articles of association, file the same with the Registrar of the Supreme Court, and any amendments or alterations made and agreed to, from time to time, of such articles of association, under the authority thereof, shall in the like manner, be filed and registered in the said office of the Registrar of the Supreme Court.

Provisions in regard to the "Eastern Districts Law Society."

24. The president of the Eastern Districts Law Society, and of any other Law Society now established, or hereafter to be established within this Colony, under similar articles of association, shall, *ex-officio*, be members of the council of the said society by this Act established.

President thereof to be *ex-officio* member of this society.

25. Nothing in this Act contained shall be taken to affect the constitution and object of the Eastern Districts Law Society as

Constitution of E. D. Law Society not affected by this Act.

- No. 28—1883. now established, or the constitution and object of any other Law Society to be hereafter established within this Colony, under similar articles of association.
- Short title. 26. This Act may be cited for all purposes as “The Incorporated Law Society Act, 1883.”

No. 28—1883.]

[September 27, 1883.]

ACT

To Amend and Consolidate the Laws regulating the Sale of Intoxicating Liquors ⁽¹⁾

Preamble. WHEREAS it is expedient to amend and consolidate the laws regulating the sale of intoxicating liquors: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. The laws mentioned in the first schedule to this Act, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed except as to offences committed against, or proceedings commenced or pending under any of such repealed laws, and except as to subsisting licences which shall during the interval between the coming into operation of this Act and the expiration of such licences respectively, be deemed and judged of in respect of the sales and dealings which they shall be held to authorise, and the liabilities which the holders thereof shall incur, as if the said repealed laws still remained in force.

Exemptions from operation of this Act

2. Nothing in this Act shall apply
- (1) To any person selling any spirituous or distilled perfume or perfumery;
 - (2) To any apothecary, chemist, or druggist who may administer or sell any spirituous, distilled, or fermented liquors, for medicinal purposes;
 - (3) ⁽²⁾ To any person engaged in agriculture who may sell, upon the property occupied by him, intoxicating liquors in quantities of not less than seven gallons at one time, such liquors being the produce of grapes or other fruits respectively of his own growth or purchased or procured by him: Provided that such liquors shall be distilled or made upon such property and shall not be drunk or consumed on his premises.
 - (4) To any such person as in the last preceding sub-section mentioned, who may sell any liquors, being such procured as aforesaid, upon any public market, or to any licensed dealer;

¹ See Acts 44, 1885; 38, 1887, schedules 1 and 2; 42, 1887; 25, 1891; 22, 1894; 25, 1894, Part VI.

² Re-enacted by Act 25, 1891, § 27.

- (5) To any sheriff, messenger, or other officer acting under the authority of any Court, Judge, or Magistrate; or to any officer of Customs, in the exercise or discharge of his duty;
- (6) To any auctioneer selling by auction liquor in quantities not less than such as are authorised to be sold under a wholesale licence belonging to a licensed dealer upon the licensed premises of such dealer, or belonging to any such person as is mentioned in sub-section (3) upon the property occupied by such person
- (7) Any person appointed by the President of the Legislative Council and the Speaker of the House of Assembly, as caterer of the refreshment rooms of the Houses of Parliament, who shall sell any spirituous or other liquors, subject to such rules and conditions as may be laid down by the Joint Refreshment Room Committee of the Council and Assembly respectively. (1)

3. In this Act, if not inconsistent with the context :

“Intoxicating liquor” or “liquor” means any spirits, wine, ale, beer, (2) porter, cider, perry, or other fermented, distilled, spirituous or malt liquors of an intoxicating nature, and every drink with which any such liquor shall have been mixed.

“Licence” means any licence for the sale of liquors granted under this or any other Act now or hereafter to be in force relating to the sale of such liquors.

“Licensing Court” or “Court” means the Licensing Court of the district wherein a licence is intended to take effect.

Interpretation clause.

LICENCES.(3)

4. The licences authorised to be granted under this Act shall be issued by the distributors of stamps, respectively, in Cape Town, and in the several districts of the Colony, and such distributors shall, in regard to the issue of such licences, and any privileges allowed or granted to the holders thereof, to be noted or endorsed upon any licence, conform to the provisions of this Act, and any regulations to be made by the Governor relating to the performance of their duties under this Act.

Licence to be issued by Distributor of Stamps.

5. For or in respect of licences granted or renewed, or transfers or removals of licences or privileges allowed to the holders of licences under and in terms of this Act there shall be payable and paid to the Public Treasury such sums of money to be collected by means of stamps as are prescribed in the second schedule hereto.

Fees for licences as in Schedule II.

6. Licences under this Act may be granted of the several descriptions following, that is to say :

Description of Licences.

¹ Printed as amended by § 2 Act 44, 1881.

² Kaffir beer. See § 31 Act 25, 1891.

³ See § 6 Act 38, 1887.

No. 28—1883.

- (1) Wholesale Licences.
- (2) Retail Licences.
- (3) Bottle Licences.
- (4) Temporary Licences.
- (5) Club Licences.

Definitions and provisions in regard to licences.

7. In regard to licences granted under this Act the following definitions and provisions shall apply :

- (1) A "wholesale licence" shall authorise a dealer to sell and deliver liquors in quantities of not less than five gallons if in cask, or one unbroken case containing not less than twelve reputed quart, or twenty-four reputed pint bottles, to be delivered at one time, such liquors not to be consumed in or upon the seller's house or premises.
- (2) ⁽¹⁾ A "retail licence" shall authorise the sale of liquor in any quantity on the premises therein specified between the hours of six in the morning and nine at night on any day other than Sunday, Christmas Day, and Good Friday; or between such other hours as may be fixed by the Licensing Court under the provisions of this Act; such liquors according to the conditions of the licence to be consumed in or upon the seller's house or premises, or otherwise.
- (3) [Repealed by Act 25, 1891, § 1.]
- (4) A "temporary licence" shall authorise the dealer, being also the holder of a retail licence, to sell liquors by retail at any place of recreation or public amusement for the period stated therein, subject to such restrictions and conditions as the Resident Magistrate authorising the issue of the same shall think fit.
- (5) ⁽²⁾ A "club licence" shall authorise the sale and supply of liquor in any quantity to the members of a club, at any time, for consumption on the premises; provided that no place of accommodation, entertainment or refreshment shall be considered a club where others than members or the invited guests of such members are allowed entry or accommodation, or where others than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein.

Who disqualified from obtaining licences.

8. No licence shall be granted or transferred to any person or to the wife of any person
- (1) Holding office or appointment under Government ;
 - (2) Occupying premises of which any constable or member of a police force is the proprietor or landlord, or in which such constable or member has any interest ;

¹ See § 4 Act 25, 1891.

² See Act 44, 1885, §§ 4, 5.

- (3) Convicted of selling liquor without a licence until after a period of one year subsequent to the date of such conviction ;
- (4) Licensed to sell or otherwise deal in diamonds or keeping a native eating-house in any district in which the Diamond Trade Act of 1882 is or shall hereafter be in operation.

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

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

10. Club licences may be obtained at any time upon application to the distributors of stamps, in the district in which the club premises are situated.

Club licences.

Every club licence shall be issued to the chief manager or steward of the club. No transfer of any such licence shall be necessary upon any change of any such manager or steward, but the person for the time being holding any such office shall be entitled to the privileges granted by the licence, and subject to all duties and liabilities imposed upon the holder thereof.

11. No certificate from a Licensing Court shall be required in respect of the granting of the following licences :

When certificate of licensing court not required.

A wholesale licence for the sale of liquors in any municipality or in any town or village which is the seat of a Court of Resident Magistrate : or

A licence for the sale of liquors at any railway refreshment room : or

A temporary licence : or

A club licence.

WHOLESALE LICENCES. (1)

12. Any person may upon application to the distributor of stamps obtain a wholesale licence for the sale of intoxicating liquors within the limits prescribed for any municipality, or within the limits of any town or village which shall be the seat of a Court of Resident Magistrate : and for the purposes of this section the limits of any such town or village, not being a municipality, shall if defined for the purposes of the "Villages Management Act, 1881," be such limits, and if not so defined, shall be deemed to be a circle of two miles in diameter, having the court-room of the Resident Magistrate's Court for its centre.

Within short limits wholesale licences to operate.

13. No wholesale licence for the sale of liquors beyond the limits of any municipality or of any town or village as in the preceding section defined, shall be granted except upon the certificate of a Licensing Court, as in this Act provided.

Certificate when licence is for place beyond Municipality, town or village.

¹ See § 10 Act 38, 1837.

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Company-s.

14. Wholesale licences may be issued in the name of a company or co-partnership where two or more persons carry on business as a company or co-partnership in the same house or premises.

Number of whole-
sale stores within
two miles, unlimited.

15. Any person holding a wholesale licence may store any liquors in any number of stores or places approved of by the Resident Magistrate and described in or endorsed upon the licence, but no one of such stores or places shall be distant from any other such stores or places more than two miles.

Auctioneers.

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

LICENCES ON RAILWAYS.

Conditions on which
licences to be issued
for railway refresh-
ment rooms.

17. Licences for the sale of intoxicating liquors at any railway station refreshment room, upon property owned or occupied by the Government of the Colony for railway purposes, shall be granted, and shall be obtainable upon and subject to the conditions following :

- (1) The lessee or occupier may apply in writing to the Commissioner of Crown Lands and Public Works, or any officer of the railway department whom the said Commissioner may appoint for that purpose, for a certificate to obtain a licence.
- (2) The said Commissioner or such officer may, if he sees fit, issue a certificate authorising the grant of a retail licence by the proper stamp officer to the applicant for any period not exceeding one year to expire on the thirty-first day of March next after issue.
- (3) Every licence so granted shall be renewable by the like authority for any period not exceeding one year.
- (4) Any licence so granted may be transferred by the authority of the said Commissioner or such officer as aforesaid.
- (5) [Repealed by Act 25, 1891 § 24.]
- (6) Any licence granted under the authority of any such certificate may at any time be cancelled by the said Commissioner.
- (7) For or in respect of any such licence issued for a year there shall be paid such sum as is prescribed by the said second schedule, and for any period less than a year one-twelfth of the said sum for every month for which or the part of which the said licence is granted.

TEMPORARY LICENCES.

Place of recreation.

18. Any person being the holder of a retail licence may apply to the Resident Magistrate for a certificate authorising the distributor of stamps to issue a temporary licence for the sale of liquors at any place of recreation or amusement.

What Magistrate's
certificate must specify.

19. The Resident Magistrate to whom any such application shall be made may, if he shall see fit, grant a certificate wherein shall

be stated the name of the applicant, the place where such temporary licence is to be granted, the number of days during which sales are authorised, and such restrictions and conditions as such Magistrate may impose: the time mentioned in any such certificate may be extended, but the licence shall not endure for longer than twenty-one ⁽¹⁾ days in all.

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NATIVE LOCATIONS AND AREAS.

20. No licence shall be issued for the sale of liquor within the limits of any native location established or to be established under the provisions of the "Native Locations Act, 1876," or the "Native Locations Amendment Act, 1878," or any Act hereafter to be passed for regulating native locations except with the permission of the Governor.

No licence in Native Locations without permission of Governor.

21. In districts where aboriginal natives of South Africa are located or resident, or are congregated upon public or other works or mines, the Governor may define areas within the limits of which it shall not be competent for any Licensing Court to authorise the grant of a licence for the sale of liquor except with the permission of the Governor. Any licence issued in contravention of this and the last preceding section shall be void.

Governor may define area within which no licence shall issue.

22. Save and except as to any liquor administered medicinally no person shall sell, supply, or give to any aboriginal native any liquor within the limits of any native location or area proclaimed as aforesaid. Any person who shall sell, supply, or give liquor in contravention of this section shall be liable upon conviction to the same penalties and forfeiture of licence, respectively, as are provided for selling liquor without a licence.

Liquor not to be supplied to Native Locations, &c.

RESTRICTIONS UPON THE ISSUE OF NEW LICENCES.

23. ⁽²⁾ The voters registered for the election of members of Parliament within the limits of any field-cornetcy, municipality, or place where the "Villages Management Act, 1881," is in operation, or, where a municipality is divided into wards, within the limits of any ward, may not less than four days before the annual meeting of the Licensing Court lodge with the Resident Magistrate of the district in which such voters reside, a memorial or memorials objecting to the increase of the number of licensed premises for the sale of liquor under any retail licence or bottle licence or under licences of both descriptions within the limits of such field-cornetcy, municipality, or place, or ward of a municipality as the case may be.

How objections to increase of licences, be made.

24. ⁽³⁾ With respect to every such memorial the following provisions shall apply:

(1) It may be in the form marked A in the third schedule, or to the like effect.

What provisions applicable.

¹ Printed as amended by Act 41, 1885, § 6.

² See § 12, Act 41, 1885.

³ See § 14 Act 25, 1891.

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- (2) It shall contain the name in full of every voter signing the same, corresponding to the name as registered on the list of registered voters, and his place of residence or business.
- (3) Annexed or appended to such memorial there shall be a declaration signed by the person by whom the signatures were collected in the form as nearly as is material marked B in the said third schedule.

False representations, &c.

25. (1) Any person who shall
- (1) Falsely append the name of any other voter to any such memorial; or
- (2) Make any declaration in form or in substance corresponding to the form marked B in the third schedule containing any wilfully false statement,

shall be liable, upon conviction, to a penalty not exceeding fifty pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months, or to both such penalty and such imprisonment.

Magistrate to strike off names not being those of registered voters.

26. (1) The Resident Magistrate receiving any such memorial shall cause the names appearing thereon to be compared with the list of registered voters, and he may strike off therefrom any names which are either illegible, or do not appear in the list of registered voters, or do not correspond with any name in such list, and shall ascertain and certify the number of names of registered voters appearing properly to be appended to such memorial: Provided that any person whose name has been so struck off may appear in person before the Resident Magistrate, or before the Licensing Court, and upon satisfying such Magistrate or court that he is a registered voter, and signed the said memorial, his name may be restored: and any person may, in like manner, appear and have his name withdrawn, or, if forged or improperly appended, struck off.

Majority required to prevent increase of licences.

27. If it shall appear that such a majority (as hereinafter mentioned) of the voters registered within the limits of the field-cornetcy or other locality in question object to the grant of any new licence increasing the number of licensed premises as aforesaid, then it shall not be competent for the Licensing Court to grant any certificate which shall have the effect of increasing the number of licensed premises of the description referred to in the memorial or memorials

- (1) During one year then ensuing, if such majority shall exceed one-half of the voters then registered within such limits.

LICENSING COURTS.

Licensing Court.

28. A court for the consideration and determination of applications for or relating to the granting, renewal or transfer of

licences for the sale of intoxicating liquors is hereby constituted, and shall be held in and for each district of the Colony.

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Such court shall consist of

Constitution thereof.

- (1) The Resident Magistrate, or in the absence of the Resident Magistrate, the Assistant Resident Magistrate (if any).
- (2) The Mayor, or chairman of any or each municipality within the district, unless disqualified under the provisions of this Act and in case any such Mayor or chairman shall be disqualified, the council or commissioners of the municipality may elect one of their number instead.
- (3) Three members of the Divisional Council (1) of the division which includes such district, to be chosen in the manner provided by this Act.
- (4) Such Justices of the Peace, not being more than two in number, as the Governor may appoint to be members: Provided that no Justice of the Peace being in the Civil Service shall be so appointed, or shall continue to be a member if he shall enter the Civil Service after appointment.

29. The following persons shall be disqualified for election or appointment, or if elected or appointed, of continuing, as members of a Licensing Court, that is to say:

Who disqualified from being members of licensing court.

- (1) The holder of any licence for the sale of intoxicating liquors.
- (2) Any brewer or distiller, other than an agriculturist distilling only from fruit the produce of his own property or purchased by him.
- (3) Any person interested or concerned in partnership with any holder of such licence as aforesaid, or with any brewer or distiller.
- (4) Any paid officer, or agent of any co-partnership or society interested in the sale or the prevention of the sale of intoxicating liquors.
- (5) Any person employed, directly or indirectly, as an agent for the purpose of making application for a licence for any other person, or any partner of any person so employed as an agent.

And no person being the owner or landlord of, or the agent or manager of or a partner in, any trade or calling carried on upon any premises licensed or about to be licensed, or the holder of any mortgage bond upon such premises, shall take part in the discussion or adjudication upon any application for or relating to any licence for such premises.

Any person so disqualified acting or sitting as a member of a Licensing Court shall be liable to a penalty not exceeding fifty pounds for every offence.

Penalty.

¹ See § 61 Act 25, 1894.

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Divisional Council
to elect three mem-
bers of court.

30. Before the last day of February in every year, and as often as a vacancy shall occur, the Divisional Council of the division which includes one or more districts may at a duly convened meeting thereof, by a majority of the votes of the members present elect three members of such council to be members of the Licensing Court for the district, or three members for each district in case more than one district shall be included in such division.

Annual appoint-
ment of J. P.'s as
members.

31. The Justice of the Peace to be appointed members of the Licensing Court by the Governor as aforesaid shall be appointed annually, or on the occurrence of any vacancy.

Duration of office.

32. Every member of the Divisional Council so elected, and every Justice so appointed as aforesaid, shall hold office until the last day of December in the year in which he is appointed, unless his office shall be vacated by death, resignation, ceasing to be a member of such council, or Justice of the Peace, or to reside in the division or district, as the case may be.

Days of meetings
of the court.

33. A meeting of the Licensing Court open to the public shall be held in each district on the first Wednesday in the months of March and September in each year, for the purpose of taking into consideration all applications for the granting of such licences as require a certificate from such court, to authorise their issue, and for the renewal, transfer or removal of any licences for or in respect of which proper notice shall have been given.

The meeting to be held in the month of March shall be the "annual licensing meeting."

Quorum.

34. Three members of a Licensing Court shall form a quorum for the dispatch of business.

Adjournment in
absence of quorum.

If a quorum be not present at any licensing meeting on the day appointed or advertised, or at any adjournment of a meeting on the appointed day, the said meeting or adjournment shall stand adjourned from day to day until a quorum can be present to hold such meeting.

Adjournment gen-
erally.

35. Any meeting of a Licensing Court may be adjourned from time to time as such court may determine.

President of court.

36. The Resident Magistrate shall, if present, preside at every meeting of the Licensing Court; in the absence of the Resident Magistrate, the Assistant Resident Magistrate (if any) shall preside; and in case there shall be no such Assistant Magistrate present, the members present shall elect one of their number to preside.

The officer or person presiding shall in case of an equality of votes have a casting as well as a deliberative vote.

Lists of certificates
to be sent to distri-
butor of stamps.

37. The Magistrate or member presiding at any meeting of the Licensing Court shall, within seven days, cause to be forwarded to the Treasurer of the Colony and the distributor of stamps of the district, a list signed by him specifying the names and places of residence of all persons to whom certificates shall have been granted by the court for obtaining or renewing licences, and the nature of the licence authorised to be granted or renewed.

38. The Licensing Court may, as a condition of the granting of any retail licence, require that the holder thereof shall, during the continuance of his licence, provide for the accommodation of travellers such number of rooms and stabling for such number of horses as such court may deem necessary for the convenience of the public: and may also require such holder to make provision for sufficient means of egress in case of fire, and for proper drainage and sanitary arrangements and conveniences upon the licensed premises.

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Power to insist on accommodation for travellers.

39. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting grant to the holder of any retail licence, on payment of such additional sum as may be prescribed in that behalf, an extension of the time prescribed for the sale of liquors until not later than twelve o'clock at night, or authority to keep open his licensed house during such hours of Sunday (¹), Christmas Day, or Good Friday as such court shall think fit for the refreshment of *bonâ fide* travellers. Such extension or authority shall respectively be termed "Midnight privileges" and "Sunday privileges."

"Midnight" and "Sunday" privileges.

40. When any Licensing Court shall deem it necessary to take evidence respecting any question to be determined by such court, such evidence shall be given on oath (which oath the person presiding is hereby authorised to administer) and shall be filed of record in the office of the Resident Magistrate of the district.

Evidence before court on oath.

41. If any person shall, upon any examination before any Licensing Court, wilfully and corruptly give false evidence, such person shall be deemed and taken to be guilty of perjury.

Perjury.

APPLICATIONS FOR OR RELATING TO LICENCES.

42. On or before the last day of the months of January and July any person desiring to obtain at the next licensing meeting

When and how applications for licences to be made.

A wholesale licence in respect of the issue of which a certificate is required from the Licensing Court: or

A retail licence in respect of the issue of which such certificate as aforesaid is required: or

A bottle licence: or

The renewal of any licence: (²) or

The removal of any licence from the licensed premises to any other premises in the same district: or

The transfer of a licence by the holder to any other person, may make application, in writing, addressed to the Resident Magistrate of the district setting forth the nature or description of the licence required to be obtained, renewed, removed or transferred, as the case may be, and of the place, stating the number or name (if any) of the house, and the street or road where the business is intended to be or is being carried on, or in case of the transfer of

¹ But see Act No. 44, 1885, § 1 and 7.

² Printed as amended by § 5, Act 25, 1891.

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a licence the name of the person to whom the same is desired to be transferred.

Magistrate to post notice of applications.

43. The Resident Magistrate receiving any such applications as are in the last preceding section mentioned shall cause a notice to be posted in some conspicuous place at or in his office and to be published in some newspaper circulating in the district in which the court is held, containing the name of the applicant, nature of the application, description of the premises referred to in the application, the day on which and the place where the court will sit for hearing such application.

Such notice shall be posted and published fourteen days at least before the sitting of the said court, and a copy thereof shall be sent by post or otherwise to every member constituting such court: Provided that no licence authorised to be granted by any such court shall be capable of being questioned by reason that any such notice was not duly posted, published, or sent as aforesaid.

Cases in which Attorney-General may authorise applications not made in proper time to be considered.

44. In case any application for the granting, removal, renewal, or transfer of any licence which ought, under the provisions of this Act, to have been made on or before the last day of January or July, as the case may be, shall through inadvertence not be made in due time, but shall be made within ten days after the appointed day, the Attorney-General may, if he shall see fit, authorise the consideration of such application by the Licensing Court at the next meeting or any adjournment thereof, upon condition of payment in case the application shall be granted or allowed of such sum as the Attorney-General may determine, not being less than five pounds, and upon such terms, as to notice to be given, as the said Attorney-General may prescribe.

Such sum of money shall be denoted by stamps, to be affixed to the licence, issued and cancelled as by law required.

In case of death, &c., of licensed person.

45. In case the applicant for any licence shall die, or shall become insolvent after applying for the grant or renewal of a licence, but on or before the day for considering such application by the Licensing Court, such court may, if it shall think fit, grant a certificate for such licence to the widow of any deceased applicant, or to the executor, curator bonis, or trustee, as the case may be, of the estate of such applicant.

Who may object to licences or renewals.

46. Any chief constable or member of a police force, and any person residing in the city, town, village, or field-cornetcy wherein a licence or a renewal of a licence is applied for, may object in writing or personally at any meeting of a Licensing Court to the granting or renewal of such licence.

OBJECTIONS.

What objections may be made.

47. The objections which may be taken to the granting of a licence may be one or more of the following:

- (1) That the applicant is of bad fame or character, or of drunken habits, or has previously forfeited a licence, or

- has been convicted of selling liquor without a licence within a period of three years; or
- (2) That the premises in respect of which the application is made are out of repair, or have not reasonable accommodation.
 - (3) That the licensing thereof is not required in the neighbourhood, or that the premises are in the vicinity of a place of public worship, hospital, school or native location, or that the quiet of the place in which such premises are situated will be disturbed if such licence is granted.
 - (4) That the number of previously licensed premises is sufficient for the requirements of the neighbourhood.

48. The Licensing Court may of its own motion take notice of any matter or thing which in the opinion of the members thereof would be an objection to the granting of a licence, or to the renewal, transfer or removal of a licence, although no objection has been made by any person.

Cases in which court may itself raise objections.

In any such case the court shall inform the applicant, and shall adjourn the further consideration of the application, should the applicant so request, for any period not less than four days in order that the person affected by such objection may be offered an opportunity of replying thereto.

The court shall after any such adjournment give notice in writing, signed by the president, of the cause of objection to the person affected thereby, and of the day on which the adjourned application will be considered.

49. The council or commissioners of any municipality or the board of management of any village or community in which the "Villages Management Act, 1881," is in operation, may authorise any person to appear before the Licensing Court for the purpose of objecting on behalf of the inhabitants to the granting or renewal of a licence in such municipality, village or community, as the case may be.

Municipalities and Village Boards may object.

RENEWAL OF LICENCES.

50. [Repealed by Act 25, 1891, § 5.]

51. [Repealed by Act 25, 1891, § 5.]

52. The objections that may be taken to the renewal of any licence may be all or any of the following:

Objections to renewals.

- (1) That the applicant is of bad fame and character, or of drunken habits.
- (2) That the licensed premises are out of repair, or are not kept in a clean and wholesome state.
- (3) That the business is conducted in an improper manner and drunkenness permitted upon the licensed premises.
- (4) That the conditions upon which the licence was granted have not been satisfactorily fulfilled.
- (5) That a licensed place is no longer required in the neighbourhood.

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Notice of objections to be lodged.

53. In case of objections to the renewal of any licence, the persons objecting shall cause notice of the intention to object and grounds of objection to be given to the applicant at least two days before the sitting of the Licensing Court. If such notice shall not have been given, such court may notwithstanding, if it see fit, adjourn the hearing of the application to a future day, and require the attendance of the holder of the licence on such day, and may then consider the objections and determine thereon.

When licence refused for personal reasons.

54. When the renewal of any licence is refused for some reason personal to the licensed person, the Licensing Court may, if it see fit to do so, adjourn to such day not being less than fourteen nor more than thirty days after such meeting.

Application (not being by the person so refused) for a licence of the same description as that refused in respect of the same premises may be heard and determined at such adjourned meeting.

Three months extension to certain persons to whom renewal refused.

55. In case the renewal of a licence held by any person shall be refused by the Licensing Court, and such person shall not during the preceding twelve months have been convicted of any offence against this or any other Act relating to the sale of intoxicating liquors, he shall, upon payment of a proportionate part of the cost of a licence such as then held by him, be entitled to obtain a licence for a period of three months.

TRANSFER AND REMOVAL OF LICENCES. (1)

In case of sale, &c., of licensed premises.

56. (2) Any person being the holder of a licence (other than a temporary or club licence) who shall during the currency thereof sell or dispose of his business or the house or premises in respect of which such licence was granted, may make application to the Resident Magistrate for a temporary transfer of such licence to the purchaser of such business or to the purchaser or lessee of such premises, as the case may be: and such Magistrate, and any two members of the Licensing Court may, if they think fit, and upon proof of payment by the applicant of the sum prescribed for such transfer, by memorandum endorsed upon the original licence, grant temporary transfer of such licence accordingly.

Licensed person removing to other premises.

57. (2) The holder of any licence (except a temporary licence) who may desire to remove his licence from the licensed premises to any other premises in the same district not distant more than one mile, may make application to the Resident Magistrate to authorise such removal: and such Magistrate and any two members of the Licensing Court, if satisfied that to wait for the next meeting of the Licensing Court would subject such holder to serious loss or inconvenience, and if they think fit, may, upon payment of the sum prescribed, authorise such removal after notice of such application shall have been given by advertisement in a newspaper circulating in the district for not less than fourteen days, and in such other manner as may by the said Magistrate and members be

¹ See Act 44, 1885, §§ 8 and 9.² See § 13 sub § (4) Act 25, 1891.

directed; provided that in case objections be made to the removal of the licence to the premises proposed by any person who would be entitled to object to the granting of a licence for such premises, such removal shall not be authorised as aforesaid.

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58. Any person to whom a licence may be temporarily transferred and any person who may be authorised to remove his licence to other premises shall at the next licensing meeting apply for a licence in the same manner as if he were not a licensed person: Provided that if any such application shall be made at the September meeting of the court, and be allowed by such court, an endorsement thereof shall be made upon the existing licence, which shall, subject to such endorsement, be of force during the unexpired term thereof.

Transferees to apply for licence at next Court.

59. Any objections which may be taken to the granting or renewal of a licence may in like manner be taken to the transfer or removal of a licence.

Objections to transfer, &c.

60. In case the temporary transfer of a licence, or the removal of a licence as aforesaid shall not be ratified by the action of the Licensing Court at the next meeting upon consideration of the application then made in respect thereof, such licence shall, as to the person to whom the same was originally granted, or in respect of the premises originally licensed, as the case may be, remain unimpaired.

When transfer or renewal refused.

61. Any person to whom a licence may be temporarily transferred, or who may be carrying on or conducting the business of licensed premises as the widow, or curator bonis, or executor of the estate of any deceased person, or as trustee of the estate of any insolvent, or as approved agent of any such widow, curator, executor, or trustee, shall, until the end of the period for which the licence was granted, possess all the rights and be subject and liable to all the duties, obligations, and penalties of the original holder of the licence.

Holders of temporary licence in same position as person represented by them.

62. In case of the death of the holder of any licence, the widow (if any) or the executor of the deceased person, and failing the appointment of an executor, any curator bonis appointed by the Master of the Supreme Court for taking charge of the estate of such deceased person, or any person approved of by the Resident Magistrate, and in case of insolvency, the trustee of the estate of such insolvent, may carry on the business until the next meeting of the Licensing Court, either personally or by an agent approved of by any writing under the hand of the Resident Magistrate, without any formal transfer of the licence.

Curators, Executors, Trustees, &c.

63. In case of the marriage of any woman who shall have obtained any licence, such licence shall confer on her husband the same privileges, and shall impose upon him the same duties, obligations and liabilities as if such licence had been granted to him originally.

Rights of woman marrying to pass to her husband.

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DUTIES AND LIABILITIES OF LICENSED PERSONS AND OTHERS.

Production of licence.

64. Every holder of a licence under this Act shall produce such licence within a reasonable time after production thereof is demanded by any Resident Magistrate, Justice of the Peace, Excise Officer, Chief Constable or member of any Police Force.

Licensed persons to have name, &c., painted in front of his premises.

65. Every licensed person, except the holder of a temporary licence or club licence, shall cause to be painted and fixed, and shall keep painted and fixed on the front of the premises in respect of which his licence is granted, in a conspicuous place, and in letters two inches at least in length, his name, with the addition of the word "licensed," and of words sufficient to express the business for which the licence has been granted. No person who is not licensed shall have any words or letters on his premises importing that he is licensed, and no licensed person that he is licensed in any way other than that in which he is duly licensed.

Lamp may be ordered to be kept.

66. The Licensing Court may, if it shall see fit, require the holder of any retail licence in any city, town, or village to keep a lamp affixed over the door of the licensed premises, or within twenty feet thereof, and lighted during such hours as such court shall determine.

Penalty for not providing stipulated accommodation for travellers.

67. The holder of every retail licence which shall have been granted on the condition of providing accommodation to travellers, who shall fail or refuse, except for some sufficient reason to be judged of by the Resident Magistrate, to supply lodging, meals or accommodation to travellers, shall, for each offence, be liable, on conviction, to a penalty not exceeding ten pounds.

Price of liquor consumed on premises cannot be sued for.

68. No person shall recover any sum of money or maintain any suit at law on account of any liquor sold by him on credit to any person for consumption on the premises, except in the case of liquor supplied in moderate quantities with meals to any person actually lodging with such first mentioned person.

Pledges forbidden.

69. No person shall receive in payment, or as a pledge or security for any liquor or entertainment supplied in and from his licensed premises, anything except current money, or cheques on bankers, or orders for payment of money.

Penalty.

The person to whom anything pledged in contravention of this section shall belong shall have the same remedy for recovering any such thing, or the value thereof, as if it had not been pledged.

No payment in advance.

No person shall receive payment in advance for any liquor to be supplied: Any payment so made in advance may be recovered, notwithstanding that any liquor may have been supplied subsequently to such payment.

Duties of Police.

70. ⁽¹⁾ It shall be the duty of the chief constable or chief officer of the police to report to the Licensing Court any licensed premises which are out of repair, or have not reasonable accommodation, or proper or sufficient sanitary or drainage requirements and any case

¹ See § 9, Act 25, 1891.

in which the holder of a licence shall be of drunken habits, or shall keep a disorderly house.

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71. (1) Any chief constable or officer of police, or any constable or policeman authorised in writing by the Resident Magistrate, chief constable, or police officer, may, during the hours for which the premises are licensed, enter on any such premises, and inspect and examine every room and part of such premises, for the purpose of reporting, as in the last preceding section is required, as to the state and condition of the premises.

Right of entry.

72. (1) At every meeting of the Licensing Court, a return shall be laid before such court by the clerk of the Resident Magistrate of the district showing:

Returns to be laid before Licensing Court.

- (1) The name of every applicant for a licence, and of every licensed person who shall, since the previous annual meeting of the court, have been convicted of any crime or offence, the nature of such crime or offence, and the penalty or punishment imposed.
- (2) In case of a previous conviction within three years, the particulars of such previous conviction.

OFFENCES.

73. The holder of any licence who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding ten pounds: that is to say, if he shall

Offences by licensed persons.

- (1) Permit drunkenness, or any violent, riotous or quarrelsome conduct to take place upon his premises.
- (2) Sell liquor to any person already in a state of intoxication or by any means encourage or incite any person to drink liquor.
- (3) Knowingly harbour or suffer to remain on his premises any constable or policeman during any time appointed for such constable to be upon duty unless for the purpose of keeping or restoring order, or in the execution of his duty.
- (4) Suffer any unlawful game or gambling to be carried on on his premises.
- (5) Permit his premises to be a brothel, or the habitual resort or place of meeting of reputed prostitutes.
- (6) Sell or knowingly permit to be sold (2) or deliver, or knowingly permit to be delivered or supplied to any person apparently under the age of fifteen years, any description of liquor (3), or permit or suffer any such person to drink any such liquors (3) upon his premises.

¹ See § 9 Act 25, 1891.

² Printed as amended by Act No. 22, 1894.

³ Printed as amended by Act No. 25, 1891, § 19.

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- (7) Keep his licensed premises open for the sale of liquor, or sell or expose any liquor for sale, during any time when he is not authorised by the licence to sell, or allow any liquors purchased before the hour of closing to be consumed on such premises.

And in the case of a second or subsequent conviction every such holder shall be liable to a penalty not exceeding forty pounds.

Offences generally.

74. Every person who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding twenty pounds: that is to say, if he shall

- (1) Wilfully mix or cause to be mixed with any liquors any injurious, poisonous, or deleterious ingredient or material to adulterate the same for sale.
- (2) Sell or keep or offer for sale any liquor with which any ingredient or material injurious to the health of persons drinking such liquor has been mixed.

Penalties for dealing without licence.

75. (1) Any person who shall contrary to the provisions of this Act sell, deal in or dispose of intoxicating liquors without a licence, or sell or offer, or expose for sale any such liquors at any place where he is not authorised by his licence to sell the same, shall upon conviction be liable to the following penalties, that is to say:

For the first offence a penalty not exceeding twenty-five pounds, and in default of payment being made or security given for the same, to imprisonment with or without hard labour for any period not exceeding three months unless such penalty be sooner paid or levied.

For a second offence a penalty not exceeding fifty pounds, and in default of payment or security as aforesaid being made or given, to imprisonment with or without hard labour for any period not exceeding six months, unless such penalty be sooner paid or levied.

For a third or any subsequent offence a penalty not exceeding one hundred pounds, and in default of payment or security as aforesaid being made or given, to imprisonment with or without hard labour for any period not exceeding twelve months, unless such penalty be sooner paid or levied; or to both such penalty and such imprisonment.

In addition to any other penalty imposed by this section, the convicting Magistrate or Special Justice of the Peace, as the case may be, may in case of a second or subsequent conviction of any person for any offence in this section mentioned, within three years previously adjudge that such person shall, if he be a holder of a licence under this Act, or the holder of a retail shop licence, forfeit such licence, or both such licences if both be held by such person, and that the offender be disqualified from taking out any

¹ See § 64, Act 25, 1854.

other retail shop licence during the remainder of the then current year, and also from holding any licence for the sale of intoxicating liquors for any term of years or at any time.

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76. (1) The holder of any retail licence or bottle licence shall be liable to forfeit such licence

Cases when licence becomes forfeited.

- (1) If he shall permit any other person to manage, superintend, or conduct the business of the licensed premises during his absence for a longer period than one month without the consent, in writing, of the Resident Magistrate.
- (2) If he shall, whether present in such premises or not, permit any unlicensed person to be in effect the owner of the business of the licensed premises, unless with the consent of the Licensing Court.
- (3) If (being the keeper of any inn or hotel) he shall fail to provide and maintain the accommodation required according to the conditions prescribed by the Licensing Court granting such licence.
- (4) If (except in the case of fire, tempest, or other cause beyond his control) he shall allow the licensed premises to become ruinous or dilapidated.
- (5) If he shall permit his premises to be a brothel, or if he shall sell liquor to any person already in a state of intoxication.
- (6) If he shall be twice convicted of selling, offering or keeping for sale any adulterated liquor.
- (7) If he shall be convicted of any offence under this Act, and a previous conviction within the preceding six months of the same or any other offence under this Act shall be proved.
- (8) If he shall be convicted of any crime and sentenced to imprisonment without the option of a fine.

77. In any proceeding relative to any offence under this Act it shall not be necessary to show that any money actually passed, or that any liquor was actually consumed, if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of liquor was about to take place; and proof of consumption, or intended consumption of liquor on licensed premises by some person other than the occupier, or a servant in such premises, shall be evidence that such liquor was sold to the person consuming or about to consume the same by or on behalf of the holder of such licence.

What need not be proved in prosecutions.

If any vendor of ginger or other beer, soda water, lemonade, or the like drinks, not being duly licensed, shall supply liquors to mix or be taken with such drink, he shall be deemed to have sold such liquor.

¹ See also § 11, Act 44, 1885.

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Who may be refused admission to licensed premises.

78. Any licensed person may refuse to admit to or may turn out of the premises in respect of which his licence is granted any person who is drunk, or who is violent, quarrelsome or disorderly, whether drunk or not, and any person whose presence on his premises would subject him to a penalty under this Act, and may refuse to serve any such person with liquor. Any such person, who upon being requested by such licensed person, or his agent, or servant, or any constable or policeman, to quit such premises, refuses or fails to do so, shall be liable to a penalty not exceeding five pounds; and all constables or policemen are required on the demand of such licensed person, agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be reasonably necessary for that purpose.

79. [Repealed by Act 25, 1891, § 22.]

80. [Repealed by Act 25, 1891, § 22.]

Closing during riot, &c.

81. Where any riot or tumult occurs or is expected to occur in any place, the Resident Magistrate, or any two Justices of the Peace, may order any or every licensed person in or near such place to close his premises during any time which such Magistrate or Justices may see fit.

Force may be used.

82. Any person acting by order of any Resident Magistrate or two Justices of the Peace may use such force as may be necessary for closing such premises: Any person resisting or obstructing the execution of any such order, and any licensed person selling liquor in contravention of such order, shall upon conviction be liable to a penalty not exceeding fifty pounds.

Persons found on premises when seizure made, to give name and addresses.

83. Any constable or member of a police force may demand the name and address of any person found on premises in which he seizes or from which he removes any liquor under the provisions of this Act, and if such person shall fail upon such demand to give his name or address, or shall give a name or address which the constable, or other person demanding the same, has reasonable grounds to believe is false, he may apprehend such person without warrant, and take him as soon as possible before a Resident Magistrate or Justice of the Peace. Any such person who fails to give his name and address when so demanded, or gives a false name or address, shall, upon conviction be liable to a penalty not exceeding five pounds.

Penalty.

Evidence of being unlicensed.

84. In any proceeding against any person for selling, or allowing to be sold, any liquors without a licence, such person shall be deemed to be unlicensed unless he shall produce his licence or give other satisfactory proof of his being licensed. The fact of any person not holding a licence having any sign or notice importing that he is licensed upon or near his premises, or having a house or premises fitted up with a bar or other place containing bottles, casks, or vessels, so displayed as to induce a reasonable belief that liquor is sold or served therein, or of there being on such premises

liquor concealed, or more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person.

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85. Any person convicted of contravening any of the provisions of this Act for or in respect of which no penalty is specially provided, shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and when a penalty has been provided for any offence without any period of imprisonment in default of payment thereof then the person convicted of such offence shall be liable

Penalties for contravention of Act.

To imprisonment with or without hard labour not exceeding one month if the penalty do not exceed five pounds; or

To imprisonment with or without hard labour not exceeding three months if the penalty exceed five pounds;

unless such penalty be sooner paid.

JURISDICTION OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE.

86. All offences against this Act shall be cognizable before the Resident Magistrate, or any Special Justice of the Peace within whose jurisdiction such offences shall have been committed, and any such Resident Magistrate or Special Justice of the Peace may impose the penalties respectively by this Act provided.

Magistrates to have jurisdiction.

87. Any Justice of the Peace, if satisfied by information on oath that there is reasonable ground to believe that liquor has been or is being sold or kept for sale at any place, whether a building or not, in which or where such liquor is not authorised to be sold, or in any vehicle, may grant a warrant under his hand by virtue whereof it shall be lawful for any constable or member of a police force at any hour within a time to be stated in such warrant, or if no time be stated, within fourteen days from the date thereof, to enter, and if need be by force, the place or vehicle named in the warrant, and every part thereof, and search for liquor therein, and to seize and remove any liquor found therein which there is reasonable ground to believe or suppose is in such place or vehicle for the purpose of unlawful sale, and the vessels containing such liquor.

Warrants to search.

88. In the event of any person being convicted of selling or keeping for sale any liquor which he is not authorised to sell, any liquor seized under the authority of this Act and the vessels containing such liquor shall be forfeited and sold and the proceeds thereof paid into the Public Treasury.

Forfeiture of seized liquors.

89. The Resident Magistrate of any district may by an order in writing, forbid the selling of liquor to any person who

Power to forbid selling by licensed persons.

shall within the space of three months have been thrice convicted of drunkenness, or, who having been twice so convicted shall also have been convicted of assault;—or

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By excessive drinking of liquor, misspends, wastes, or lessens his estate, or greatly impairs his health, or endangers the peace of his family.

Every such order shall be in force during such time as the said Magistrate may determine, not however exceeding twelve months, in the district wherein the same was granted and in any other district into which such person may remove or be. Every licensed person who shall with a knowledge of such prohibition sell to any such person any liquor, and every other person who with such knowledge shall give to, purchase or procure for such prohibited person any liquor shall on conviction be liable to a penalty not exceeding five pounds, in respect of each offence.

MISCELLANEOUS PROVISIONS.

Cape Town, and
Cape District one
district.

90. For the purposes of this Act Cape Town and the district thereof and the Cape district shall be deemed and taken to be one district.

Proceedings of
landlords in regard
to persons who have
left without paying.

91. Any licensed person being the keeper of any inn or hotel, to whom any person shall be indebted for board or lodging, or for the keep or expenses of any horse or other animal left with or standing at livery in the stables of such licensed person, shall be entitled to cause to be sold any property which may have been deposited with him or left in the house he keeps, or on the premises belonging thereto, subject to the following provisions and conditions:

- (1) No such property shall be sold unless the same shall have been for the space of one month in the charge or possession of such licensed person without such debt being paid or satisfied.
- (2) If the address of the debtor shall be known to such licensed person, notice in writing shall be given or sent by post prepaid, informing him that unless within ten days from the date of such notice the debt be paid or satisfied, the property in question will be sold.
- (3) If the address of the debtor shall not be known, notice shall be given by advertisement in some newspaper circulating in the district at least once a week during three weeks of the intended sale.
- (4) If after the expiration of the period stated in any such notices respectively, the debt shall not be paid, the person having custody of any such property may require the messenger of the Court of the Resident Magistrate of the district to sell such property by auction.
- (5) The messenger if so required shall make an inventory of such property, and deal therewith precisely as if such property had been property attached by legal process. Such messenger shall lodge with the clerk of the Court of the Resident Magistrate all documents and accounts which in

the case of the execution of a writ he would be required to lodge, or such as the Resident Magistrate may order or require.

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- (6) The messenger after payment out of the proceeds of any sale of the fees and charges due to him in respect of such sale, according to the scale allowed in civil process, and upon taxation thereof by the clerk of the Court, shall pay to the licensed person the amount due to him, including the cost of postage on, or of advertising any such notice, as aforesaid, and if there be any surplus such surplus shall be paid to the debtor.

92. Any property which may have been left in charge of any such licensed person, and not reclaimed within six months, may, after notice such as is in last preceding section has been given, be sold by the messenger provided in the manner aforesaid.

When such person's property may be sold.

93. Any person may prosecute any offender for contravening the provisions of this Act: and in any summons or information it shall be sufficient to set forth the offence charged in the words of this Act or in similar words without inserting or negating any exception, exemption, or qualification, but any such exception, exemption, or qualification may be proved by the defendant.

Who may prosecute under the Act.

94. The Court before which any offence against this Act shall be prosecuted may direct that any portion not exceeding one-half of any penalty imposed and recovered, shall be paid or awarded to any person who may have given such information as shall have led to the conviction of the offender; and when any prosecution shall have been conducted by any field-cornet one-half of the penalty imposed and recovered shall be awarded to such field-cornet as remuneration for his trouble in conducting such prosecution.

Half fine may go to prosecutor.

95. For the purposes of levying any penalty imposed under the provisions of this Act execution may be levied upon all goods and chattels found on the premises upon or in respect of which the offence shall have been committed, whether the said goods and chattels be or be not the absolute property of the person upon whom the penalty was imposed. The provisions of this section shall not apply to goods the *bonà fide* property of lodgers or travellers or of persons who may leave or deposit such goods for safe custody, or convenience, or for the purpose of being worked by any handicraftsman.

Levying for penalties.

96. If through any accident or omission anything required by this Act to be done is omitted to be done, or is not done within the time fixed, the Governor may order all such steps to be taken as may be necessary to rectify any error or omission, and may validate anything which may have been irregularly done in matter or form, so that the intent and purpose of this Act may have effect. The Governor may also authorize the holding of a special meeting of any Licensing Court in the event of any emergency requiring that a special meeting should be held.

Errors which may be rectified by Governor.

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Governor may frame regulations for Licensing Court.

97. The Governor may from time to time make, alter, and revoke regulations, not being contrary to the provisions of this Act, for regulating the proceedings and meetings of Licensing Courts, prescribing the forms of licences, notices and other documents to be used, and generally for the more efficient administration of this Act.

When Act to come into force.

98. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-four, and may be cited as the "Liquor Licensing Act, 1883."

Short title:

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

Number and Year.	TITLE.	Extent of Repeal.	
No. 6, 1844.	Ordinance for regulating Sales by Auction.	The Eleventh Section.	
No. 9, 1851.	Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors.		
No. 10, 1860.	An Act to make better provision for the granting and withholding of Licences to Sell Wines and Spirituous and other Liquors.	} The whole.	
No. 2, 1868.	The Retail Wines and Spirits Act, 1868.		
No. 8, 1875.	The "Wines and Spirits Act, 1875."		
No. 11 of 1876.	An Act to Amend the Law relating to the Sale of Wines and certain other Liquors by Auctioneers.		
GRIQUALAND WEST.			
No. 16 of 1879.	Ordinance for consolidating and amending the Laws relating to the Sale of Intoxicating Liquors.		
No. 19 of 1880.	"Liquor Law of 1879 Amendment Ordinance, 1880."		

THE SECOND SCHEDULE.

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Sums payable for or in respect of Licences granted or renewed, and privileges allowed under the "Liquor Licensing Act, 1883."

1. For a Wholesale Licence (1) Thirty pounds.
2. For a Retail Licence at any Railway Restaurant, to endure for one year from the date of issue thereof Thirty pounds.
3. For a Retail Licence for a Refreshment Room at a Theatre, to endure for one year from the date of issue thereof Fifteen pounds.
4. For a Club Licence to endure for one year from date of issue thereof. Eighteen pounds.
5. For a Bottle Licence for one year, ending on the last day of March, or for the renewal thereof Thirty pounds.
6. For a Bottle Licence for six months, ending on the last day of March, after the issue thereof Fifteen pounds.
7. For a Retail Licence for one year, ending the last day of March, and for a renewal of any such licence, if issued in respect of any place or premises :
 - (1) Within any municipality, or within five miles of the limits of a municipality Forty pounds.
 - (2) Not within any municipality, or within such limits Thirty pounds.
8. For a Retail Licence for six months ending the last day of March after the issue thereof, half the sum payable for such licence for a year.
9. For the allowance of midnight privileges an additional sum of Five pounds.
10. [Repealed by Act 44, 1885, § 1.]
11. For the removal of a Licence to other premises Two pounds.
12. For the transference of a Licence to a person other than the person to whom the Licence was granted Two pounds.
13. A Temporary Licence—A sum to be fixed by the Resident Magistrate authorising the issue thereof, not being less per diem than Ten shillings.

THE THIRD SCHEDULE.

A.

Form of Memorial of Registered Voters objecting to an increase in the number of licensed premises.

To the Licensing Court for the district of

We, the undersigned, registered Voters residing within the limits of the [*Field-cornetcy, Municipality, or other area, describing it*] of

No. 30—1883.

do hereby object to the increase of the number of licensed premises or the sale of liquor within the said [field-cornetcy, or as the case may be] under any Retail Licence [or Bottle Licence, or if the objection be to the increase of both descriptions of licence, describe both].

SIGNATURES.

Names in full.	Places of Residence.

B.

Declaration to be made by the person collecting signatures to a Memorial.

I, A.B., of.....do hereby declare that the persons whose names appear upon the above (or annexed) Memorial marked A, signed the said Memorial in my presence; that such persons are respectively resident within the limits of the field-cornetcy (or as the case may) of and that the names of such persons appear upon the list of registered voters for the District of.....

A. B.

Witness:

C. D.

No. 29—1883.]

[September 27, 1883.

Act to supply a Sum of Money for the Service of the year ending the 30th day of June, 1884.

[Spent.]

No. 30—1883]

[September 27, 1883.

ACT

To Regulate the Erection and Maintenance of Dividing Fences. (1)

Preamble.

WHEREAS it is expedient that the erection and maintenance of dividing fences between adjoining properties should be regulated: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

PRELIMINARY.

1. In this Act, if not inconsistent with the context,

“To repair” shall include to trim, keep and maintain a live fence or ditch or part thereof.

Interpretation clause.

¹ Amended by Act 15, 1891. See Act 11, 1893. Part II. extended by Proclamation No. 261 of 1891 to Transkei, Tembuland, and Griqualand East. Part I extended by Proclamation No. 116 of 1892 to Griqualand East, and by Proclamation No. 168 of 1894 to Tembuland.

“Occupier” shall include any person, company, co-partnership, or public body in actual occupation of, or entitled as owner to occupy any land alienated from the Crown.

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“Dividing Fence” shall mean a fence separating the lands of different occupiers, of a kind which such occupiers may agree upon, or in the event of disagreement, which may be settled by arbitration.

2. (1) This Act shall not apply to any crown land not alienated, nor shall the Public Treasury be liable to make any contribution towards the construction or repair of any dividing fence between the land of any occupier and any crown land.

Exemption of Crown Lands.

3. For the purposes of any arbitration under the provisions of this Act, the provisions of the “Lands and Arbitration Clauses Act, 1882,” are hereby incorporated.

“Lands and Arbitration Clauses Act, 1882,” incorporated.

PART I. (2)—PROVISIONS APPLICABLE TO PROCLAIMED DIVISIONS.

4. The provisions of this part of this Act shall be in operation in such divisions or field-cornetcies as the Governor shall by proclamation prescribe: and from a date to be by such proclamation fixed and appointed.

Act in force where Governor may proclaim.

5. If the Divisional Council of any division shall by resolution request the Governor to suspend the operation of this Act within such division or any field-cornetcy therein, the Governor may suspend this Act accordingly: And if such council shall by resolution request the Governor to bring this Act again into operation the Governor may bring it into operation accordingly: Provided that no such resolution shall be proposed until notice of the intention to propose the same shall have been given at an ordinary meeting of the council previously held, and until such notice shall have been published in the newspaper in which the notices of the council are usually published at least once a week during three weeks.

Governor may suspend Act when requested by any Divisional Council.

6. The occupiers of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands, in such proportions as may be agreed upon between them, or in default of agreement in the proportions to be settled by arbitration.

Fence between lands of different occupiers to be at cost of each.

7. Any person desiring any other person to contribute to the construction of a dividing fence under the provisions of this Act may serve on such person a notice in writing to fence, which shall specify the boundary to be fenced, and the kind of fence proposed to be constructed, and shall contain a proposal for fencing the same. If within three months after the service of any notice to fence, the person serving and the person served with such notice do not agree as to the kind of fence to be erected and the position

Notice to any person required to contribute towards making fence.

¹ See Act 15, 1891, § 2.

² Extended by Proclamation No. 168 of 1894 to Tumbuland. See Act 15, 1892, § 5.

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Arbitration provided for.

In case of refusal to comply with Award, &c.

When contributions may be paid by instalments.

Proceedings in case of absent owners.

thereof, and what proportion of the expense of constructing the same is to be contributed by them respectively, any of such matters as to which there shall be no agreement, shall be settled by arbitration. In making any award, the arbitrator or arbitrators shall be guided as to which kind of fence such arbitrator or arbitrators shall order or award to be constructed, by the kind of fence, if any, usually constructed in the place where it is proposed to erect such fence.

8. If the person serving and the person served with such notice agree as to the matters aforesaid relating to the construction of such fence, or if, in default of such agreement, an arbitrator or arbitrators is or are appointed and make an award, and in either case either of such persons fail within the time named in that behalf in such agreement or award, or, if no such time be named, within six months after the date of such agreement or award, to perform his part of such agreement or to comply with such award, then the other of such persons may construct the whole fence as agreed upon or prescribed by such agreement or award, and may recover such part of the cost of constructing the same as may have to be contributed by the other of such persons in any Court of competent jurisdiction.

9. (1) If any person shall be called upon under this Act to join in or contribute to the construction of any dividing fence, and such person shall be unable or unwilling, sooner or otherwise, to pay the amount or any part thereof which he shall be or become liable to pay, and shall, within one month after the amount which he is liable to pay shall have been fixed, give notice to the person calling upon him to join or contribute as aforesaid, that he desires to pay such amount by instalments as hereafter mentioned, the amount payable by such person, or such part thereof as he shall not be willing to pay sooner or otherwise as aforesaid, together with interest thereon at the rate of six per centum per annum, shall be paid by such person by equal yearly instalments, such instalments to be so calculated and fixed that the said capital sum and interest shall be wholly paid off in a period of fifteen years from the date which he shall have given such notice as aforesaid, as more particularly shown in the first schedule: Provided that notwithstanding such notice, and the payment of any instalment as aforesaid, it shall be lawful for any such person at any time during the said fifteen years, to pay the value at that time of the unpaid instalments in one sum, as shown in the second schedule.

10. When the occupier of any land is absent from the Colony or cannot be found or any land is unoccupied, the occupier of any adjoining land shall insert in the *Gazette*, and in a newspaper (if any) published or circulating in the district in which such land is situated, at least once a month during six consecutive months, a

¹ See Act 15, 1891, § 6.

notice addressed to the occupier of such land, describing him as the occupier of such land, requiring him to contribute to the construction of a fence and may then proceed *ex parte* to obtain from the Resident Magistrate of the district an order authorising the construction of such fence, and specifying the kind of fence to be constructed, and the position thereof, and may construct a fence in compliance with such order; and if afterwards during the continuance of such fence, any person shall go into occupation of such adjoining land, he may, within one month thereafter, serve any person who, if such fence were not in existence would be liable to contribute to the construction of a fence in the place thereof, with a copy of such order, and shall, after the expiration of one month from the date of such service, be entitled to recover one-half the then value of such fence; but if such order so made *ex parte* be deemed by such person to be inequitable, he may require the matter in question to be settled by arbitration.

11. When any fence is constructed under the provisions of this Act dividing any lands held by any person as tenant of any landlord from any adjoining lands, such tenants shall pay yearly during the continuance of his lease the interest, calculated at six per cent. per annum, upon one-half of the cost of such construction: Provided, however, that no tenant whose unexpired term of lease does not exceed one year shall be liable to pay any such interest.

Tenants to pay interest on cost of fences.

12. Any tenant having a right to purchase any land occupied by him at a fixed rate, shall, on the completion of the purchase, pay to his landlord, in augmentation and as part of the purchase-money, any sum paid by such landlord under the last preceding section, together with any interest upon such sum as the tenant shall not previously have paid to his landlord.

Tenant, with right to purchase, to pay cost of fence in addition to purchase money.

13. When any dividing fence made or to be made shall be out of repair or become insufficient, the occupiers of land on either side thereof shall be liable to the cost of repairing such fence, in equal proportions. (1)

Repairs.

14. The occupier of any land separated from any adjoining land by a dividing fence may serve a notice upon the occupier of such adjoining land, requiring him to assist in repairing such fence, and if such occupier shall refuse or neglect for the space of one week after the service of such notice to assist in repairing such fence, it shall be lawful for such first-mentioned occupier to repair such fence and to demand and recover of and from such occupier his portion of the cost of repairing the same, in manner provided in the next succeeding section (1): Provided that, if any dividing fence, or any portion thereof, shall be destroyed by accident, the occupier of land on either side may immediately repair the same without notice, and shall be entitled to recover his proportion of the

Notice of required repairs to occupier of adjoining land.

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expense as above provided for from the occupier of the adjoining land: Provided that in case such dividing fence shall have been destroyed by fire, or by the falling of any tree, or by the trespass of any cattle, the occupier through whose neglect (if any) such fire shall have originated, or have caused injury to the fence, or such tree shall have fallen, or such cattle shall have caused such injury, shall be liable to repair the entire of the fence so damaged as aforesaid.

Mutual rights of recovery of moneys under this Act.

15. All moneys recoverable under this Act, in respect of the construction or repairing of any fence by any person serving any notice to fence or repair, or under any *ex parte* order or award, may be recoverable from any person liable to contribute to the cost of constructing or repairing such fence who is served with notice to fence or repair, or with such *ex parte* order or award, or any person who may come in and defend under the provisions of this Act any proceedings consequent on such notice, or the service of such order or award; and all such moneys recoverable by any person served with such notice may be recovered from the person serving the same, or any person liable to contribute to the construction or repair of such fence as tenant of whom the person serving such notice may hold the lands bounded by such fence.

Act not to apply to existing fences.

16. Nothing in this part of this Act contained shall be deemed to affect any substantial fence ⁽¹⁾ already erected at the time of the coming into operation of this Act.

PART II.—PROVISIONS APPLICABLE TO THE COLONY.

Part II applicable to whole Colony.

17. The provisions of this part of this Act shall be in operation throughout the Colony.

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

18. If the occupier of any land shall have erected or hereafter erect, a fence on the boundary of his land, and any other person shall adopt any means by which such fence shall be rendered of beneficial use to himself, and shall avail himself of such fence or portion thereof, such person shall be liable to pay to the occupier of the land whereon such fence is erected, interest on half the then value of so much of such fence as such person shall use or avail himself of, at the rate of six pounds per centum per annum, for so long a period as he shall continue to use or avail himself of such fence; and shall also, so long as aforesaid, be liable for one-half the cost of repairs of so much of such fence as aforesaid.

When fence divides land from Crown Land subsequent occupier of latter to pay a portion of the cost.

19. Where a fence is erected on the boundary of any land, and any adjoining land is at the time of the erection of such fence crown land excepted from the application of this Act, then the occupier thereafter of such adjoining crown land shall, within six months after a demand in writing made upon him, pay to the occupier of the land upon which, or the boundary of which such

¹ See s 10 Act 15, 1891.

fence was erected, a reasonable portion not exceeding one-half of the then value of such fence: And if any difference shall arise as to the amount to be paid, such difference shall be settled by arbitration.

20. Where any fence is to be erected on land covered with bush, the person erecting such fence shall be entitled to clear the bush for a width not exceeding six feet on each side of such fence, and may remove any tree standing in the immediate line of any such fence: and the cost of such clearing shall be added to and form part of the cost of the erection of such fence, and in case the person erecting such fence shall be entitled to recover in respect of such cost of erection from any other person, the cost of such clearing shall be apportioned accordingly.

Bush may be cleared for fencing.

21. The occupier of any land may, in making a ditch and bank fence dividing his land from any adjoining land, make a ditch on such adjoining land (crown land inclusive), and use the soil taken therefrom towards making a bank, or he may make the ditch in his own land, and place the bank on such adjoining land.

Soil may be used in making ditch and bank fence.

Where a dividing fence is made of posts and rails, or wire, or palings, the posts of such fence shall, as nearly as may be, be placed on the boundary line.

Posts, rails, &c.

22. When a river, creek, or natural water-course forms the boundary of contiguous lands, but is not capable of resisting the trespass of animals liable to be impounded, it shall be competent for the occupiers of such contiguous lands to agree upon such a line of fence on either side of such river, creek, or natural water-course as shall secure such fence from the action of floods, and in the event of their not agreeing upon such a line of fence, the line of fence to be erected, and whether any and what compensation in the shape of an annual payment shall be paid to either of the parties occupying such contiguous lands in consideration of loss of occupation of land shall be settled by arbitration: Provided that the occupation of lands on either side of such line of fence shall not be deemed adverse possession, and shall not affect the title to or possession of any such lands save for the purposes of this Act.

Proviso when river is the boundary between lands.

23. If the occupier of any land shall clear the same of inflammable materials for the space of fifteen feet from any fence dividing such land from the land of any other occupier, and such other occupier shall neglect or omit so to clear his land, and any damage from fire shall happen to such dividing fence through such neglect or omission, the occupier so neglecting or omitting to clear shall, at his own cost and charge, cause such fence to be repaired and re-erected within the space of one month after the same shall have been so damaged, and in case he shall refuse or omit to repair or re-erect the said fence within such space of one month, it shall be lawful for the occupier of the land contiguous to the said fence who shall have cleared the same of inflammable material as afore-

Damages against person neglecting to clear inflammable matter from boundary line.

No. 30—1883.

said to repair or re-erect such dividing fence, and all sums of money which shall or may be so expended or laid out under the provisions of this section shall be deemed and taken to be money paid to the use of the occupier in default: Provided that nothing herein shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for or in respect of any damage or injury to any fence occasioned by the reckless or negligent use of fire.

Right of way to
construct fences.

24. Every person engaged in constructing or repairing a fence under this Act, his agents and servants, may, if there be no available access thereto over the land of such person, with or without cattle, carts or other vehicles, at all reasonable times during such construction or repairing, enter upon the contiguous lands, and do thereupon such acts, matters, and things as are necessary or reasonably required to carry into effect the construction or repairing of such fence: Provided that nothing herein contained shall authorise the entry for the purposes aforesaid upon any land in cultivation or in or upon any garden, plantation, or pleasure ground without the consent of the owner; or shall authorise any person to cut down, lop, or injure any fruit or ornamental tree or shrub without such consent.

Swing gates when
fences cross roads.

25. In case any dividing fence made under the provisions of this Act shall cross any public or private road, there shall be a swing gate erected at such crossing in lieu of a fence; and such gate shall be of such size and description as the Divisional Council of the division shall fix and determine; and the provisions of this Act shall apply to such gate as if it were part of such fence, and it shall be lawful for such Divisional Council to make such regulations as to the erection of any such gate as to it may seem fit.

Landlord may
defend proceedings
against tenant.

26. Any person may come in and defend any proceeding under this Act, against any tenant of such person, in consequence of which such person may ultimately incur any liability; and any defence which the person originally proceeded against might set up shall be available to the person so coming in to defend.

Resident Magis-
trates to have juris-
diction.

27. Proceedings for orders and for the recovery of sums of money may be taken before the Court of the Resident Magistrate of the district in which the defendant resides in respect of questions arising between occupiers of property liable to the provisions of this Act, notwithstanding that the decision of any such question shall be beyond the ordinary jurisdiction of such Resident Magistrate.

Existing contracts
not affected by this
Act.

28. Nothing in this Act contained shall be deemed or taken to affect any covenant, contract, or agreement made, or hereafter to be made, relative to fencing between landlord and tenant, or between occupiers of adjoining land.

Short title.

29. This Act may be cited as "The Fencing Act, 1883."

THE FIRST SCHEDULE.

No. 30—1883.

Table of equal instalments payable at the end of each year for fifteen years, corresponding to amounts payable under the ninth section of this Act.

Amount payable.	Equivalent Instalments payable at the end of each year for fifteen years.		
£1	£0 2 1
2	0 4 1
3	0 6 2
4	0 8 3
5	0 10 4
6	0 12 4
7	0 14 5
8	0 16 6
9	0 18 6
10	1 0 7
20	2 1 2
30	3 1 9
40	4 2 4
50	5 3 0
60	6 3 7
70	7 4 2
80	8 4 9
90	9 5 4
100	10 5 11
200	20 11 10
300	30 17 9
400	41 3 8
500	51 9 8
600	61 15 7
700	72 1 6
800	82 7 5
900	92 13 4
1000	102 19 3
2000	205 18 6
3000	308 17 9
4000	411 17 0
5000	514 16 3

NOTE.—Yearly instalments for any sum not mentioned in this table, such as £2,345 may be obtained as follows:—

£2,000	gives	£205 18 6
300	„	30 17 9
40	„	4 2 4
5	„	0 10 4
Therefore £2,345	„	£241 8 11

THE SECOND SCHEDULE.⁽¹⁾

Aggregate value of unpaid instalments, each £100 in amount, of which the first is payable at once; and subsequently at yearly intervals.

Number of Instalments, £100 each.		Aggregate Value.
1	.. ..	£100 0 0
2	.. ..	194 6 10
3	.. ..	283 6 9
4	.. ..	367 6 0
5	.. ..	446 10 3
6	.. ..	521 4 9
7	.. ..	591 14 8
8	.. ..	658 4 9
9	.. ..	720 19 7
10	.. ..	780 3 5
11	.. ..	836 0 2
12	.. ..	888 13 9
13	.. ..	938 7 8
14	.. ..	985 5 4
15	.. ..	1029 10 0

NOTE.—The aggregate value of instalments of any other amount may be readily obtained from the above table, by simple proportion.

No. 31—1883.]

[September 27, 1883.

ACT

To make further Provision for the Regulation of Police, and to Fix the Amount to be contributed by the Municipality of Cape Town for Police purposes.

Preamble.

WHEREAS it is expedient to make further provision for the regulation of police and to increase the amount to be contributed by the Town Council of Cape Town towards the annual cost of the police required for the municipality of Cape Town: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

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

Powers given to Resident Magistrate under Act 11 of 1860, transferred to Commissioner of Police.

2. The several powers and authorities vested in the Resident Magistrate of Cape Town and the district thereof and the Cape district by the third section of the Act No. 11, 1860, intituled “An Act for abolishing the Offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town,” are hereby vested in the Commissioner of Police for the police district comprising the divisions of the Cape (including

¹ See § 6 Act 15, 1891.

Cape Town) and Simon's Town : Provided that the Governor may vest such powers and authorities in such other officer or person as to him shall seem fit, and thereupon the powers of the Commissioner of Police shall cease.

No. 31—1883.

3. Nothing in this Act contained shall prevent any such commissioner or other person from prosecuting any case which might be determined by himself before the court of the resident magistrate of any district in which the offence was committed, or in which the offender shall be.

Such Commissioner may nevertheless prosecute before Magistrate.

4. The Town Council for the time being of the city of Cape Town shall pay over yearly on or before the thirty-first day of March one half part or share of the expense incurred for the maintenance of the police required for the purposes of the municipality of Cape Town in lieu and instead of the proportion of one-fourth mentioned in the forty-seventh section of the "Cape Town Municipality Act, (1) 1882": Provided the yearly sum to be paid shall not exceed four thousand pounds.

Half the cost of Cape Town Police to be paid by Town Council.

5. The items which shall for the purpose of such contribution as aforesaid be included in the expense of the police force shall be such as are included in the second schedule, and the said Town Council shall not be liable to contribute towards any further charge which may be incurred for or in respect of the said police or of any additional police engaged hereafter without the concurrence of the said Town Council.

Items in second Schedule.

6. The word "last-mentioned" occurring between the words "such" and "person" in the thirty-first section of the "Police Regulation Act, (2) 1882," shall be omitted, and the word "first-mentioned" there inserted: and the said section shall be read and construed as so amended.

Amendment of Police Regulation Act, 1882.

7. The short title of this Act shall be the "Police Regulation Act, 1883."

Short title.

FIRST SCHEDULE.

LAWS REPEALED.

No. and date.	Title.	Extent of Repeal.
Ordinance No. 2, 1840.	"For improving the Executive Police of Cape Town and the district thereof, for defining the powers and duties of the said Police in certain cases, and for promoting the peace and good order of the said Town."	So much as may be repugnant to or inconsistent with this Act.

¹ Act No. 44 of 1882 repealed by Act No. 26, 1893.

² No. 12.

No. 32—1883.

No. and date.	Title.	Extent of Repeal.
Act No. 22, 1858.	To fix the amount to be contributed by the Municipality of Cape Town towards the Expense of the Executive Police of Cape Town.	The second, third, fourth, and fifth sections.
Act No. 11, 1860.	“ For abolishing the offices of Judge and Superintendent of Police of Cape Town, and Deputy Superintendent of Police of Cape Town.”	The third section.
Act No. 44, 1882.	“ Cape Town Municipality Act, 1882.”	The forty-seventh and forty-eighth sections.

SECOND SCHEDULE.

Police Force for the City of Cape Town, in respect whereof the Town Council of Cape Town is liable to contribute in terms of the “ Police Regulation Act, 1883 :”

One Inspector,
Four Sub-Inspectors,
Five Sergeants,
One Detective,
Sixty-seven Constables,
Clothing and Accoutrements,
Forge,
Remounts,
Medicines,
Miscellaneous.

No. 32—1883.]

[September 27, 1883.

ACT

To Provide for the Repression of Thefts of Ostrich Feathers and of Skins. (1)

Preamble.

WHEREAS the Theft of Ostrich Feathers prevails extensively throughout the Colony and is increasing, and whereas the theft of skins is also prevalent, and it is desirable to repress such crimes: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. It shall not be lawful for any person to deal as a buyer of ostrich feathers for purposes of trade unless such person shall have obtained a licence so to deal: Provided, however, that this prohibition shall not apply to any person purchasing ostrich

¹ Extended by Section 194 Act 24, 1886, to all the Native Territories.

Buyers of ostrich feathers to be licensed.

THEFTS OF OSTRICH FEATHERS AND SKINS. 2153

feathers at any public sale. Such licence shall be in the form A, set forth in the schedule to this Act. No. 32—1883.

2. Every purchaser of ostrich feathers under a licence as in the last preceding section provided, shall keep a book in which he shall forthwith enter, or cause to be entered, as to ostrich feathers purchased by him To keep special book. Entries there-in.

- (a) The date of purchase of such feathers.
- (b) The number, or weight, and description of feathers purchased.
- (c) The name, residence, and occupation of the vendor.
- (d) The price given.
- (e) What has satisfied the purchaser that the vendor had a right to sell such feathers.

Such entry shall be in the form B, set forth in the schedule to this Act, and such book may be inspected free of charge at all reasonable times by written order of any Resident Magistrate, Justice of the Peace, or Field-cornet. Form in Schedule.

3. Any person who shall without a licence buy ostrich feathers for purposes of trade, as in the first section of this Act mentioned, or any person buying ostrich feathers, who shall neglect to make entries with reference thereto in a book kept for that purpose as provided in the last preceding section, or any person who shall refuse to allow the production and inspection of such book, shall be liable upon conviction to a penalty of not exceeding one hundred pounds or to imprisonment with or without hard labour for any period not exceeding twelve months, or to both such fine and such imprisonment. ⁽¹⁾ Penalty for contravening the above.

4. There shall be payable annually the sum of Five Pounds for the licence in the first section of this Act mentioned. ⁽¹⁾ Licence £5.

5. [Repealed by Act 35, 1893.]

6. [Repealed by Act 35, 1893.]

7. [Repealed by Act 35, 1893.]

8. This Act may be cited as the "Ostrich Feathers and Skins Theft Repression Act, 1883." Short title.

SCHEDULES.

[A.]

Form of Ostrich Feather Buyer's Licence.

I,, Distributor of Stamps in
 on this day of, 188., do hereby certify that
 is authorised to carry on the Trade of a
 Buyer of Ostrich Feathers for One Year, ending on the,
 188., and no longer.

.....
 Distributor.

¹ Printed as amended by Act 13, 1886, § 4.

2154

FIRE INQUESTS.

No. 33 1883.

[B.]

*Form of Entry to be kept by Licensed Buyer.*Register of Ostrich Feathers purchased by.....
a Licensed Buyer.

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Date of Purchase of Feathers.	Number or Weight and Description.	Name, Residence, and Occupation of the Vendor.	Price given.	What has satisfied the Purchaser that the Vendor has a right to sell such Feathers.

No. 33—1883.]

[September 27, 1883.]

ACT

To Provide for the Holding of Inquests in cases of Fire. (1)

Preamble.

WHEREAS it is expedient to make provision for conducting investigations and holding inquests in cases of fire: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation clause.

1. In the interpretation of this Act, unless repugnant to the context,

“Inquest” or “Fire Inquest” shall mean an inquest or enquiry under the provisions of this Act.

“Magistrate” shall mean any Resident Magistrate or Justice of the Peace.

Inquest in case of fire under suspicious circumstances.

2. If any fire shall occur whereby any house or building or any property shall be destroyed or injured, and such information shall be given as to satisfy any Magistrate that there are reasonable grounds for believing that such fire originated under suspicious circumstances, an inquest shall be held.

Magistrate to proceed to place of fire and hold inquest.

3. Any Magistrate receiving such information as in the last preceding section mentioned shall, without unnecessary delay, proceed to the spot where the fire occurred, and shall make an inquest as to the cause or origin of such fire, and as to the nature or extent of the damage and injury which it has occasioned.

May summon anyone to give evidence.

4. For the purpose of making such inquest, the Magistrate shall summon and bring before him all such persons as he may think necessary, and whom he deems capable of giving information or

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

evidence concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing.

No. 33 -1893.

5. If any person summoned as a witness shall not attend pursuant to such summons, then such person so making default shall, unless some reasonable excuse be proved by an oath or affidavit, be liable to be fined by the Magistrate issuing such summons such sum, not exceeding ten pounds, as such Magistrate shall think fit, and such Magistrate may issue his warrant for the apprehension of such person so making default.

Penalty for non-attendance of witnesses.

6. The Magistrate presiding at any inquest shall administer to the persons appearing to give evidence such oaths or other solemn forms as *mutatis mutandis* are in use in criminal cases; and the forms of summonses and of warrants of apprehension set forth in the schedule to this Act shall, as near as may be, be used in all matters to which such forms refer.

Oaths to be administered.

7. All contempts committed by witnesses or others before or in regard to any inquest, shall be dealt with in like manner, *mutatis mutandis*, as contempts committed by witnesses and others before any Resident Magistrate's Court.

Contempts.

8. Nothing in this Act contained shall prevent any person authorised by law to issue warrants of apprehension or authorised to apprehend offenders or supposed offenders from acting in all respects as regards such warrants or such offenders, whether an inquest shall or shall not have been commenced, precisely as if this Act had not been passed.

Power to issue warrant of apprehension.

9. All witnesses summoned or attending to give evidence before any fire inquest shall be entitled to receive their expenses as if summoned to give evidence at a criminal trial or preparatory examination.

Witnesses' expenses.

10. If the Magistrate upon any such inquest shall see reason to believe that any crime or offence has been committed in connection with such fire by any person who can be made amenable to justice, the Magistrate shall cause such person to be apprehended in order that a preparatory examination may be instituted against him.

Magistrate may commit suspected person for trial.

11. At the close of such inquest the Magistrate shall report in writing to the Attorney-General, or in the districts over which the Court of the Eastern Districts or the High Court of Griqualand exercises jurisdiction, to the Solicitor-General or Crown Prosecutor, as the case may be, as to the cause or origin of the said fire, whether in his opinion it was kindled by design or was the result of accident, or negligence, stating the full particulars of the case and the conclusions at which he shall in regard to it have arrived.

Reports of inquests, &c., to be transmitted to Attorney-General.

12. In case upon any such inquest it shall appear that there were reasonable or probable grounds for suspecting or believing that the fire originated under such circumstances as to tend to the inference that it was wilfully or criminally occasioned the expense

How expenses of inquests to be paid.

No. 33—1883.

of the inquest shall be paid by the Public Treasury; if otherwise, such expense shall be paid by the person requiring or demanding the holding of the inquest.

The certificate of the Attorney-General, Solicitor-General or Crown Prosecutor, as the case may be, as to the liability for the payment of such expense by the treasury or by any such person shall be final and conclusive.

Magistrate may require deposit from person demanding inquest.

13. Any Magistrate called upon to hold an inquest may require the person demanding the same to deposit a sum of money or to enter into a recognizance with or without sureties for the due payment of the expense of holding such inquest in case such person shall thereafter be required to pay such expenses.

In actions on policies of insurance failing for fraud, &c., costs of inquest may be given against the plaintiff.

14. In case any action shall be brought upon or in respect of any policy of insurance against risk of fire, and the Court before which such action is tried shall determine that the plaintiff is not entitled to recover upon such policy by reason of fraud or other sufficient ground, it shall be competent for such Court if it shall see fit to order that the expenses incurred in the holding of any inquest into the origin or cause of the fire (if such inquest shall have been held), shall be deemed and taken to be part of the costs to be paid by the plaintiff against whom costs shall have been adjudged.

Short title.

15. This Act may be cited as the "Fire Inquests Act, 1883."

SCHEDULE.

FORM OF PROCESS FOR SUMMONING WITNESSES.

Fire Inquest for the District of

To (name of the constable or person to whom the process is directed). You are hereby required in Her Majesty's name to summon A. B. (describe him particularly) that he appear before me at , on the day of , 18—, at the hour of — in the fore } noon (as the case may be),
after }
then and there to be examined at an inquest concerning a fire which occurred at on (state the place and time). Therein fail not at your peril.
Dated at , this day of , 18 .

Resident Magistrate or Justice of the Peace.

FORM OF WARRANT FOR APPREHENSION OF A DEFAULTING WITNESS.

Fire Inquest for the District of

To (name of person to whom the process is directed), and constables and other officers of the law proper to the execution of criminal warrants.

Whereas A. B., of _____ (describe him particularly as in the summons) who was duly summoned to appear before me at _____ (name the place as in the summons) then and there to be examined at an Inquest concerning a Fire which occurred at _____, on _____ (stating the place and time), hath refused or neglected so to do to the great delay and hindrance of justice, these are therefore in Her Majesty's name to command you to apprehend and bring before me, the body of the said A. B., that he be dealt with according to law: and for so doing this shall be your warrant.

No. 34—1883.

Dated at _____, this _____ day of _____, 18 _____.

Resident Magistrate or Justice of the Peace.

No. 34—1883.]

[March 18, 1884.]

ACT

To Provide for the Disannexation of Basutoland from the Colony of the Cape of Good Hope.

WHEREAS it is desirable that Basutoland should cease to form part of the Colony of the Cape of Good Hope; and whereas Her Majesty's Imperial Government has expressed its willingness to provide for the future Government of Basutoland upon certain conditions; and whereas it is expedient that due provision should be made for relieving this Colony from all responsibility for or in connection with the Government of Basutoland: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Act No. 12, 1871, intituled "An Act for the Annexation to the Colony of the Cape of Good Hope of the Territory inhabited by the tribe of people called Basutos," shall be and the same is hereby repealed.

Repeal of Act No. 12, 1871.

2. From and after the taking effect of this Act, there shall be paid annually to Her Majesty's High Commissioner, or such other officer as Her Majesty may be pleased to appoint in that behalf, as a contribution towards any deficiency that may arise in the revenue of the Government of Basutoland, out of the public revenue of this Colony, such sum, not exceeding twenty thousand pounds, as may be hereafter from time to time agreed upon by and between Her Majesty's Imperial Government and the Government of this Colony.

Annual contribution, not exceeding £20,000, towards any deficiency in the revenues of Basutoland.

3. This Act shall come into operation when the Governor shall by Proclamation (1) declare that Her Majesty has been pleased to allow and confirm the same.

To come into operation by Proclamation.

4. The short title of this Act shall be "The Basutoland Disannexation Act, 1883."

Short title.

¹ Proclamation in Gazette 18th March, 1884.

No. 4—1884.

No. 1—1884.]

[May 30, 1884.

Act to enable the Governor to amend the Proclamation No. 83 of 1884, dated the 27th March, 1884. [Temporary.]

No. 2—1884.]

[June 20, 1884.

Act to Provide for a Special Valuation of Houses in the Division of Cradock, for purposes of the House Duty Act, 1878. [Temporary.]

No. 3—1884.]

[June 30, 1884.

Act for applying a further Sum not exceeding Sixty-three Thousand Six Hundred and Eighteen Pounds Sterling for the Service of the Year ending the 30th June, 1884. [Spent.]

No. 4—1884.]

[July 11, 1884.

ACT

To Dispense with Annual Burgher and Levy Lists.

Preamble.

WHEREAS it is expedient in order to diminish the expense of providing the lists required by the "Burgher Force and Levies Act, (1) 1878," to be furnished annually to make provision for having such lists furnished from time to time as may be deemed necessary: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Inconsistent portions of "Burgher Act, 1878," repealed.

1. So much of the "Burgher Force and Levies Act, (1) 1878," as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Lists already framed to continue.

2. The burgher and levy lists, respectively, last framed under the provisions of the "Burgher Force and Levies Act, (1) 1878," shall be and remain the lists for the purposes of the said Act, until other lists shall have been framed under the provisions of this Act.

Field-cornets to furnish new lists when required by Governor.

3. Instead of furnishing to the Civil Commissioner of his division the list of burghers and levies in the first month of each year as is provided by the fourteenth section of the said Act, every Field-cornet shall furnish the list by the said section required at such time as the Governor may direct; and such lists shall embrace the period since the last preceding list shall have been furnished.

Short title.

4. This Act may be cited as "The Burgher and Levy Lists Act, 1884."

No. 5—1884.]

[July 18, 1884.]

ACT

To Consolidate and Amend the Law relating to the Payment of Transfer Duty. ⁽¹⁾

WHEREAS it is expedient to consolidate and amend the law relating to the payment of transfer duty: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The laws mentioned in the first schedule to this Act, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed, except as to the recovery of any duty, interest, or penalty due or incurred before the taking effect of this Act.

Laws repealed.

PAYMENT OF TRANSFER DUTY. ⁽²⁾

2. Except as in this Act is excepted, a duty (hereinafter called transfer duty) of four pounds per centum upon the purchase price or value of any freehold property or property held from Government upon quitrent or other leasehold tenure sold or otherwise alienated or transferred after the taking effect of this Act, shall be payable and paid

Transfer duty imposed upon sale or other alienation of property.

- (1) By the purchaser of any such property.
- (2) By every person becoming entitled to any such property by way of exchange, donation, legacy, testamentary or other inheritance, or in any manner otherwise than through the medium or by means of purchase and sale.
- (3) By every person into whose name any such property registered in the Deeds Registry of this Colony in the name of any other person shall be registered or transferred.

All persons acquiring the right to the limited enjoyment of property burthened with the entail of *fidei-commissum*, and all persons acquiring a life usufruct only in any property, shall (save as in this Act excepted) be chargeable with and liable to pay the duty applicable to the species of property in question, upon the value of their estates or interest in such property, to be calculated with reference to the value of the property and the duration or extent of their interest therein, and such duty shall be recoverable whether such persons shall or shall not seek to have their said estates or interests registered in their names in the Deeds Registry office.

Mode of calculation of duty on property entailed or held for life only.

¹ Same duties payable in the districts of Idutywa, Butterworth, Ngamakwe, and Tsomo by paragraph 76 of Proclamation No. 110 of 1879; in Griqualand East by paragraph 72 of Proclamation No. 112 of 1879; and in Tembuland and the districts of Kentani and Willowvale by paragraph 71 of Proclamation No. 140 of 1885.

² Transfer of land for school purposes free of transfer duty, stamp duty, or fees of office. Act 6 of 1893.

No. 5—1884.

Cost and charges excluded from being reckoned as part of purchase price.

3. As often as by the contract of sale of any immovable property liable to the payment of transfer duty, the purchaser of such property shall become liable to pay, over and above the sum payable to the seller, all or any of the following charges or expenses arising out of or connected with the said sale, that is to say:—

1. The cost of any survey of the said property which shall have been made prior to, and for the purposes of, the said sale, and of any survey of such property which may be made after the sale, and the cost of all diagrams and sub-divisions, and of the plan of the property exhibited at the time of sale;
2. The charge made by the auctioneer for the conditions of the said sale;
3. The commission, if any, paid by the purchaser to any auctioneer, broker, or agent, by or through whom the sale of the property may have been effected, not exceeding two pounds and ten shillings per centum upon the amount of the purchase money;
4. The auction duty payable upon the said sale;
5. The transfer duty payable thereon;
6. The cost of all deeds necessary for effecting transfer of such property, and of the mortgage deed, if any, and of all necessary stamps;
7. The charges of conveyancers, and agents, incurred in effecting the transfer of the said property;
8. The quitrent, if any, payable to Government upon the property sold;
9. The quitrent, if any, which shall be payable upon the property sold to any committee, consistory, or any other body, for religious, educational, or charitable purposes, not being rent already due and in arrear at the time of such sale;

Then such charges or expenses shall not, nor shall any of them, be deemed or taken to form part of the purchase money of such property, so as to be liable to the payment of transfer duty:

Arrear rent to be added to purchase price.

Provided that as often as the purchaser shall agree or undertake to pay any such quitrent as is in the ninth sub-division of this section mentioned, which shall, at the time of the sale to such purchaser be already due and in arrear, the amount of such arrear rent shall in the solemn declarations to be made by the seller and the purchaser, respectively, be added to the sum paid or to be paid to the seller in stating the amount of purchase money upon which transfer duty is to be paid.

Other sums payable by purchaser in addition to purchase price to be added to amount of purchase money

4. In case the purchaser of any such property shall have undertaken, agreed, or in any manner become liable for, or in respect of, or in connection with, the purchase by him of the said property, to pay to any person whomsoever any sum of money over and above the sum paid or to be paid to the seller, such sum not being

one or more of the items of charges or expenses in the last preceding section mentioned, then such sum must be added to the sum paid or to be paid to the seller in stating, in the solemn declaration to be made by the seller and purchaser respectively, the amount of purchase money upon which transfer duty is to be paid.

No. 5—1884.

5. The transfer duty upon or in respect of every sale, exchange, or donation of any such property, shall be payable within six months from the day of the date of the sale, exchange, or donation, as the case may be, and from and after the expiration of such six months, and until payment or deposit of the amount of such duty, interest thereupon at the rate of twelve pounds per centum per annum shall be payable and paid.

When duty is payable.

6. As often as any contract of sale of any immovable property shall be entered into, by which contract it is stipulated that possession of such property shall not be given or that the said sale shall not take effect until some future date, the date at which such contract was entered into, and not such future date, shall be the date from which the space or term of six months mentioned in the last preceding section shall be reckoned.

Date when payable in cases of deferred possession.

7. As often as any sale of immovable property shall be a conditional sale, then the said space or term of six months shall begin to be reckoned from the day on which such contract of sale was first entered into: Provided that in case any such contract of sale shall become dissolved by reason of the happening of any dissolving condition after the payment of transfer duty, then upon proof given of such dissolution such duty shall be returned.

When duty payable in cases of conditional sale.

8. Whenever any such property as aforesaid shall be registered in the name of more persons than one, as joint owners, all the said persons shall be deemed and taken, for the purpose of payment of duty upon or in respect of any sale or alienation by any of them to any other or others of them, to have equal shares and interest in the said property, unless the particular share or interest of each shall be declared and set forth in the title deed or other instrument recorded in the Deeds Registry Office.

Liability to duty in cases of joint ownership.

RECEIPTS FOR DUTY AND DECLARATIONS.

9. All duties and interest payable under the provisions of this Act shall be paid to the Civil Commissioner of the division in which the property to be transferred is situate, who shall give a receipt for the same; and no transfer of any such property shall be made unless such receipt shall have been produced to, and deposited with, the Registrar of Deeds,

To whom duty payable.

10. No Civil Commissioner shall grant a receipt (except as in this Act is excepted and except a receipt for money deposited) for the amount of any such duty as aforesaid, payable upon or in respect of any sale and purchase of any such property as aforesaid, until the seller shall have taken and subscribed the form of solemn declaration marked A, and until the purchaser shall have taken

Solemn declaration of sale.

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Solemn declaration
of sale by agent or
broker.

and subscribed the form of solemn declaration marked B, in the second schedule.

11. As often as it shall appear to the Civil Commissioner that any agent, auctioneer, broker, or other person acting for or on behalf of any such seller or purchaser of any such property as aforesaid, has himself, in his said capacity, made and entered into the contract of sale or purchase, then it shall be lawful for such Civil Commissioner to demand and receive the solemn declaration of such agent, auctioneer, broker, or other person as aforesaid, either in lieu of, or in addition to, that of his principal, according as such Civil Commissioner shall, under the circumstances of the case, deem fit; and the solemn declaration to be taken as aforesaid shall, as nearly as may be, be in the form C in the second schedule.

Solemn declaration
in case of death or
absence from Colony
of seller or purchaser

12. If, in any case, it shall be made to appear that the seller or the purchaser of any such property has died, or departed from the Colony, without having taken and subscribed the necessary solemn declaration, the Civil Commissioner may either dispense with such solemn declaration altogether, or receive, in lieu thereof, the solemn declaration of such other person as may, under the circumstances of the case, be in a position to testify to the particular matters to be set forth in such declaration.

VALUATIONS FOR PAYMENT OF TRANSFER DUTY.

Valuation for pur-
poses of computing
duty.

13. For the purposes of ascertaining the value of property changing proprietors otherwise than through the medium, or by means of sale and purchase, and chargeable with duty under the provisions of this Act, it shall be the duty of the Civil Commissioner of the division in which the property shall be situated, at his discretion, either to claim duty upon the amount for which such property is valued for Divisional Council purposes, or to appoint some competent and disinterested person to ascertain, upon solemn declaration, the just and fair value of such property; and the reasonable expenses of such valuation shall be payable by the person chargeable with the payment of the duty; and the amount of such Divisional Council valuation or the amount at which such valuator shall value the said property, as the case may be, shall be the amount upon which duty shall be chargeable: Provided that nothing herein contained shall be held or taken to prevent any person who shall conceive himself aggrieved from bringing in review before any Court having jurisdiction, the valuation upon which duty has been claimed.

Valuation in case
in which purchase
price appears to be
less than true value.

14. When in any case of sale and purchase of such property as aforesaid (not being a sale or purchase by public auction made *bonâ fide* and without collusion), it shall appear to the Civil Commissioner who is to receive the duty that the price or purchase money of the same is considerably less than its just and fair value, and in case the said Civil Commissioner and the purchaser shall not agree to accept the Divisional Council valuation of such

property as representing the fair value thereof, it shall be competent for the said Civil Commissioner to cause a valuation of the said property to be made in manner and form as in the last preceding section mentioned: and in case the value, ascertained as aforesaid, shall exceed the amount of the said price or purchase money by one-third of the amount of such price or purchase money, then the amount of such valuation shall, for the purposes of this Act, be deemed and taken to be the price or purchase money of such property; and duty thereupon, together with the reasonable expenses of such valuation, shall be paid by the purchaser, but in case such value shall not exceed the said price or purchase money to the extent of one-third thereof, then duty shall be received upon such price or purchase money, and the expense of the valuation shall be borne by Government: Provided that nothing herein contained shall be held or taken to prevent any purchaser who shall conceive himself aggrieved from bringing such valuation in review before any Court having jurisdiction.

15. If, in any case, some additional valuable consideration, other than money, shall be given or promised, or agreed to be given by the purchaser to the seller or to any other person, for or in respect of or in connection with the alienation of any immovable property, then the seller and the purchaser shall be respectively at liberty to put, by way of solemn declaration, a value in money upon such additional consideration, and such value shall be added to the sum of money paid, or to be paid, and transfer duty shall be paid upon the conjoint amount; and in case the said seller and purchaser shall not put the same value upon such additional consideration, then duty shall be paid upon the higher of the two values so put: Provided that the provisions of the two last preceding sections respectively of this Act shall apply to the value or values so put, in case it or they shall appear to the Civil Commissioner who is to receive the transfer duty to be considerably less than the just and fair value of such additional consideration, or in case the said seller and purchaser shall not, each of them, put a value thereupon.

Valuation of consideration other than money.

16. No valuation of any property, for the purpose of the payment of transfer duty, shall be capable of being made at any time after any sum of money shall have been received, except money received by way of deposit for securing the payment of any amount of transfer duty to be afterwards fixed and ascertained, as being the transfer duty payable upon such property, and after a final receipt shall have been granted for such duty.

Valuation not competent after duty paid.

EXEMPTIONS FROM TRANSFER DUTY.

17. No transfer duty shall be remitted upon any sales whatever, except as specially in this Act provided, and except upon sales in regard to which the transfer duty, if paid, would be paid directly from and out of the colonial revenue.

Remission of duty fo. bidden.

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Return of duty
when sale declared
void.

18. As often as any contract of sale, upon which transfer duty shall be payable, shall be set aside, or cancelled, or declared or made void by the judgment of any competent Court, the transfer duty upon such sale, if unpaid, shall not be payable: and if paid, shall be returned.

Exemptions from
obligation to pay
duty.

19. Exemptions from the obligation to pay transfer duty under the provisions of this Act shall be allowed in the cases and to the extent hereinafter set forth, that is to say:

1. When any person appearing upon the records of the Deeds Registry to be a joint owner of any property shall purchase that property, he shall not be charged with duty upon that proportion of the purchase money which represents his individual share or interest.
2. Any person being a descendant of any deceased person, and who would be the heir, or one of the heirs, *ab intestato*, of such deceased person, who shall, being entitled as an heir or legatee in the estate, purchase or take over the immovable property in the estate, or any part thereof, shall not be chargeable with duty upon so much of the purchase money or value of such property as represents his share in the property so purchased or taken over, considered as, or as if, an heir, *ab intestato*; and the husband of any such heir or legatee, or the tutor, curator, or trustee of any such heir or legatee, purchasing for and in the name of such heir or legatee, shall be deemed and taken to be such heir for the purpose of this exemption.
3. Any heir or legatee of any deceased person, being such a person as has been above described under No. 2, who shall require to have any of the immovable property inherited by him from the deceased, or by the deceased legated or pre-legated to him, removed from the name of the deceased into his own name, shall not be chargeable with duty upon the amount of his share in the property so to be transferred, in case or supposing that the deceased died intestate.
4. No surviving spouse who had been married to his or her deceased spouse in community of property, shall be chargeable with any transfer duty upon any purchase, or other mode of taking over, from and out of the joint estate of the deceased and such surviving spouse, of the immovable property of the said estate, or of any part of such immovable property, or upon any immovable property or share in such property inherited by such surviving spouse from his or her deceased spouse as the heir or one of the heirs of such spouse—or upon any immovable property legated or pre-legated by the deceased spouse to such surviving spouse; nor shall any such duty become payable upon any property inherited from, or legated

- or pre-legated by such deceased spouse, by reason that the survivor has been charged by the will or other testamentary disposition of such deceased spouse with the payment of portions to children, or others, or with the payment of some amount of money into the joint estate.
5. Every purchase or other contract concluded by any surviving spouse with any heir or legatee of the deceased spouse, whereby such surviving spouse shall acquire from such heir or legatee his or her share or portion of any of the immovable property of, or which had been of, the joint estate, shall be exempt from duty, in like manner as if such purchase or contract had been concluded by such surviving spouse with the administrators of the joint estate, so long as such heir or legatee shall not have received transfer from or out of the joint estate of the property so sold, or otherwise disposed of, to such surviving spouse, but no longer.
 6. When any surviving spouse shall have been instituted as sole and universal heir of the first dying spouse subject to the obligation of making provision at some future time for the children of the marriage out of the estate of such first dying spouse, such children shall respectively be entitled, should occasion arise, to claim the exemptions provided in sub-sections No. 2 and No. 3 of this section, precisely as if they had been, jointly with the surviving spouse, instituted heirs of the first dying spouse.
 7. The husband of any woman to whom he shall be married in community of property may have any property standing in the Deeds Registry Office in her name removed into his own name without the payment of transfer duty.
 8. As often as the owner of any immovable property, being a husband or intended husband, or being a wife or an intended wife, or being the parent of a husband or wife, or of an intended husband or wife, shall agree or determine to vest such property in trustees, for the purpose of thereby making a provision for the support of the marriage, or for the wife or intended wife, or for the children of the marriage, transfer of such property may be made to such trustees without the payment of transfer duty: Provided that this exemption shall only extend to cases in which no consideration in money or property shall be given or promised to the owner of the property proposed to be vested in trustees, upon the trusts aforesaid, or upon trusts of the like nature.
 9. In every case in which any one person shall, by the records in the Deeds Registry Office, appear to be merely a

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- trustee for any other person, whether the latter shall be a minor or a major, or under coverture or not, the property so held in trust may be removed from the name of the trustee to that of such other person being entitled to have it so removed, without the payment of transfer duty.
10. In every case of voluntary or compulsory partition between joint owners of immovable property, all changes in the records of the Deeds Registry required for the due registration of the separate shares, to be held by each in severalty, shall be made without payment of transfer duty in case the person claiming exemption from such payment shall make and deposit with the officer authorised to receive transfer duty, or with the Registrar of Deeds, a solemn declaration as nearly as is material in the form D in the second schedule, that he has not given, nor is to give, any money or other valuable consideration to his late co-proprietors, or any of them, for or in regard to the share assigned to him, and which he desires to have registered in his name: Provided that if for the equalising of partition, or for any other reason, such person shall have given or agreed to give to his late co-proprietors, or any of them, any money or other valuable consideration for the said share so assigned to him, he shall, by solemn declaration as aforesaid, state the amount or value given or to be given by him, and transfer duty shall be payable upon such value or amount: Provided that the provisions of the fourteenth section of this Act shall apply to the value of any consideration other than money given, or to be given, in case it shall appear to the Civil Commissioner who is to receive the transfer duty that such value is considerably less than the just and fair value of such consideration.
 11. Any person, being a descendant or a surviving spouse of any person who shall, by will or otherwise, have burthened any immovable property with the entail of *fidei-commissum* or other similar restriction, in regard to such descendant or surviving spouse, so that the latter shall be entitled only to a life or other limited interest in such property, may have his title to such limited interest recorded in the Deeds Registry Office, without the payment of transfer duty.
 12. Any person claiming free property in remainder after the expiration or extinction of any previous *fidei-commissum*, or other similar limited interest, burthening such property, may, in case such person be a descendant within the fourth degree of the person imposing such *fidei-commissum* or other similar burthen, have the said property registered as his own in the Deeds Registry Office without the payment of transfer duty.

13. As often as any immovable property shall by the will of a deceased spouse be so limited and settled that it is, upon the death of the surviving spouse who is by such will entitled to a life interest therein, to go and belong to some child or other descendant of the deceased spouse, who would under or according to No. 3, of these subsections, or by any other law be entitled, in case such surviving spouse were dead, to obtain transfer of such property free of duty, then, in case such survivor shall during life see fit to waive and give up his or her life interest, in favour of the child or other descendant in remainder, such child or other descendant shall be entitled to take during the life of such survivor transfer of such property free of transfer duty.
14. As often as the trustee of any insolvent estate, in the exercise of the powers by law possessed by him as such trustee, shall refuse to fulfil any contract for the sale of fixed property made by the insolvent before sequestration, no transfer duty upon such sale shall be payable by the purchaser from such insolvent, and such duty if paid before the sequestration shall be returned; and in case of the subsequent sale of such property out of the insolvent estate the declaration of the seller may be altered so as to set forth the fact of such previous sale and of such cancellation thereof.
15. As often as the trustee of any insolvent estate shall elect to abandon any agreement which shall have been entered into by the insolvent for the purchase or exchange of any immovable property, no transfer duty shall be payable upon such sale: Provided that such duty, if it has been paid by the insolvent, shall not be returned; and provided that the solemn declaration to be made by the vendor, in case he shall make any second or subsequent sale, shall be as nearly as is material in the form marked E in the second schedule.
16. As often as any insolvent shall, by agreement with his creditors, be permitted to retain or take over any of the immovable property which belonged to such insolvent at the date of the order of sequestration and still remaining unregistered in the name of such insolvent, no transfer duty shall be payable upon such transaction.
17. It shall be lawful for the Governor, upon proof made to his satisfaction, that any person, acting *bonâ fide*, has made a mistake in regard to the enregisterment of any transfer, to permit such transfers as may be necessary for the correction, in the deeds registry, of the said mistake to be passed free of transfer duty.

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18. If in any case any person who having become surety for the payment by the purchaser of the purchase money of any property shall have paid such purchase money, and by reason of insolvency, absence from the Colony or other cause, such surety shall be unable to recover the money so paid, and shall be willing or desirous of taking transfer of the property into his own name, the Governor may, if he shall see fit, upon proof by solemn declaration of the facts, authorise the passing of transfer of the property direct from the vendor to such surety upon payment of single duty, whether paid by the purchaser or by the surety, as if the sale had been made *ab initio* to such surety: Provided that nothing herein contained shall affect the respective rights and remedies of such vendor and such purchaser in regard to such first or original sale.

Remission of duty
when sale rescinded.

20. (1) As often as any contract of sale upon which transfer duty shall be payable, shall be cancelled and rescinded by mutual consent of the vendor and the purchaser, before transfer made, without any part of the purchase money having been paid, or any valuable consideration given or promised by or on behalf of the purchaser, for the purpose of obtaining the consent of the vendor to such cancellation, the transfer duty upon such sale shall be remitted, in case such sale shall have been so cancelled and rescinded within six months from the day of sale, but not otherwise: Provided

(1) That the vendor and the purchaser shall make, in reference to such cancellation, solemn declarations, which shall be, in substance, in the forms marked F and G in the second schedule:

(2) That the Governor may, in case any vendor or purchaser shall from any cause be unable to make such declaration, dispense with the declaration of such vendor or purchaser, and may should he see fit require or accept the declaration of any agent or person acquainted with the circumstances.

Partial remission
when sale rescinded
after part considera-
tion has passed.

21. As often as any contract of sale upon which transfer duty shall be payable, shall be by mutual consent of the vendor and purchaser cancelled and rescinded before transfer made, then, in case any part of the purchase price shall have been paid, or any valuable consideration shall have been given or promised by either party to the other, for or in respect of such cancellation, transfer duty shall be payable only upon the sum so paid or the value of any consideration other than money so given, such value to be ascertained in manner in the thirteenth section of this Act provided; and the vendor may, on a second sale of the said property, amend the declaration to be made by him by setting forth the circumstances of such previous sale and of the cancellation thereof.

¹ Land transferred for school purposes free of transfer duty, stamp duty or fees of Office. Act 6, 1893.

22. Whenever any person requiring to have any transfer or change of name effected in the Deeds Registry Office of this Colony, shall claim to be exempted from the payment of transfer duty under and by virtue of any of the exemptions mentioned and contained in this Act, it shall be the duty of the Registrar of Deeds to require due proof by solemn declaration if need be of all facts and circumstances by reason or on account of which such exemption is demanded, and he may also require the production of any deeds or instruments connected with the case and tending to show whether or not such exemption ought by law to be allowed.

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Inquiry by Registrar of Deeds when exemption sought.

23. As often as any question shall arise between the Registrar of Deeds and any person claiming to be entitled to any such exemption as aforesaid, regarding the right to such exemption, or the extent of that right, or, generally, any matter concerning the amount upon which any such person shall justly and legally be chargeable with transfer duty, it shall and may be lawful for any Judge of the Supreme Court sitting in Chambers, to hear the said Registrar of Deeds and the said person (or any person or persons representing each respectively) as to the matter in question, and to examine the proofs, if any, which shall have been offered in support of the claim to exemption, and to call for such further proofs as may be necessary, and, in a summary manner, to make, if he shall so think fit, such order in the premises as shall to justice appertain: Provided that such Judge may direct any such question to be brought, by way of motion, before any Court having jurisdiction, in order that the same may be heard and determined by such Court.

Hearing by a judge of dispute between Registrar of Deeds and claimant for exemption.

AS TO SALES TO AGENTS FOR ALLEGED PRINCIPALS.

24. As often as any immovable property shall be sold by public sale, the auctioneer shall, before or at, or forthwith after, the closing of the bidding, ascertain from the bidder for whom he purchases, and if such bidder shall profess to purchase for some person other than himself, then the auctioneer, or his assistant, shall, in case the purchaser so disclosed shall be approved of, take down, in writing, the name of such bidder and of the purchaser for whom he purchases, and until the name of the purchaser, whether the bidder himself or some one else for whom he purchases, shall have been taken down, in writing, there shall be no sale to any person; and the property may be again put up to competition: Provided that it shall not be necessary that the name of the person, for whom any bidder shall be purchasing, shall be announced publicly to the bystanders, if it be made known to the auctioneer, and be by him or his assistant taken down in writing as aforesaid.

Person bidding as an agent to disclose name of principal.

25. Should any bidder, whose bid shall have been accepted by the auctioneer, refuse to declare, when called upon so to do by the auctioneer, for whom such bidder purchases, it shall be lawful for

Proceeding where bidder refuses to disclose name of principal.

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the auctioneer to treat and consider such bidder as being himself the purchaser, and such bidder shall, in such case, be deemed and taken to be, to all intents and purposes, the purchaser; or the auctioneer, at his election, may treat such bidding as null and void, and proceed afresh as if it never had been made: Provided that the auctioneer, having once made his election either to treat such bidder as the purchaser, or to proceed to sell afresh, shall not be at liberty afterwards to alter such election.

Proceeding where principal repudiates purchase.

26. If, in any case, any bidder should declare, as aforesaid, the name of some person as his principal, who shall be taken down as the purchaser, and who shall afterwards refuse to accept the property purchased in his name, then, unless the bidder shall produce a sufficient authority, in writing, from such alleged principal, authorising such bidder to make such purchase for such principal, the bidder shall himself (without prejudice to other questions between the parties) be liable to pay transfer duty: Provided that such bidder, paying transfer duty, shall be entitled to recover the same from his principals, in case he shall succeed in proving that such principal did, in fact, give him authority to make the purchase in dispute.

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

Auctioneer forbidden to sell to undisclosed principal.

27. The provisions of the last preceding section relative to purchases at public sales by agents for alleged principals, shall extend and apply, *mutatis mutandis*, to purchases made by agents for alleged principals, at sales not being public sales.

28. No auctioneer, broker, or agent shall take down or receive in regard to any purchase, the name of any purchaser as purchasing in the manner commonly called and written "q.q." or receive, in any other form, the name of any person as purchasing for an unnamed principle; and any auctioneer, broker, or agent contravening this section of this Act shall incur and be liable to any penalty not exceeding fifty pounds.

Calculation of duty when property is taken over by agent bidder.

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

Private sales to undisclosed principals.

30. Every private sale or sale made otherwise than by auction, in regard to which the purchaser shall not profess to purchase for himself, in his individual capacity, shall be wholly null and void, unless, at the time of the making and completion thereof, the name of the principal for whom the purchase is made shall be

disclosed, and inserted in the note or memorandum, in writing, if any, which may be made in regard to such sale.

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MISCELLANEOUS.

31. As often as any dispute or question shall arise between a supposed seller and a supposed purchaser, the supposed seller alleging that a sale of immovable property by the one of them to the other of them was actually completed, and the supposed purchaser on the other hand denying the fact that such a sale took place, it shall be lawful for the Governor, at any time within six months next after such supposed sale, upon the application of such supposed seller, and upon proof made to his satisfaction that no collusion exists between the supposed seller and the supposed buyer, to authorise such supposed seller, in case of a future sale of the same property to a different person, to alter the ordinary form of solemn declaration to be made in reference to such future sale by stating in such declaration that he never sold the said property to any person except the person named in such declaration as the purchaser, if not to one A B, who, however, disputed and denied the fact of such sale, whereupon the said sale was given up and abandoned by the person making such declaration, and the Governor's authority obtained for altering the form of the said declaration so as to make it conformable to the fact.

Proceeding when fact of sale disputed.

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

Re-sale when vendor fails to enforce contract of purchase.

33. In case of a second or subsequent sale of any property previously sold, the solemn declaration to be made by the vendor, in regard to such second or subsequent sale, may, subject to the provisions of this Act, be altered in the manner indicated in the form marked J in the second schedule.

Form of declaration on re-sale.

34. In any case in which transfer duty shall have become payable upon any contract of sale, and such contract shall not have been completed, it shall be lawful for the vendor, if he shall make a subsequent sale of the said property to another purchaser to pay the amount of any such duty for which the first purchaser may have become liable by law, if such first purchaser shall have

Payment of first transfer duty on second sale.

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neglected or refused to pay the same; and such vendor shall be entitled to recover the sum so paid from the first purchaser as so much money paid for his use; provided that the solemn declaration to be made by the vendor, in regard to such first sale, shall be in the ordinary form of a vendor's declaration, and no declaration shall be necessary from the first purchaser.

Declarations in sales completed before passing of this Act.

35. In case any sale and purchase or other transaction upon which transfer duty is chargeable shall have been perfected before the passing of this Act, and the solemn declaration required by the law existing at the time of the completion of such sale and purchase or other transaction shall have been made, no further declarations under the provisions of this Act shall be necessary, but in all cases, where no such declarations shall have yet been made, the declarations to be made and subscribed shall be those directed by this Act and none other.

Before whom declarations are to be made.

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

Short title.

37. This Act may be cited as the "Transfer Duty Consolidation and Amendment Act, 1884."

FIRST SCHEDULE.

LAWS REPEALED.

Laws repealed.

Number and Year.	Title.	Extent of Repeal.
1. Ord. No. 18 of 1844.	Ordinance for regulating the payment of Transfer Duty in this Colony.	So much as has not already been repealed.
2. Act 15 of 1855.	Act to amend the Ordinance No. 18 of 1844, for regulating the payment of Transfer Duty in this Colony.	So much as has not already been repealed.
3. Act 7 of 1858.	Act for amending the Law relative to the payment of Transfer Duty.	The whole.
4. Act 8 of 1861.	The Transfer Duty Amendment Act, 1861.	The whole.

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Number and Year.	Title.	Extent of Repeal.
5. Act 11 of 1863.	Act to amend the Law relative to the payment of penalties for neglect to pay Transfer Duty.	So much as has not already been repealed.
6. Act 7 of 1864.	The Transfer Duty Amendment Act, 1864.	The whole.
7. Act 4 of 1872.	The Transfer Duty Amendment Act, 1872.	The whole.
8. Act 3 of 1876.	Act to transfer to certain other Officers certain duties performed by the Treasurer-General and other Officers, under the Ordinances relating to Auctioneers and Transfer Duty.	So much as refers to the functions of certain Officers in connection with transfer duty.
9. Act 3 of 1877.	The Transfer Duty Amendment Act, 1877.	The whole.

SECOND SCHEDULE.

FORM A.

I, A B, do solemnly and sincerely declare that the sum of £ _____ is the full and entire purchase money for which I have sold to C D the following property, that is to say: [Here describe the property.] And I declare that I sold the same to the said C D on the _____ day of _____, 18—, and not before; and that there is not any agreement, condition, or understanding between me and the said C D, whereby he has paid or is to pay to me or to any other person whomsoever, for, or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £ _____, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following:

Declaration of seller.

1. The costs of any survey of the said property which shall have been made prior to, and for the purposes of, the said sale, and of any survey of such property which may be made after the sale, and the cost of all diagrams and sub-divisions, and of the plan of the property exhibited at the time of sale;
2. The charge made by the auctioneer for the conditions of the said sale;
3. The commission, if any, paid by the purchaser to any auctioneer, broker, or agent, by or through whom the sale of the property may have been effected, not exceeding two

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- pounds and ten shillings per centum upon the amount of the purchase money ;
4. The auction duty payable upon the said sale ;
 5. The transfer duty payable thereon ;
 6. The cost of all deeds necessary for effecting transfer of such property, and of the mortgage deed, if any, and of all necessary stamps ;
 7. The charges of conveyance and agents, incurred in effecting the transfer of the said property ;
 8. The quitrent, if any, payable to Government upon the property sold ;
 9. The quitrent, if any, which shall be payable upon the property sold to any committee, consistory, or any other body, for religious, educational, or charitable purposes, not being rent already due and in arrear at the time of such sale ;

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £ —, save and except in so far as any of the charges above specified, and to be paid by the said C D, might be held or taken to be payable for me or on my behalf. And I further declare that the said C D is the only person who has ever purchased the said property from me, and that I never sold the same to any other person.

And I make this solemn declaration conscientiously believing the same to be true.

(Signed) A. B.

Declared before me this — day of —, 18—.

FORM B.

Declaration of purchaser.

I, C D, do solemnly and sincerely declare that the sum of £ — is the full and entire purchase money given, or to be given, by me to A B for the property following, bought by me from him, that is to say: [Here describe the property]. And I declare that I bought the same from the said A B on the — day of —, 18—, and not before, and that I have not, nor has any person to my knowledge, on my account, given, nor is there by me or on my behalf, to be given, any other valuable consideration for, or in respect of, or in connection with the alienation to me of the said property, save and except certain charges or payments which fall under, or come within, some one or more of the heads or items of charges or payments following: [Here set forth in order from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A]. And I make this solemn declaration conscientiously believing the same to be true.

(Signed) C D.

Declared before me this — day of —, 18—.

C.

No. 5—1884.

DECLARATION OF SALE BY AN AGENT.

I,
do solemnly and sincerely declare, that I have acted as the agent Declaration of sale by Agent.
(auctioneer or broker, as the case may be)
in making the sale (or purchase) of certain
sold by

to
and that I know, of my own knowledge, the amount of the purchase
money thereof: And I do further declare that the said sale was made
on the

and not before; and that the sum of
to be paid by the said
to the said

is, to the best of my knowledge and belief, the full and entire
purchase money to be given and received by the said persons, respec-
tively, in regard to the alienation of the said property by the one of
them to the other of them; and that, to the best of my knowledge
and belief, no further or other valuable consideration has been given
or is to be given, by or on behalf of the said
to or on behalf of the said

for or in respect of the said property, save and except certain charges
or payments (insert as in form A);—And I make this solemn
declaration, conscientiously believing the same to be true.

Declared at , this
day of 18

Before me

Justice of the Peace.

FORM D.

DECLARATION

ON PARTITION OF LANDED PROPERTY.

[Section , Act No. , .]

We, the undersigned
joint proprietors of the Quit-rent Farm or Land called Declaration of par-
tition by Joint Pro-
prietors. in
extent morgen and square roods, situated in the Division
of , Field-cornetcy of Registered Folio do
severally solemnly and sincerely declare that we have mutually agreed
with each other to the following partition of the said land so as to
give to each party a defined portion as his separate and exclusive
property;—namely,

And we declare that we have not, nor has any person to our know-
ledge, on our account given, or received, nor is there by us, or on our
behalf, to be given or received, by the one, to or from the other of us,
any money or other valuable consideration for or in respect of the
partition and mutual transfer of the aforesaid land.

No. 5—1884.

And we make this solemn declaration conscientiously believing the same to be true.

Declared at

this

day

of

18

Before me

Justice of the Peace.

FORM E.

Declaration of re-sale of property sold to insolvent and abandoned by trustee.

I, A. B., do solemnly and sincerely declare that the sum of £—— is the full and entire purchase money for which I have sold to C. D., the following property, that is to say: [here describe the property.] And I declare that I sold the same to the said C. D., on the —— day of ——, 18——, and not before, and that there is not any agreement, condition, or understanding between me and the said C. D., whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £——, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: [here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A.] And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £——, save and except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or on my behalf. And I further declare that the only person, other than the said C. D., to whom I ever sold the said property, or who at any time purchased the said property from me, was E. F., to whom I sold the same on the —— day of ——, 18——, for the sum of £——. And I further declare that since the said sale to the said E. F., he has become insolvent, and that the trustee of his insolvent estate has elected to abandon the said sale. And I make this solemn declaration conscientiously believing the same to be true.

(Signed) A. B.

Declared before me this —— day of ——, 18——.

FORM F.

Declaration by seller of cancellation of sale.

I, A. B., do solemnly and sincerely declare that I sold to C. D. on the —— day of ——, 18——, the property following, namely: [Here describe the property], for the sum of £——; and I declare that I have never received any sum of money, or other valuable consideration, on account of the said purchase.* And I further

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

declare that I have consented and agreed with the said C. D., to cancel by mutual consent the said sale, which sale was, on the — day of —, 18—, cancelled accordingly. And I further declare that I have not received, nor am I to receive, from the said C. D., or any other person, any money or other valuable consideration, for or in reference to my consent to the cancellation of the said sale. And I make this solemn declaration, conscientiously believing the same to be true.

No. 5—1884.

(Signed) A. B.

Declared before me this — day of —, 18—.

FORM G.

I, C. D., do solemnly and sincerely declare that I bought from A. B., on the — day of —, 18—, the property following, namely: [here describe the property], for the sum of £—; and I declare that I have never given to the said A. B., any sum of money or other valuable consideration, on account of the said purchase.* And I further declare that I have applied to the said A. B., to consent to cancel the said sale, which sale hath accordingly been cancelled by mutual consent. And I further declare that I have not given, nor am I to give, nor has any person, on my behalf, to my knowledge, given, nor is any person to my knowledge to give, any money or other valuable consideration for or in reference to the cancellation of the said sale. And I make this solemn declaration, conscientiously believing the same to be true.

Declaration by purchaser of cancellation of sale.

(Signed) C. D.

Declared before me this — day of —18—.

FORM H.

I, A. B., do solemnly and sincerely declare that I sold to C. D., as the agent, or alleged agent, of E. F., on the — day of —, 18—, and not before, the property following, namely: [here describe the property], for the sum of £—. And I declare that the said E. F. has declined to accept the property, and that the said C. D. has signified his willingness to take the same to and for his own individual account, for the said sum of £—, neither more nor less. And I further declare that there is not any agreement, condition, or understanding between me and the said C. D., whereby he has paid or is to pay to me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £—, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: [here set forth in order, from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A.] And I further declare that I have not received, and that I am not to receive, nor has any

Declaration of sale to agent of purchaser who refuses to ratify purchase.

* Should any interest have been paid upon the purchase money, add the words, "except certain interest upon the said sum."

No. 5—1884.

other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £——, save and except in so far as any of the charges above specified, and to be paid by the said C. D., might be held or taken to be payable for me or in my behalf. And I further declare that the said C. D., as the agent or alleged agent of the said E. F., is the only person who has ever purchased the said property, and that I never sold the same to any other person than, in manner aforesaid, to the said C. D., who with my consent and by virtue of the Act in that behalf provided, takes over the property aforesaid as his own. And I make this solemn declaration, conscientiously believing the same to be true.

(Signed) A B.

Declared before me, this —— day of ——, 18—.

FORM I.

Declaration of agent who takes over property bought for his principal.

I, C D., do solemnly and sincerely declare that I did, in the name of E F., purchase from A B, on the —— day of ——, 18—, and not before, the property following, namely: [here describe the property], for the sum of £——; and I declare that the said E F has declined to accept the said property, and that the said A B has consented and agreed that I shall take over the said property as the purchaser thereof, for the sum of £——. And I further declare that I have not, nor has any person to my knowledge, on my account given nor is there by me, or on my behalf, to be given, any other valuable consideration of any kind whatever, for or in respect of the alienation to me of the said property, save and except certain charges or payments which fall under, or come within, some one or more of the heads or items of charges or payments following: [here set forth in order from No. 1 to No. 9, both inclusive, the heads or items of charges or payments as in form A.] And I make this solemn declaration, conscientiously believing the same to be true.

(Signed) C. D.

Declared before me, this —— day of ——, 18—.

FORM J.

Declaration of seller of property resold after cancellation of first sale by mutual consent, order of Court, or other cause.

I, A B, do solemnly and sincerely declare that the sum of £—— is the full and entire purchase money for which I have sold to C D the following property, that is to say: [here describe the property]. And I declare that I sold the same to the said C D, on the —— day of ——, 18—, and not before; and that there is not any agreement, condition, or understanding between me and the said C D, whereby he has paid or is to pay me or to any other person whomsoever, for or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £——, save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments following: [Here set forth in order, from No. 1 to No. 9, both inclusive, the heads or

items of charges or payments as in form A.] And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £——; save and except in so far as any of the charges above specified, and to be paid by the said C D, might be held or taken to be payable for me or in my behalf. And I do further declare that the only person other than the said C D to whom I ever sold the said property, or who at any time purchased the said property from me, was E F, to whom I sold the same on the —— day of ——, 18—. And I further declare that the said sale to the said E F has been cancelled by mutual consent, and that the transfer duty thereupon has been remitted.

No. 6—1884.

(Or, “and I further declare that the said sale has been set aside by a judgment of the Supreme Court bearing date the —— day of ——, 18—, pronounced in a suit wherein —— was the plaintiff, and —— was the defendant”);

(Or, “and I further declare that the said E F has, to the best of my knowledge and belief, left the colony, ‘or cannot be discovered within it’ (as the case may be), and that he has not paid me any part of the purchase money agreed to be paid, and that I have received from the Governor the permission herewith annexed to make this special declaration”).

And I make this solemn declaration conscientiously believing the same to be true.

(Signed) A B.

Declared before me this —— day of ——, 18—.

In cases falling under the twenty-first section of this Act the above form must be altered so as to set forth the amount of the money or the value of the consideration upon which transfer duty is by such section made payable, and to state that such transfer duty has been paid.

No. 6—1884.]

[July 18, 1884.

ACT

To make Further Provision for the Imprisonment in this Colony of Criminals sentenced in Adjacent Territories. ⁽¹⁾

WHEREAS it is desirable to make further provision for authorising the imprisonment, with or without hard labour, of criminals sentenced to undergo such imprisonment by any competent Court in the territory of St. John's River, or in any other territory in South Africa to which this Act may be declared applicable: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Every person who has been or may hereafter be sentenced by any competent Court within the territory of St. John's River,

Governor authorised to imprison within the Colony criminals sentenced in St. John's River or other territory.

¹ Extended by Proclamation No. 25 of 1885 to Tembuland and the districts of Kentani and Willowvale in Transkei; by Proclamation No. 26 of 1885 to the remaining districts of Transkei and to Griqualand East; and by Proclamation No. 340 of 1894 to East and West Pondoland.

No. 7—1884.

or within any other territory in South Africa to which the Governor may, in exercise of the powers hereby conferred upon him, declare the provisions of this Act to extend or apply, to imprisonment with or without hard labour, may be sent into, imprisoned, and detained in the Colony of the Cape of Good Hope until the expiration of such sentence, and shall be treated in every respect as if the said sentence had been pronounced by some competent Court within the said Colony.

Certificate of Colonial Secretary to be evidence of sentence.

2. A certificate signed by the Colonial Secretary, setting forth that from documents deposited in his office it appears that the person or persons named in such certificate has or have been sentenced as in this Act is mentioned, and for the term named in such certificate, shall, in all courts and places whatsoever, be deemed and taken to be conclusive evidence, at all times during the continuance of such term, that such person or persons is or are duly imprisoned and kept to hard labour, or otherwise, as the case may be, under and by virtue of the provisions of this Act.

Short title.

3. This Act may be cited as "The Prisoners' Detention Act, 1884."

No. 7—1884.]

[July 18, 1884.]

ACT

To Amend the Law relating to Boards of Management. (1)

WHEREAS no provision has been made by law with regard to the liquidation of the liabilities and the fulfilment of the obligations or the disposal of the assets of boards of management, established under the provisions of the "Villages Management Act, (2) 1881," which by virtue of the twenty-sixth section of the said Act may have ceased or may cease to exist; and whereas it is expedient that due provision should be made by law with reference to the said matters: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. In every municipality by or upon the establishment of which any board of management has ceased or shall hereafter by virtue of the twenty-sixth section of the said Act cease to exist, the commissioners of the municipal council of such municipality shall be subject to all and singular the liabilities and obligations to which such board was or shall be subject at the time of the establishment of such municipality, and shall be entitled to all the moneys or other assets or property or things whatsoever, and to all the books, accounts, or other documents which belonged or

¹ Extended by Proclamation No. 23 of 1892 to Tembuland and to districts of Kentani and Willowvale in Transkei, and by Proc. No. 456 of 1894 to Griqualand East.

² No. 29. See also Act 28, 1882.

Municipalities to succeed to all assets and liabilities of Boards of Management.

Preamble.

shall belong to such board or to which such board was or shall be in any way entitled upon the taking effect of the said section of the said Act.

No. 7-1884.

2. Whenever any proclamation declaring a community to be subject to the provisions of the "Villages Management Act, (1) 1881," shall be repealed, and the board of management of such community shall for that reason cease to exist, all moneys or other assets or property or things whatsoever, and all books, accounts, or other documents belonging to the said board shall be vested in the Divisional Council of the division wherein the said community is situated, and such Divisional Council shall liquidate all valid claims which may be brought against the said board out of the moneys or other assets of the board, and should such moneys or other assets prove to be deficient in amount, the Divisional Council may levy a rate on the landed property situate within the limits of the said community sufficient to make good such deficiency, such rate to be levied and collected in all respects as if it were a rate levied by such council for its own purposes.

When Village Management Act repealed, Board of Management to pay assets to the Divisional Council.

Claims—mode of settlement by levy of rate.

3. Whenever a board of management under the provisions of the "Villages Management Act, (1) 1881," has been or shall be established in any Native Location or community to which the provisions of Act No. 10 of 1870 applied, and there are or shall be any funds received or receivable under the first section of the last mentioned Act still remaining to be administered, the said board of management shall be entitled to all such funds, and shall be invested with and subject to all and singular the rights, liabilities and obligations attaching to such funds, and shall be entitled to all books, accounts, and other documents relating to such funds.

Powers of board in connection with Native Locations.

Disposal of funds.

4. In the event of no Resident Magistrate or Justice of the Peace being present at any such meeting as is mentioned in the fifth section of "The Villages Management Act, (1) 1881," any registered voter enrolled upon the list of registered voters referred to in the said section may be elected by a majority of the registered voters present at such meeting to preside thereat, and the person so presiding shall have and may exercise all the powers and shall discharge all the duties which any Resident Magistrate or Justice of the Peace would have and exercise and would be bound to discharge if present.

Who to preside at meetings in absence of Resident Magistrate.

5. This Act may be cited as the "Villages Management Act Amendment Act, 1884."

Short title.

No. 8—1884.]

[May 17, 1892.]

ACT

To Check the Spread of the Disease known as Leprosy.⁽¹⁾

Preamble.

WHEREAS the disease of Leprosy is prevalent in this Colony and has lately been spreading and continues to spread; and it is desirable to check the extension of such disease, and, if possible, to exterminate it: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof as follows:—

How person suffering from leprosy to be dealt with.

1. Whenever it shall be certified to the Governor, by the district surgeon of any district, or by any other duly qualified medical practitioner, and by a Field-cornet or Justice of the Peace, that any person is suffering from the disease known as leprosy, and that the fact of such person being at large is likely to spread such disease, the Governor may, by warrant under the hand of the Colonial Secretary or Under Colonial Secretary, order that such person shall be removed to such asylum or hospital as he shall appoint, to be there detained during the Governor's pleasure, and kept apart from contact with all other inmates of such asylum or hospital who are not afflicted with the same disease; Provided, always, that every such person, while so detained, shall have the liberty and privilege of seeing his friends and legal advisers at all reasonable times under such regulations in force for the time being, as the Governor may provide in that behalf.

Males to be kept apart from females.

2. Every asylum or hospital in which males shall be detained under the provisions of this Act shall be separated entirely from any asylum or hospital in which females shall be detained.

Provision for maintenance of persons detained under this Act.

3. When any person shall be detained under the provisions of this Act the maintenance of such person shall, until further provision be made therefor, be defrayed out of the Colonial revenues: Provided, always, that all sums so paid may be recovered from the estate, if any, of such person, or from any person or persons liable by law to contribute towards the maintenance of such detained person, by the civil commissioner of the district in which such estate is situate, or in which the person or persons so liable shall reside.

Special agreement may be made with detained person for maintenance.

4. Notwithstanding the provisions of the last preceding section, it shall be lawful for the superintendent or keeper of any such hospital or asylum, in all cases in which a person detained under the provisions of this Act shall be possessed of sufficient means to defray the expense of his maintenance in any such hospital or asylum, to make a special agreement with such person for his maintenance while so detained.

¹ See Act 31, 1894. Extended by Proclamation No. 42 of 1893 to all the Native Territories, and by Proclamation No. 340, 1894, to East and West Pondoland.

5. All district surgeons and medical officers shall give any information which may be required in regard to the disease referred to in this Act by the local authority appointed under the "Public Health Act, 1883," or by any Resident Magistrate, and shall be bound to attend to or inspect any case, or report on any matter relative to this Act, and every such surgeon or medical officer shall be entitled to charge and receive from such local authority or otherwise such reasonable fee as the Governor shall by any regulation in that behalf provide for each certificate required together with some reasonable amount for travelling expenses as such regulation shall prescribe.

No. 10—1884.

District surgeons and other medical officers to inspect cases and make reports at reasonable fees.

6. (1) The Governor may, from time to time, make, alter, and amend such regulations as he may deem to be advisable for the better and more effectually carrying out the provisions of this Act.

Governor may make regulations.

7. This Act may be cited as the "Leprosy Repression Act, 1884."

Short title.

No. 9—1884.]

[July 9, 1884.]

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1885.

[Spent.]

No. 10—1884.]

[July 11, 1884.]

ACT

To Provide for the more Effectual Working of the Public Health Act (2) of 1883.

WHEREAS it is desirable to provide for the more effectual working of the Public Health Act of 1883 within certain portions of Griqualand West, and to provide for the due levying of rates for the purposes of that Act on claim property in mines and otherwise: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The Governor may constitute a board to consist of five persons, of whom the Civil Commissioner of Kimberley shall be one, for the purpose of carrying out the provisions of the "Public Health Act of 1883" within such area as he may define within the Division of Kimberley, the Municipality of Beaconsfield, and the respective Mines and Mining Areas of Kimberley, De Beer's, Du Toit's Pan and Bultfontein. Such board shall be deemed a "local authority" for the purposes of the "Public Health Act (2) of 1883" and of this Act.

Governor to constitute a Board of five persons.
C.C. of Kimberley to be one.

2. Of the remaining four persons to be appointed by the Governor, one shall be selected from the members of the Borough Council of Kimberley, one from the members of the Town Council

Selection of remaining four.

¹ See Act 31, 1894.

² No. 4.

- No. 10—1884. of Beaconsfield, and two from the members of the mining boards or committees of management as the case may be of the said mines.
- Three to form a quorum. 3. Three of the members of the board constituted under this Act shall form a quorum for the despatch of business, and in case any member shall absent himself without leave from three consecutive meetings of the board, or from the division of Kimberley for one month, his seat shall become vacant, and another member may thereupon be appointed by the Governor in his place.
- Local authority to levy rates. 4. Subject to the provisions hereinafter in this Act contained the said "local authority" shall, for the purposes of the said Public Health Act, have power to levy and recover rates upon all property liable to assessment, within the borough of Kimberley and municipality of Beaconsfield, and upon all claims and other property within the respective mining areas included within the area under its jurisdiction.
- How value of rateable property to be ascertained. 5. The value of the rateable property upon which such local authority may levy rates shall be the value according to the latest assessment made for the purpose of the said borough of Kimberley and municipality of Beaconsfield, and for the purpose of the respective mining boards or committees of management as the case may be. The said Borough Council of Kimberley, the Town Council of Beaconsfield, and the several mining boards and committees of management aforesaid, shall respectively furnish to the "local authority" copies of their valuation or assessment rolls within ten days after delivery of a notice in writing calling for copies.
- In case valuation roll be not furnished. 6. In case of default in furnishing any copy of such valuation or assessment roll, the "local authority" may either apply to a competent Court to compel the body in default to furnish such copy, or proceed to frame such roll, and for that purpose the "local authority" is hereby invested with all the powers and authority of the body so in default.
- Collection of rates already imposed. 7. The Divisional Council of the Division of Kimberley shall complete the collection of the rate amounting to three farthings in the £ already imposed by such council upon property liable to assessment other than property within the mining areas for the purposes of the said "Public Health Act,"⁽¹⁾ and shall from time to time pay over the proceeds of such rate to the said "local authority"; but no further rate for such purposes shall be levied, until the said "local authority" have levied and collected a rate of not less than three farthings in the £ on the claim and other property within the mining areas aforesaid.
- Payment over to "local authority." 8. The "local authority" created by this Act shall take over and discharge all debts which may have been contracted by the "local authority" already existing, for the purpose of carrying out the provisions of the said "Public Health Act"; and shall be invested with all property belonging to such last mentioned "local authority."
- New "Local Authority" to discharge debts of old one.

¹ No. 4, 1883.

9. During the prevalence of any epidemic all householders, district surgeons, medical officers and medical practitioners shall report any case or cases of sickness which may come under their notice, and the symptoms of which to their knowledge are similar to the symptoms of the prevailing epidemic, to the Board of Health, or any Board appointed under the provisions of this Act; the said cases to be reported within twelve hours under a penalty not exceeding twenty pounds for each default.

No. 10—1884.

During epidemic all cases of sickness to be reported to Board of Health.

10. The Governor may, when he shall deem fit, abolish the "Board of Health" heretofore constituted for the district of Kinberley, or the Board to be constituted under the provisions of this Act.

Power to Governor to abolish Board of Health.

11. This Act may be cited as the "Public Health Extension Act, 1884."

Short title.

No. 11—1884.] [July 22, 1884.]

Act to Levy and Collect a Duty on Beer brewed within this Colony.

[Repealed by Act 25, 1887.]

No. 12—1884.] [July 25, 1884.]

Act to Authorise the Establishment of a Toll on the Bridge crossing the Orange River at Hope Town.

[Repealed by Act 17, 1889.]

No. 13—1884.] [July 15, 1884.]

Act for Altering the Duties of Customs in the Colony of the Cape of Good Hope.

[Repealed by Act 1, 1889.]

No. 14—1884.] [July 25, 1884.]

Act to Impose a Duty on Dogs.

[Repealed by Act 40, 1889.]

No. 15—1884.] [July 18, 1884.]

Act to Impose an Excise Duty upon Spirits Distilled or Manufactured within the Colony of the Cape of Good Hope.

[Repealed by Act 9, 1887.]

No. 16—1884.] [July 25, 1884.]

Act to Apply a further Sum not exceeding Thirty-three Thousand and Eighteen Pounds Sterling for the Service of the Year ending the 30th day of June, 1885.

[Spent.]

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EXCISE (SPIRITS).

No. 18—1884.

No. 17—1884]

[July 25, 1884.

ACT

To Authorise the Raising of a Sum of £139,800 for the Prosecution of certain Public Works.

Preamble.

WHEREAS it is desirable to prosecute and carry on certain public works already authorised, and to complete some of such works, and also to provide further funds for giving effect to the provisions of Acts at present in operation: And whereas there is a sum of £20,800 sterling, which will fall due upon the 1st day of October next, being the balance of certain debentures authorised to be issued under the Act No. 7 of 1870, known as the "Public Debt Consolidation Act," and comprehended in the schedule to such Act as "Kowie Harbour Improvement, £24,000"; and it is desirable to provide for the payment of such balance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Power to raise
£139,800.

1. It shall be lawful for the Governor to raise and take up a sum of One Hundred and Thirty-nine Thousand and Eight Hundred Pounds sterling, from time to time, as occasion may require, for the several purposes mentioned in the Schedule ⁽¹⁾ to this Act.

Short title.

2. This Act may be cited as "The Public Works Loan Act, 1884."

No. 18—1884.]

[July 21, 1884.

ACT

To Consolidate and Amend the Law relating to the Manufacture and Sale of Spirits. ⁽²⁾

Preamble.

WHEREAS it is desirable to consolidate and amend the law relating to the manufacture and sale of spirits within the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council and House of Assembly thereof, as follows:—

PRELIMINARY.

Short title.

1. This Act may be cited as the "Excise Spirits Act, 1884."

Definitions.

2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent with such meaning:—

¹ Not printed.

² All the provisions of this Act in so far as they may be applicable to wine farmers or to distillers distilling spirits from wine only, are repealed by § 3, Act 19, 1886. See Act 20, 1890. This Act extended by Proclamation No. 170 of 1884 to Port St. John's; by Proclamation No. 171 of 1884 to Tembuland; and by Proclamation No. 172 of 1884 to Transkei and Gr.qualand East.

“Person” includes an individual and a body of persons, whether corporate or otherwise:

“Spirits” means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits, and wood spirits:

“Colonial Spirits” means spirits liable to a duty of Excise:

“Foreign Spirits” means all spirits and strong waters liable to a duty of Customs:

“Low Wines” means spirits of the first extraction conveyed into a low wines receiver:

“Feints” means spirits conveyed into a feints receiver:

“Spirits of Wine” means spirits of the strength of not less than forty-three degrees above proof:

“Compounds” means spirits re-distilled, or which have had any flavour communicated thereto, or ingredient, or material mixed therewith:

“Sugar” includes any saccharine substance or syrup manufactured from any material from which sugar can be manufactured:

“Chief Inspector” means Chief Inspector of Excise:

“Proof Spirits” means such spirits as at a temperature of fifty-one degrees by Fahrenheit’s thermometer shall weigh twelve-thirteenth parts of an equal measure of distilled water:

“Proof” means the strength of proof as ascertained by Sykes’s hydrometer:

“Gravity” means the gravity as ascertained by Bates’s saccharometer:

“Still” includes any part of a still, and any distilling apparatus whatever for distilling or making spirits:

“Distiller” means and includes any person who conducts, works, or carries on any distillery, or who distils or manufactures any spirits, by any process whatsoever, either by himself, or his agent, or servant:

“A Distillery” means and includes any place or premises where any process of distillation whatever of spirits is carried on, or where any process of rectification of spirits by redistillation, or other process is carried on, or where any spirits are manufactured, or produced from any substance whatever by any process whatever:

“Dealer” and “retailer” mean respectively, a person who deals in, or retails spirits:

“Rectifier” means a person, other than a licensed distiller, who rectifies or compounds spirits:

“Excise trader” means any person carrying on a business subject to any of the regulations of this Act, and includes any proprietor or occupier of an Excise warehouse:

“Vinegar maker” means a person who shall make, prepare, extract, distil, rectify, purify, or sell any liquors prepared or capable of being used or applied for the purposes of making vinegar, or acetous acid for sale:

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“Wine”⁽¹⁾ means wine of any description produced within the Colony, and includes grape juice, grapes, husks and stalks of grapes and raisins:

“Wine farmer” means a farmer who cultivates vines on land in his own occupation and who produces wine from grapes grown on such vines:

“Licence” means a licence, in the form prescribed, granted by any distributor of stamps, or by any officer duly authorised, and “licensed,” as applied to any Excise trader, means a person holding a licence so granted for the purpose of his business:

“Premises” when used with reference to an Excise trader means any building or place used by him in the course of his business, and includes all buildings, or places, owned or occupied by, or on behalf, or for the use of, such Excise trader:

“Prescribed” and “approved” mean respectively prescribed or approved by the Governor or Chief Inspector:

“Warehouse” means an Excise warehouse approved as a general warehouse for the deposit of spirits, and includes an approved warehouse on the premises of a distiller, and a Customs warehouse:

“Civil Commissioner,” when used with reference to an Excise trader, means the Civil Commissioner for the division in which the premises of the trader are situate:

“Officer” and “proper officer” mean respectively an officer duly appointed for the purposes of this Act:

“Still maker” means a person who makes or repairs any still, or any distilling apparatus for distilling or making spirits, and includes the importer of any still or distilling apparatus:

“Resident Magistrate” and “Justice” mean respectively a Resident Magistrate or a Justice of the Peace having jurisdiction for the district in which any offence is committed or supposed to have been committed, or any offender is apprehended or found, or any goods, or commodities are seized, or liable to seizure, or suspected to be so liable:

“Schedule” means the schedule to this Act:

“This Act” includes any regulations made under the provisions hereinafter contained.

LICENCES.

Licences.

3. (1) On and after the first day of August, one thousand eight hundred and eighty-four, the following duties on licences granted in the Colony shall be paid; that is to say:

- | | |
|---|---------|
| (a) On a licence to be taken out by a distiller
(except as hereinafter provided) | £10 0 0 |
| (b) [Repealed by Act 19, 1886]. | |

¹ “Wine” means fermented liquor produced from grapes, the husks or stalks of grapes, and raisins, the produce of this Colony, without the addition of any foreign substance other than water. See § 2 Act 20, 1890.

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(c) On a licence to be taken out by a rectifier or compounder of spirits	£10 0 0
(d) On a licence to be taken out by every person, not being a licensed distiller, or rectifier, or compounder of spirits, who keeps or uses any still or retort	£1 0 0
(e) On a licence to be taken out by a maker of vinegar or acetous acid for sale (except a maker of vinegar or acetous acid from wine the produce of land in his own occupation)	£1 0 0
(f) On a licence to be taken out by a still maker	£1 0 0

(2) Every such licence shall be in the prescribed form, and shall be paid by means of stamps, and shall expire on the thirty-first day of December in each year, but when any such licence shall be issued on and after the first day of July there shall be payable only one-half the yearly licence.

If any person contravenes this section by carrying on any business hereinbefore mentioned without being duly licensed, or if he fails, or refuses, to produce his licence on the demand of an officer, he shall, for each offence, incur the penalty by this Act provided, and all spirits and vessels, utensils and materials found in his possession for the purposes of such business shall be forfeited.

4. (1) No person shall be entitled to a licence as a distiller, or be permitted to make entry of a distillery at which the daily attendance of an officer may be deemed necessary by the Chief Inspector, unless it is situate within half a mile of any town or village.

Distillery to be within half a mile of a town or village except on terms as to lodgings for officers, and licences to be conditional in other cases.

(2) The Governor may grant a licence for, and permit entry to be made of a distillery situate at a greater distance than above specified, provided that satisfactory lodgings for the officer or officers to be placed in charge of the distillery are provided by the person making the application for such licence, and provided that the rent to be paid by the Government for such lodgings shall at no time exceed twenty pounds a year.

(3) If a distiller to whom a licence is granted on said terms fails to provide the lodgings, or to keep them in proper repair, or interrupts or annoys any officer in the enjoyment thereof, he shall incur the penalty by this Act provided.

(4) No licence shall be granted for distilling spirits in any building or premises which may appear to the Governor, from their situation or otherwise, with reference to surrounding buildings or places of business, to be so constructed or arranged as to endanger the collection of the revenue.

(5) No licence to distil spirits shall be granted without a certificate from the proper officer that the person applying for such licence has complied with the prescribed regulations as to the

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buildings, places, vessels, and utensils to be used by such person in the manufacture or distillation of spirits.

Provided that the provisions of this section shall not apply to any wine farmer who only distils spirits from wine the produce of land in his own occupation.

5. [§§ 5-9 relate solely to wine farmers who distil spirits, and are therefore repealed by § 3, Act 19, 1886.]

DISTILLERS, OTHER THAN WINE FARMERS.

Premises, utensils,
and vessels to be
marked.

10. All premises used by a distiller, other than a wine farmer, for the purpose of his business, and all utensils and vessels used by him for, or in connection with, such business shall be marked, numbered or otherwise distinguished in such a manner as may be prescribed.

Prescribed form of
entry of premises,
&c.

11. (1.) Such distiller shall, before he begins to distil, make entry in the prescribed form of all premises, rooms, places, vessels, pipes, and utensils intended to be used by him for his business, specifying the purpose for which each room, place, vessel, pipe, and utensil is to be used, and the mark by which it is distinguished, and no room, place, vessel, pipe, or utensil shall be described in the entry as intended to be used for more than one purpose.

(2.) Such distiller shall sign the entry and deliver it to the proper officer.

(3.) No entry shall be withdrawn whilst there remains in any place mentioned therein any still, or in any room, place, vessel, pipe, or utensil mentioned therein any materials preparing or fit for distillation, or any spirits liable to duty.

(4.) No such distiller shall alter, move, or add to the vessels, utensils, or pipes at his distillery, after entry has been made thereof, except in accordance with the prescribed regulations.

(5.) No such distiller shall without the consent of the Chief Inspector, remove any sugar from the room or place entered as a sugar store except for use in the manufacture of spirits on his distillery premises, under the prescribed regulations.

Any person contravening this section shall for each offence be liable to the penalty by this Act provided, and every vessel or utensil, with its contents, and all spirits or materials for distilling spirits found in any room or place not specified in the entry of such distiller shall be forfeited.

Power of Governor
to fix number of
vessels.

12. The Governor may prescribe the number of vessels and utensils to be fixed and used by such distiller, and no addition shall be made to the number of such vessels or utensils without a certificate from the Chief Inspector that the vessels or utensils required to be added are necessary, and all stills, apparatus, utensils, vessels, and pipes used by any such distiller shall be fixed, placed, secured, and worked in accordance with such regulations as may be in that behalf prescribed.

13. (1.) Every such distiller shall keep such books as may be prescribed, setting forth from day to day the nature and quantity of the materials used by him for the purpose of distilling or manufacturing spirits, and the quantity of spirits distilled or manufactured by him, and an officer duly appointed in that behalf, may at all times demand an inspection of any such books, make extracts therefrom, and examine and take an account of any materials and spirits upon the premises of such distiller, or in any store or warehouse connected therewith.

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Distillers to keep books and to enter therein quantity of materials and spirits produced.

(2.) Every such distiller shall make a return in the prescribed form in the first week of each month, setting forth the quantity of each description of materials used by him in the distillation or manufacture of spirits, and the number of gallons of spirits computed at proof distilled from such materials in the month preceding such return.

14. (1.) Every such distiller shall provide, to the satisfaction of the Chief Inspector, a spirit store on his distillery premises, and cause it to be properly secured, and all spirits distilled by such distiller shall be placed and kept in such store in accordance with the prescribed regulations.

Provision and securing of spirit store

(2.) The spirit store shall be kept locked by the officer in charge of the distillery except when he is in attendance.

15. All spirits shall be received into and removed from such distiller's store, in the presence of an officer, and all operations in such store shall be conducted in accordance with the prescribed rules and regulations.

Spirits in store.

16. (1.) The proper officer shall, from time to time, take an account in the prescribed manner of the quantity of spirits in such distiller's spirit store.

Account of stock and penalty for excess or deficiency.

(2.) If the quantity of spirits computed at proof found in any such store is greater or less than the quantity which should be therein, according to such account, the distiller shall incur a fine, not exceeding double the duty, for every gallon of spirits so in excess or deficient, and such excess shall be forfeited.

(3.) No distiller shall be liable to any penalty under this section in respect of any such excess, as aforesaid, not exceeding one-half per centum, or in respect of any such deficiency, as aforesaid, not exceeding three per centum on the balance struck when such account was last taken, together with the quantity since brought in from the spirit receiver, nor if he satisfy the Chief Inspector that such excess or deficiency does not result from fraud: Provided that in any case all spirits found in excess, as aforesaid, shall be charged with duty.

17. (1.) In respect of all feints and spirits made in any distillery the duty shall be charged on the quantity of spirits at proof after deducting the feints (if any) remaining from the previous distillation, and included in the last account taken of feints and spirits.

Regulations for charging duty.

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(2.) In calculating the duty payable on spirits an allowance shall be made for any deficiency occasioned by natural waste in the transfer of spirits from the receiver to the store, subject to the following provisions :

(a) The allowance shall not exceed one and a half per centum on such spirits :

(b) If the deficiency exceeds three per centum on such spirits no allowance whatever shall be made.

Removal of spirits to a distiller's or excise warehouse and for exportation or ship's stores, and regulations as to warehouses.

18. (1.) Spirits may be removed, subject to the prescribed security, from a distiller's spirit store to any warehouse, or from one warehouse to another, or for exportation, or for ship's stores without payment of duty.

(2.) The Governor may approve Excise warehouses for warehousing spirits without payment of duty. Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

(3.) The proprietor of spirits in any warehouse may, on giving the prescribed security, remove the spirits for exportation or ship's stores without payment of duty.

(4.) All spirits shall be received into and removed from any warehouse in the presence of an officer, and all operations in any warehouse shall be conducted in accordance with the prescribed rules and regulations.

(5.) The proprietor or occupier of a warehouse shall be alone responsible to the proprietor of any spirits warehoused therein for the safe custody of such spirits, and no action shall be against any person in the employment of the Government for loss or damage occasioned to spirits whilst stored in such warehouse, or on account of any wrong or improper delivery therefrom: Provided that nothing in this sub-section contained shall apply to spirits warehoused in any Government warehouse.

(6.) The proprietor or occupier of any warehouse shall give the prescribed security.

(7.) The Governor may revoke his approval of a warehouse, and upon such revocation all spirits warehoused therein shall be removed, as may be directed, and no abatement of duty, or allowance, shall be made in respect of any such spirits, for deficiency of quantity or strength, after notice of the revocation has been given to the proprietor or occupier of the warehouse.

(8.) Good and effectual delivery of any spirits in any warehouse may be made for all purposes by handing to the officer in charge of such warehouse a written order signed by the owner of such spirits for the delivery thereof to the person named therein ; and thereupon entry of such delivery shall be made in the prescribed books.

In case of deficiency in spirits in a warehouse, duty on quantity warehoused to be paid.

19. (1.) Except in the case of spirits removed to a warehouse, or for exportation, or ship's stores, in accordance with the provisions of this Act, the duty upon all spirits shall be paid upon the

removal of the same from the distiller's store; and no spirits shall be removed from any warehouse, save as in this Act provided, until the duty chargeable thereon shall have been paid.

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(2.) Duty shall be chargeable upon the full quantity of spirits shewn to be in the casks containing the same, according to the entries in the prescribed books, unless the Chief Inspector shall be satisfied that no part of any deficiency that may be found to exist in such quantity shall not have been fraudulently caused; in which latter case duty shall only be charged upon the quantity of spirits actually contained in such casks at the time of removal.

20. (1.) If at any time any deficiency beyond that which can be accounted for by natural waste, or other legitimate cause, is found in any cask of spirits warehoused, the Chief Inspector may require immediate payment of duty on the quantity of spirits originally warehoused in the cask.

Duty to be paid upon deficiencies.

(2.) If the person in whose name the spirits are warehoused refuses, or neglects within two days after written demand by an officer to pay the duty, he shall forfeit double the amount of duty so demanded.

(3.) After demand made in terms of this section for the duty on spirits warehoused, no such spirits shall be transferred or removed until the duty and forfeiture (if any) is paid.

21. No such distiller shall mash any materials, or brew, or make wort, or wash, or use a still between ten o'clock in the afternoon of Saturday and one o'clock in the forenoon of Monday.

Unlawful hours for brewing and distilling.

22. If the original gravity of any wort or wash as ascertained from any sample of wash taken from a fermenting back, or wash charger, exceed by more than five degrees the gravity thereof, as declared by the distiller, he shall incur the penalty by this Act provided.

Penalty where original gravity exceeds gravity as declared.

23. The original gravity of wort or wash shall be ascertained in accordance with the provisions of the eighteenth section of the "Excise Beer Duty Act (1) 1884."

Mode of ascertaining original gravity.

24. Every such distiller, proprietor, or occupier of any warehouse shall provide to the satisfaction of the Chief Inspector, office accommodation at his distillery, store, or warehouse for the officer in charge thereof.

Office accommodation to be provided.

25. (1.) An officer may require such distiller at any time, when his still is not at work, to cause the water in any worm tub in his distillery to be drawn off, and the tub and worm to be cleansed.

Power to require water to be drawn off from worm tub.

(2.) In such case the water shall be kept out of the worm tub until the officer has finished his examination.

GENERAL PROVISIONS APPLICABLE TO ALL DISTILLERS. (2)

26. If a distiller, or proprietor of spirits, or proprietor or occupier of any warehouse by himself, or by any person in his employ,

Offence with respect to warehousing.

¹ No. 11, repealed by Act 25, 1887, which see.

² See note to title of this Act.

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or with his connivance, commits any of the following offences; (that is to say)—

- (a) Opens any of the locks or doors of a warehouse, or makes or obtains access into a warehouse, except in the presence of an officer acting in his duty as such; or,
- (b) After the approval of a warehouse makes any alteration therein or addition thereto without the previous consent of the Chief Inspector; or,
- (c) Warehouses spirits in, or removes spirits from a warehouse otherwise than is provided by this Act and the regulations made in accordance therewith; or,
- (d) By any contrivance or device privately removes or conceals any spirits either before or after they are warehoused; he shall incur the penalty by this Act provided, and all spirits warehoused, removed or concealed in contravention of this section shall be forfeited.

Penalty for interference with or attempt to defeat gauging.

27. If on the premises of any distiller any attempt is made, or device used, to prevent or hinder any officer from ascertaining the gravity, quantity, or strength of the wine ⁽¹⁾ wort, wash, low wines, feints, or spirits in, or running into, or from any vessel, or to deceive him in taking the dip or gauge of any vessel or utensil, or if such distiller causes any cover, fastening, cock, plug, pump, or pipe to be so made, or used that any vessel or utensil may be employed, opened, removed, filled, or emptied in the absence of an officer to avoid or defeat the security intended to be provided by this Act, the distiller shall for each offence incur the penalty by this Act provided.

Materials for the manufacture and distillation of spirits

28. (1) A distiller may use in the manufacture and distillation of spirits (in addition to wine produced within the Colony) any material of such nature that the gravity of the wort or wash produced therefrom can be ascertained by the prescribed saccharometer: Provided that a wine farmer who distils spirits shall only distil such spirits from wine the produce of vines grown on his farm.

(2) No distiller shall distil spirits from materials other than wine, except from wort or wash, brewed or made in his distillery from such materials.

(3) If a distiller has in his possession any wort, wash, low wines, feints, or fermented liquor not brewed, made, or distilled in his own distillery, except as hereinafter provided, the same shall be forfeited, and the distiller shall incur the penalty by this Act provided.

(4) It shall be lawful in accordance with the prescribed regulations for the distiller to receive from any licensed brewer sour or spoilt beer for use in the manufacture or distillation of spirits. Such distiller shall deliver to the proper officer a solemn declaration, made by such brewer, or his authorised agent, or servant, in the prescribed form, certifying the quantity and original gravity

¹ See note to title of this Act.

of the beer, and that it is unfit for use in his business as a brewer.

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29. There shall not be mixed with or added to any low wines, feints, or spirits in a distillery any substance which prevents the true strength thereof from being ascertained by Sykes's hydrometer.

Low wines or spirits not to be mixed so as to increase gravity.

30. The bulk quantity of spirits contained in any vat, vessel, cask, or package warehoused in any store or warehouse may be calculated by weight or gauge as may be prescribed.

Mode of calculating quantity of spirits warehoused.

31. (1) An officer may take a sample of any wine, wort, wash, low wines, feints, or spirits from any vessel or utensil in any distillery, or in any store, or warehouse, and the gravity, or strength, of any sample so taken shall be deemed the gravity, or strength, of the whole contents of the vessel or utensil from which it is taken.

Officer may take samples.

(2) A distiller may, if he wishes, before any such sample is taken, stir up and mix together all the liquor contained in the vessel or utensil from which the sample is to be taken.

32. No spirits shall be sent out or delivered from a distiller's store, or any warehouse (except upon the permit or certificate of the proper officer and except as in the seventh and eighth sections of this Act provided), (1) and no spirits shall be received by a rectifier or dealer in, or retailer of spirits, unless accompanied by a permit or certificate in accordance with the prescribed regulations: Provided that every rectifier, dealer in, and retailer of spirits shall keep an account in the prescribed form of all spirits received into his stock, and such stock account shall be open at all times to the inspection of an officer who may make extracts therefrom.

Permits and certificates.

Any person who shall, in any manner use, or cause or suffer to be used, any permit or certificate so as to evade the provisions of this section, or of any regulation made in accordance therewith, shall incur the penalty by this Act provided, and all spirits found to have been so sent out, delivered, removed, or received, shall be forfeited.

33. For the purpose of ascertaining by weighing the quantity of spirits in any cask, Table A in the first schedule shall be used, and the quantity ascertained thereby in accordance with the rates prefixed thereto shall be deemed to be the true quantity: Provided that when the calculation of the quantity of spirits in a cask shall produce a fraction of a gallon less than half a gallon such fraction shall be rejected, and when the fraction amounts to half a gallon, or upwards, the next higher number of gallons is to be taken and entered as the true quantity; and further, that the same method of calculation shall be followed in ascertaining the quantity of spirits at proof in a cask

Rules for ascertaining quantity of spirits by weight.

34. In the event of the loss or destruction by fire, or other unavoidable accident, of any spirits in a distillery, or of any spirits

Remission of duty for spirits lost or destroyed.

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when deposited in a warehouse, or whilst being received into or delivered from a spirit store, or warehouse, or whilst being removed under bond on shipboard, or whilst being shipped or landed, or whilst being removed from one warehouse to another, the Treasurer of the Colony shall, on proof to his satisfaction of the loss or destruction, remit the duty payable or paid in respect of the spirits so lost or destroyed.

Spirits removed for fortifying wine for exportat on.

35. Subject to the prescribed regulations spirits may be delivered from a distiller's store or warehouse to be used for fortifying wines produced within the Colony to be exported by sea, but the quantity of such spirits shall not exceed ten gallons of spirits computed at proof to one hundred gallons of wine: Provided that an officer shall be present when any such spirits are added to such wines for fortifying: Provided further that in case any wine so fortified shall be re-imported within the Colony, the duty on such spirits shall be paid by the exporter.

Strength of spirits to be ascertained by Sykes's hydrometer.

36. All spirits shall be deemed to be of the strength denoted by Sykes's hydrometer as ascertained by any officer in accordance with the table lodged with the Chief Inspector, and intituled a table of the strength of spirits denoted by Sykes's hydrometer.

Excise traders to provide scales, weights and measures.

37. Every distiller (except a wine farmer who distils from wine on his own farm) or proprietor of a warehouse, and every rectifier shall, when so required by the Chief Inspector, provide sufficient and just scales and weights, and a set of standard measures for the purpose of weighing, measuring, and taking an account of the spirits, goods, and commodities in his warehouse, stock, or possession, and of any casks or vessels used for the purpose of containing any such spirits, goods, or commodities.

Locks and fastenings.

38. (1) Where any warehouse, room, place, vessel, utensil, or fitting belonging to any Excise trader is by this Act directed to be secured or locked, the Excise trader shall to the satisfaction of the proper officer, provide, affix, repair, and renew all fastenings requisite for the purpose of enabling officers to affix locks thereto, or otherwise to secure the same.

(2) All requisite locks, or keys, shall be provided by the Chief Inspector at the expense of the revenue.

(3) No Excise trader, or his servant, shall destroy or damage any fastening, or lock, or key, belonging thereto, or any lock label, or open or remove any lock, fastening, or lock label, or improperly obtain access into any warehouse, room, place, vessel, utensil, or fitting, or shall have any fastening, vessel, utensil, or fitting so constructed that the security intended to be obtained by any lock, or fastening may be defeated.

RECTIFIERS, STILL MAKERS, AND VINEGAR MAKERS.

Rectifiers.

39. (1) Entry in the prescribed form shall be made by a rectifier before he begins to receive, rectify, or compound spirits, and such rectifier shall rectify or compound spirits according to the prescribed regulations.

(2) An officer shall have power at all times to inspect the stock book of a rectifier, make extracts therefrom, and take account of all spirits in his possession.

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(3) If the quantity of spirits computed at proof found on taking such accounts exceeds the quantity which should be found in his possession according to the stock book of such rectifier the excess shall be forfeited.

40. (1) Every still maker shall keep an account, in the prescribed form, of all stills and distilling apparatus made, or repaired, or imported by him, and such account shall be open at all times to the inspection of an officer, and he shall permit any officer at any time to inspect the same and make extracts therefrom.

Still makers.

(2) An officer shall have power at all times to enter upon the premises of a still maker and to inspect and take account of all stills or distilling apparatus found therein.

41. (1) Every still, or still head, or worm of a still which is found in the custody or possession of any person not being licensed to keep or use such still, still head, or worm, shall be forfeited, provided that the Chief Inspector may permit, under the prescribed regulations, the keeping and using of any still or stills, for experiments in chemistry, or by any persons carrying on trade, or otherwise, for the manufacture of any articles other than spirits.

Use of stills by unlicensed persons.

(2) An officer may at any time enter upon the premises of any person who shall be licensed to keep or use any still, or retort, or who shall keep or use any still, or retort, and examine any such still, or retort kept by such person.

42. (1) Every maker of vinegar or acetous acid, who shall have, possess, or use at or upon his premises for making vinegar, any still for distilling, rectifying, or purifying vinegar, or acetous acid, or any liquor, or materials prepared, or preparing for making vinegar, or acetous acid, shall have and use such still under and subject to the prescribed regulations.

Vinegar makers.

(2) The premises of a maker of vinegar or acetous acid shall be open at all times to the inspection of an officer.

POWERS OF OFFICERS.

43. An officer may at any time, either by day or by night, enter any part of the premises of, or house or place whatsoever belonging to, or made use of, by a distiller or rectifier, and search for, examine, gauge, and take an account of any still or other vessel, or utensil, and also any spirits or materials for the manufacture of spirits therein.

Powers of officers.

If a distiller or rectifier, after demand for admission has been made by an officer, shall refuse to admit such officer, he shall, for each offence, incur the penalty by this Act provided.

44. (1) An officer may at any reasonable time enter the premises of a dealer in, or retailer of spirits, and inspect his stock book, and examine and take account of all spirits in his stock or possession,

Officers may enter upon the premises of a dealer in or retailer of spirits and exa-

No. 18—1884. and take samples of any such spirits, paying for any samples so
 mine and take account of stock of spirits. taken the usual price thereof.

(2) If the quantity of spirits computed at proof found on taking such account exceeds the quantity which should, according to the stock book of the dealer, or retailer, be found in his possession, the excess shall be forfeited, and the dealer or retailer shall incur the penalty by this Act provided.

Ladders and lights to be provided.

45. Every distiller or rectifier shall provide ladders of sufficient length and strength and place them firmly and conveniently to enable the officers to take account of any vessel, utensil, spirits or materials therein, and provide sufficient lights and other conveniences and assist the officers in taking such accounts.

GENERAL OFFENCES.

General offences.

46. No person shall remove any wort, wash, low wines, feints, or spirits from the premises of a distiller contrary to the provisions of this Act, or knowingly buy, or receive any wort, wash, low wines, feints, or spirits so removed from the premises of a distiller.

Receiving spirits from persons not authorised to sell or deliver.

47. No person shall knowingly receive, buy, or procure any spirits from a person not having authority to sell or deliver the same.

Receiving spirits on which the duty has not been charged.

48. If any person knowingly buys, or receives, or has in his possession any spirits after they have been removed from the place where they ought to have been charged with duty, and before the duty payable thereon has been charged and paid, or secured, or if any person shall hawk, sell, or expose for sale any spirits in or about any street, highway, or other place, or in, or from any boat, or other vessel upon the water, or in any other manner or place whatsoever, except in a place duly licensed for that purpose, he shall forfeit such spirits and incur a fine equal to treble the value thereof.

Assaulting and opposing officers.

49. Any person who assaults an officer acting under this Act, or any person acting in his aid, or who shall forcibly oppose the execution of any of the powers given under this Act shall incur the penalty by this Act provided.

Spirits or goods forfeited may be seized.

50. (1) Any spirits or goods forfeited under this Act may be seized by an officer, or an officer of Customs, or by a Resident Magistrate, a Justice of the Peace, Field-cornet, Police Constable, or any Market Master.

(2) If any spirits or materials for making spirits shall be forfeited under this Act, all casks or other utensils containing the same shall also be forfeited.

(3) Where any spirits are forfeited by an Excise trader, the Chief Inspector may, if he think fit, take from the stock of such Excise trader instead of the spirits forfeited, the same quantity, proof or bulk, of any other spirits.

Misconduct of and collusion with officers.

51. Every person shall incur the penalty by this Act provided who, in or with reference to any matter relating to the laws of Excise:

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- (a) Not being authorised so to do, gives or promises to give, directly or indirectly, any reward to an officer or a person employed by the Government, in respect of the performance or non-performance, by any such officer or person, of his duty or employment; or
- (b) Agrees with or proposes to any such officer or person to do, or permit anything in contravention or evasion of this Act, or any other Act or Acts, relating to the revenue of Excise or of his duty; or
- (c) Being an officer or a person employed by the Government
- (i) Demands or receives, except from or through the Government, any reward in respect of the performance or non-performance of his duty or employment; or
- (ii) By any wilful act, neglect, or default does, or permits, or agrees to do, or permit anything in contravention or evasion of this Act, or any other Act or Acts, relating to the revenue of Excise.

If any such officer or person is convicted of any of such offences he shall be disqualified from serving the Government in any office or employment.

SUPPLEMENTAL.

52. The Governor shall appoint officers for the purpose of carrying out the provisions of this Act, or any other Act or Acts relating to the revenue of Excise, and shall make rules and regulations for all or any of the following purposes:—

Governor may appoint officers and make rules and regulations.

(1) The period of time allowed for the various operations of brewing and distilling, and for removing any material, wort, or spirits from the several vessels used in such operations.

(2) The guidance and conduct of officers and persons employed in carrying this Act into effect.

(3) For ascertaining the amount of duty payable, and securing and enforcing payment thereof.

(4) For prescribing all things necessary to be done for effectually carrying the provisions of this Act into effect.

53. Any person who shall contravene any of the provisions of this Act, or of any regulations made under this Act, shall, upon conviction before the Court of the Resident Magistrate of the district in which the offence was committed, or of any other competent Court, be liable to a penalty not exceeding five hundred pounds sterling in respect of each act or offence (in addition to any penalty or forfeiture by this Act otherwise provided), and in default of payment to imprisonment, with or without hard labour, for any period not exceeding twelve months, unless such penalty be sooner paid.

Penalties.

54. (1) Subject to such regulations as may be prescribed goods of any description liable to a duty of Customs may be warehoused in any Excise warehouse approved for the purpose.

Goods liable to Customs duty may be warehoused in Excise Warehouse.

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(2) All the powers, provisions, regulations, and penalties contained in or imposed by any Act relating to the Customs as to the warehousing, custody, and delivery out of warehouse of goods liable to a duty of Customs, and as to any deficiencies therein or allowances thereon, shall, when applicable, be observed, applied, enforced, and put in execution with reference to such goods warehoused in Excise warehouses, and further shall, where applicable, be observed, applied, enforced, and put in execution with reference to Colonial spirits warehoused in a Customs warehouse, so far as the same are not superseded by and are consistent with the provisions of this Act.

Repeal of Acts in
Schedule.

55. The enactments specified in the second schedule are hereby repealed, from and after the commencement of this Act, to the extent specified in the third column of that schedule.

Provided that all existing bonds and securities given under or in pursuance of any enactment hereby repealed shall have the same force and effect as if they had been given under or in pursuance of this Act, and this repeal shall not affect—

- (a) Anything done or suffered before the commencement of this Act, under any enactment repealed by this Act; nor
(b) Any right or privilege acquired or duty or liability imposed or incurred under any enactment so repealed.

FIRST SCHEDULE.

TABLE A.

TABLE FOR DETERMINING THE WEIGHT PER GALLON OF SPIRITS BY SYKES'S HYDROMETER.

1. Spirits which on Sykes's Hydrometer indicate a number in Column A, must be taken to be of the Weight per Gallon in pounds and decimal parts of a pound of Spirits indicated by the corresponding number in Column B.

2. To ascertain the quantity of Spirits in Cask, their net weight must be divided by the number which in Column B indicates their weight per Gallon, and the product will be the quantity of the Spirits and decimal parts of a Gallon.

Column A Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter	Column B. Weight per Gallon.
0	8·154	4	8·178	8	8·202	2	8·225
2	8·157	6	8·181	3	8·205	4	8·229
4	8·161	8	8·185	2	8·208	6	8·232
6	8·164	2	8·188	4	8·212	8	8·236
8	8·168	2	8·191	6	8·215	5	8·239
1	8·171	4	8·195	8	8·219	2	8·242
2	8·174	6	8·198	4	8·222	4	8·245

EXCISE (SPIRITS).

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FIRST SCHEDULE—(Continued.)

No. 18—1884.

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
6	8·249	8	8·423	26	8·600	2	8·781
8	8·252	16	8·426	2	8·603	4	8·784
6	8·255	2	8·429	4	8·607	6	8·788
2	8·258	4	8·433	6	8·610	8	8·791
4	8·262	6	8·436	8	8·614	37	8·795
6	8·265	8	8·440	27	8·617	2	8·799
8	8·269	17	8·443	2	8·620	4	8·802
7	8·272	2	8·446	4	8·624	6	8·806
2	8·275	4	8·450	6	8·628	8	8·809
4	8·279	6	8·453	8	8·631	38	8·813
6	8·282	8	8·457	28	8·635	2	8·817
8	8·286	18	8·460	2	8·639	4	8·820
8	8·289	2	8·464	4	8·642	6	8·824
2	8·292	4	8·467	6	8·646	8	8·827
4	8·296	6	8·471	8	8·649	39	8·831
6	8·299	8	8·474	29	8·653	2	8·835
8	8·303	19	8·478	2	8·656	4	8·838
9	8·306	2	8·481	4	8·660	6	8·842
2	8·309	4	8·485	6	8·663	8	8·845
4	8·313	6	8·488	8	8·667	40	8·849
6	8·316	8	8·492	30	8·670	2	8·853
8	8·320	20	8·495	2	8·674	4	8·856
10	8·323	2	8·498	4	8·677	6	8·860
2	8·326	4	8·502	6	8·681	8	8·863
4	8·330	6	8·505	8	8·684	41	8·867
6	8·333	8	8·509	31	8·688	2	8·871
8	8·337	21	8·512	2	8·692	4	8·874
11	8·340	2	8·516	4	8·695	6	8·878
2	8·343	4	8·519	6	8·699	8	8·881
4	8·347	6	8·523	8	8·702	42	8·885
6	8·350	8	8·526	32	8·706	2	8·889
8	8·354	22	8·530	2	8·709	4	8·892
12	8·357	2	8·533	4	8·713	6	8·896
2	8·361	4	8·537	6	8·716	8	8·899
4	8·364	6	8·540	8	8·720	43	8·903
6	8·368	8	8·544	33	8·723	2	8·907
8	8·371	23	8·547	2	8·727	4	8·911
13	8·375	2	8·551	4	8·730	6	8·914
2	8·378	4	8·554	6	8·734	8	8·918
4	8·382	6	8·558	8	8·737	44	8·922
6	8·385	8	8·561	34	8·741	2	8·926
8	8·389	24	8·565	2	8·745	4	8·929
14	8·392	2	8·568	4	8·748	6	8·933
2	8·395	4	8·572	6	8·752	8	8·936
4	8·399	6	8·575	8	8·755	45	9·840
6	8·402	8	8·579	35	8·759	2	8·944
8	8·406	25	8·582	2	8·763	4	8·947
15	8·409	2	8·586	4	8·766	6	8·951
2	8·412	4	8·589	6	8·770	8	8·954
4	8·416	6	8·593	8	8·773	46	8·958
6	8·419	8	8·596	36	8·777	2	8·962

FIRST SCHEDULE—(Continued.)

No 18—1884.

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
2	9·745	4	9·808	6	9·872	8	9·938
4	9·749	6	9·812	8	9·876	97	9·942
6	9·753	8	9·816	94	9·880	2	9·946
8	9·757	91	9·820	2	9·884	4	9·950
88	9·761	2	9·824	4	9·888	6	9·955
2	9·765	4	9·828	6	9·892	8	9·959
4	9·769	6	9·832	8	9·896	98	9·963
6	9·773	8	9·836	95	9·900	2	9·967
8	9·777	92	9·840	2	9·904	4	9·972
89	9·781	2	9·844	4	9·908	6	3·976
2	9·785	4	9·848	6	9·913	8	9·981
4	9·789	6	9·852	8	9·917	99	9·985
6	9·792	8	9·856	96	9·921	2	9·989
8	9·796	93	9·860	2	9·925	4	9·994
90	9·800	2	9·864	4	9·929	6	9·998
2	9·804	4	9·868	6	9·934	8	10·003
						100	10·007

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Number and Year.	Title of Act.	Extent of Repeal.
No. 2, 1878.	Act to impose an Excise Duty upon Spirits distilled or manufactured within the Colony of the Cape of Good Hope.	The whole Act.
No. 33, 1882.	Act to amend the Act No. 2 of 1878, known as the "Excise Duty Act, 1878."	The whole Act.

THIRD SCHEDULE.

[Repealed by Act 19, 1886.]

No. 19—1884.]

[July 25, 1884.

Act to Provide for the Better Repression of Thefts of Wool, Mohair, and Slaughtered Carcasses.

[Repealed by Act 35, 1893.]

No. 20—1884.]

[July 25, 1884.

ACT

To Amend the Law relating to Stamp Duties and Fees of Office, and to provide for a Rebate of Customs Duty. ⁽¹⁾

Preamble.

WHEREAS it is expedient that the Revenues of the Colony should be increased by the imposition of certain new and increased Stamp Duties and by levying certain new and increased Fees of Office, and to provide for a certain Rebate of Customs duty: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. The several laws mentioned in the first schedule to this Act, and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except as to things done, offences committed, penalties incurred, or proceedings instituted, previously to the commencement of this Act.

Stamp Duties and Fees in Schedule 2 established.

2. All and singular the stamp duties and fees of office set forth in the second schedule hereto, shall from and after the taking effect of this Act become due and payable for and in respect of the several instruments, acts, matters and things mentioned and enumerated in the said schedule: and all and singular the several explanations, directions and provisions contained in the said schedule shall be of the same force and effect as if the same had been contained herein.

Governor may appoint person to perform duties of distributor or civil commissioner.

3. It shall be lawful for the Governor, by notice in the *Government Gazette*, to direct that any of the duties required by the "Stamp Acts, 1864, 1870 and 1877," to be performed by the Distributor of Stamps in Cape Town or by any Civil Commissioner elsewhere, shall be performed by some other person or persons, anything to the contrary in the said Acts notwithstanding; and from time to time to prescribe the manner in which adhesive stamps tendered for cancellation under the provisions of Act No. 3 of 1864, shall be cancelled by the officers empowered by law to cancel the same.

And may prescribe how stamps shall be cancelled.

Police officers may demand licence.

4. It shall be lawful for any commissioner, inspector, sub-inspector, or sergeant of police, or for any chief constable, or other officer of police thereto specially appointed, or for any excise officer, at any reasonable time to enter upon the premises of any person carrying on any trade or business, by Tariff 15 of the Schedule to this Act required to be licensed, and to demand the production of the necessary licence, and unless such person shall on

¹ See Acts 38, 1887: 36, 1889, § 34; 6, 1893 and 37, 1893, § 1. As to applicability to Native Territories see Paragraph 79 of Proclamation 110 of 1879; Paragraph 72 of Proclamation 112 of 1879, and Paragraph 71 of Proclamation 140 of 1885.

such demand produce a proper licence duly stamped and still in force, he shall be considered as a person carrying on an unlicensed trade or business, and be liable to the penalty provided by section 6 of the "Stamp Act, 1870": Provided that in the event of the necessary licence being produced at the trial of any such case, a penalty not exceeding £1 for the non-production of such licence to the officer by whom the same may have been demanded shall be imposed.

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Penalty for non-production.

5. Every person who shall grant, issue, or deliver,

- (1) Any proxy to vote at any meeting of shareholders or members of any joint-stock company, association, or society,
- (2) Any receipt for the payment of money,
- (3) Any letter of allotment or letter of renunciation, or any letter having the effect of a letter of allotment,
- (4) Any scrip certificate or share or any transfer thereof,
- (5) Any debenture issued by any company or corporation, or any transfer or cession of any debenture payable to order,
- (6) Any bank deposit receipt or renewal, or continuation thereof,

without affixing thereto the stamp by law required, shall be liable on conviction to a penalty not exceeding two pounds.

6. Every broker's note, whether bought or sold, shall be on stamped paper, and all and singular the provisions in Tariff 6 of the Schedule of the Stamp Act, 1864, relative to the use of adhesive stamps are hereby repealed.

Broker's notes to be on stamped paper

7. It shall be lawful for any person, granting a receipt for the payment of money, to use for the purpose of the stamp duty thereon required by Tariff 16 of Schedule 2 of this Act, either a revenue or a postage stamp, anything in Act No. 1, 1868, to the contrary notwithstanding.

Postage stamps may be used to cover receipts.

8. This Act shall take effect from the 1st day of August, 1884, and may be cited as "The Stamp and Offices Fees Act, 1884," and shall be read as one with the Stamp Act, 1864, the Stamp Act, 1870, and the Stamp Act, 1877, and the said Acts may be cited together as the "Stamp Acts, 1864, 1870, 1877, and 1884."

Commencement of Act and short title.

SCHEDULE 1.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ordinance No. 104, 1833.	Ordinance for regulating the Registration of Wills and the Administration of the Estates and Property of persons dying either testate or intestate in so far as the same are situated within the Colony.	Schedule A.

No. 20—1884.

Number and Year.	Title.	Extent of Repeal.
Ordinance No. 105, 1833.	"Ordinance for providing for the due Administration and Management of the Estates and Property of Minors, Lunatics, and Persons absent from the Colony, and for the proper care of the Persons of Minors and Lunatics."	Schedule D.
Ordinance No. 14 of 1844.	Ordinance for the better Regulation of the office of the Registrar of Deeds.	Schedule of Fees.
Act No. 3 of 1864.	An Act for Regulating the Duties upon Stamps and Licences.	Tariffs Nos. 12 and 18 of the Schedule; so much of Tariff No. 15 of the Schedule as has not already been repealed; the words "but the licence of every such last-mentioned Company shall be reckoned upon one-half, instead of upon the whole of its subscribed Capital" in subsection <i>b</i> of section 1 of Tariff No. 17 of the Schedule.
Act No. 13 of 1870.	"The Stamp Act, 1870."	Tariffs Nos. 2 and 16 of the Schedule.
Act No. 15 of 1877.	"The Stamp Act, 1877."	Section 8.
Tariffs of Fees, dated 17th June, 1830, fixed by Order of the Supreme Court.	<ol style="list-style-type: none"> 1. Tariff of Fees to be taken in Civil Cases by the Registrar of the Supreme Court of the Cape of Good Hope. 2. Tariff of Fees to be taken by the Master of the Supreme Court. 	} The whole.
Tariff of Fees, dated 24th January, 1832, fixed by Order of the Supreme Court.	Tariff of Fees to be taken for Proceedings in Civil Cases in the Circuit Courts of this Colony.	} The whole.

Number and Year.	Title.	Extent of Repeal.
Table of Fees and Charges fixed by Rule No. 341 of the Supreme Court, dated 26th March, 1881.	Table of Fees and Charges to be allowed by the High Sheriff of the Colony in respect of executing the process of the Supreme Court, Eastern Districts Court, and Circuit Courts of the Cape of Good Hope. GRIQUALAND WEST.	The item "Registering Summons or other process, £0 1s. 0d."
Ordinance No. 20 of 1874.	Ordinance to substitute in the Province of Griqualand West, certain Tariffs of Fees and Charges for certain other Tariffs in force in the Colony of the Cape of Good Hope.	Tariffs Nos. 1, 2, 4 and 5 of Schedule 2; the item "Reissuing Summons or other process, £0 1s. 0d.," in Tariff No. 3 of Schedule 2.

SCHEDULE 2 (*)

TARIFF 11. POLICIES OF INSURANCE.—ACCIDENT POLICIES.

	£	s.	d.
For any payment agreed to be made upon the death of any person only from accident or violence, or a composition for personal injury, or by way of indemnity against loss or damage of or to any property for which Stamp Duty is not otherwise provided; for every £100 or fraction thereof	0	0	3
2. Where the Premiums on Accident Policies shall be payable or be paid annually, the receipts for such annual payments shall be stamped as follows:—For over £1 of such premium or fraction of £1	0	0	1
3. For Single or Return Journey Tickets issued at Railway Stations, covering risks of accidents on Single or Return Journeys, five per cent. on the annual receipts from such Tickets, shall be paid by the Insurance Company into the Treasury. Every Insurance Company issuing such Tickets shall be bound to render accounts to the Treasury in support of the payment of the Stamp Duty.			
1. The foregoing Tariff shall be taken to form part of Tariff No. 11 of the Schedule to the Stamp Act, 1864, and shall be considered as if the same had been inserted therein after the words and figures following namely: "On Fire Policies for every £100 or fraction thereof of the sum insured"			0 0 6"

* See Act 37, 1893 §, 1.

TARIFF 15—LICENCES. (1)

No. 20—1884.

ANNUAL.

	£	s.	d.
For exercising the trade of a Baker.. .. .	5	0	0
For exercising the trade of a Butcher	5	0	0
For keeping a Public Billiard Table	10	0	0
For keeping a Public Bagatelle Table	8	0	0
For Hawkers—			
To trade in one Division with or without one vehicle..	3	0	0
For each additional vehicle	1	0	0
To trade generally with or without one vehicle ..	10	0	0
For each additional vehicle	3	0	0
For carrying on the business of an Auctioneer	10	0	0
For keeping a Bonded or Bonding Warehouse	20	0	0
For dealing in Gunpowder	5	0	0
For every Apothecary, Chemist and Druggist	5	0	0
For carrying on the business of a Broker	5	0	0
For carrying on the business of a Pawnbroker	10	0	0
For manufacturing Jams, Preserves, and Confectionery, for purposes of Trade or Sale	5	0	0
For Selling Revenue Stamps	0	5	0
Every Wharf Dingy plying for hire.. .. .	0	10	0
Every other Boat, used in the Transport of Goods or Materials, or plying for Passengers:			
Of Ten Tons and under	1	0	0
Above Ten Tons	1	10	0
Every Steam Launch plying for Passengers	2	0	0
Every Steam Tug, including Passenger Licence	10	0	0
Every Steam Tug fitted and used only for supplying Water to Shipping	10	0	0
Every Hulk used for Storing Coal	20	0	0
OTHER.			
For (2) killing game (for one whole season)	0	10	0
For a special licence for the Solemnization of Marriage ..	5	0	0
For admission to practise as an Advocate	20	0	0
For admission to practise as an Attorney	20	0	0
For admission to practise as a Notary	12	10	0
For admission to practise as a Conveyancer	12	10	0
For admission to practise as a Translator	2	10	0
For admission to practise as a Medical Practitioner ..	5	0	0
For admission to practise as a Land Surveyor.. .. .	5	0	0
For admission to practise as an Apothecary, Chemist and Druggist	2	10	0
For admission to practise as a Dentist	2	10	0
SPECIAL.			
Every Hulk or Condemned Vessel in any Port or Harbour not used for Storing Coal, until completely broken up and removed:			
For the first six months	25	0	0
For the second six months	30	0	0
For every additional six months	35	0	0

¹ Printed as amended by Acts 38, 1887 and 36, 1889 § 34.² See §§ 5 and 6 of Act 36 of 1886.

1. The above-mentioned licences shall either be written upon paper duly stamped, or shall have adhesive stamps of the proper value affixed to them before being issued. If adhesive stamps be used, they must be cancelled by writing thereon the initials of the officer issuing the licence, and the date on which he shall write the same, or in such other way as the Governor may from time to time direct.

2. All such of the above licences as are annual shall, no matter at what period of the year they may be taken out, expire on the thirty-first of December then next. When any such annual licence shall be issued upon or after the first of July, there shall be payable only one-half of the appointed sum. If taken out at any time before the first of July, there shall be no deduction.

3. It shall be lawful for any Resident Magistrate, Justice of the Peace, field-cornet, assistant field-cornet, excise officer, or chief constable, to demand from any person travelling in this Colony as a hawker or trader, the production of his licence; and, unless such person shall, on such demand, produce a licence duly stamped, and still in force, it shall be lawful for the person demanding the same to carry and convey the hawker or trader, with his goods, to the nearest Resident Magistrate, and such Magistrate shall have jurisdiction to try the offender, although no act of trading may be proved to have been done within the district of such Magistrate.

4. No hawker or pedlar shall obtain a licence until he shall produce to the officer authorised to issue such licence a certificate signed by some officer of police or by the chief constable, or by a Justice of the Peace for the division or district in which the said licence is applied for, that the applicant has resided within the said division or district for one month, and that he is, to the best of his knowledge and belief, a person of good character, and intends in good faith to carry on the trade of a hawker.

5. So much of this tariff as relates to annual licences shall commence on the first day of January, 1885, and not sooner, anything contained in the concluding section of this Act to the contrary notwithstanding.

6. No licences shall be necessary for selling postage stamps.

7. [Repealed by Act 30, 1887.]

8. Under such regulations as may be prescribed by the Governor in that behalf a rebate of Customs duty may be allowed to the wholesale consumers of sugar for the manufacture of jams, preserves, and confectionery: Provided that no premises on which the brewing of beer or distillation of spirits is carried on shall be licensed for the manufacturing of jams, preserves and confectionery.

Rebate of duty on sugar.

9. The foregoing Tariff shall be and the same is hereby substituted in lieu of Tariff No. 15 of the Schedule to the Stamp Act, 1864.

TARIFF 16—MISCELLANEOUS.

	£	s.	d.
Every Affidavit in any Civil Case, Motion, or Proceeding in Insolvency	0	3	0
Every Ante-nuptial Contract	1	0	0
Articles of Partnership	2	0	0
Every Act of Suretyship	0	2	0

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	£	s.	d.
Notarial Protest of a Bill or Note exceeding £10, but not exceeding £40	0	2	6
Notarial Protest of a Bill or Note exceeding £40	0	5	0
Notarial Certificate of the presentation of a Bill, Note, or Cheque not exceeding £40	0	1	0
Notarial Certificate of the presentation of a Bill, Note, or Cheque exceeding £40	0	2	6
Every Notarial Attestation of any instrument not otherwise stamped, and any Notarial Attestation of the truth of any Copy of any instrument, each	0	1	0
Every Notarial Special Power of Attorney to do any particular act	0	1	0
Every Notarial Act not required to be otherwise stamped, and every Grosse	0	1	0
Every Certificate of Authentication by a Minister of the Crown or Head of a Department.. .. .	0	15	0
Every proxy to vote at any Meeting of Shareholders or Members of any Joint Stock Company, Association, or Society	0	0	1
Every General Power of Attorney which includes among the acts to be performed, Sales or Transfers of Ships or Lands, or the passing of Deeds of Hypothecation or Mortgage	1	0	0
Every General Substitution to exercise all the powers conferred by a Power of Attorney as aforesaid	0	10	0
Every General Power of Attorney which does not include Sales or Transfers of Ships or Lands, or the passing of Deeds of Hypothecation or Mortgage, but includes the continuous performance of more than one act or transaction, or of various matters of business	0	10	0
Every General Substitution to exercise all the powers conferred by such last mentioned General Power of Attorney	0	5	0
Every Power of Substitution under any General Power of Attorney :			
(a) If for the performance of a single transaction	0	1	0
(b) If for the performance or continuous performance of more than one transaction	0	5	0
Every Special Power of Attorney not otherwise provided for	0	1	0
Every Substitution under such last mentioned Power of Attorney	0	0	6
Every Receipt for the Payment of Money (other than a receipt for, or in respect of, Money deposited in any Bank) when the sum exceeds £1 ⁽¹⁾	0	0	1
Every Letter of Allotment or Letter of Renunciation, or every Letter having the effect of a Letter of Allotment of any Share in any Company or proposed Company.. .. .	0	0	3
Every Scrip Certificate, Scrip, or Share (new Scrip Certificates without change of proprietorship excepted)—			

¹ See § 7 of this Act.

STAMPS AND LICENCES.

2211

No. 20—1884.

	£	s.	d.
(a) Entitling any person to become the proprietor of any Share in any Company or proposed Company			
(b) Issued or delivered in the Colony and entitling any person to become the proprietor of any Share in any Colonial or Foreign Company or proposed Company			
For every £10 of subscribed capital or fraction thereof	0	0	3
Every Transfer of any such Share—			
For every £10 of subscribed capital or fraction thereof	0	0	1
Every Debenture issued by any Company or Corporation—			
For every £100 or fraction thereof	0	5	0
Every Transfer or Cession of any Debenture not payable to bearer—			
For every £100 or fraction thereof	0	2	0
Every Fixed Deposit Receipt of any Bank or Joint Stock Company—			
For each £100 or fraction of £100 and for each year or fraction of a year	0	1	0
Every Renewal or Continuation of any Fixed Deposit Receipt of any Bank or Joint Stock Company—			
For each £100 or fraction of £100 and for each year or fraction of a year	0	1	0
Every Fixed Deposit Receipt of any Bank or Joint Stock Company terminable at the expiration of a notice to be given from either side—			
For each £100 or fraction of £100 and for each year or fraction of a year during its continuance ..	0	1	0

1. Every instrument mentioned in this tariff must be as to some part of it written upon stamped paper, or otherwise have an adhesive stamp affixed and cancelled in such manner as the Governor may from time to time direct.

2. Protests and certificates of presentation of bills, notes, and cheques under £10 shall not be required to be stamped.

3. The foregoing Tariff shall be and the same is hereby substituted in lieu of Tariff No. 16 of the Schedule to the Stamp Act, 1870.

TARIFF 2.—AGREEMENTS.

On every Lease or Agreement for Lease of Movable or Immovable Property, where the term of hiring shall not be less than six months,

	£	s.	d.
For every £100 given by way of fine or foregift, and in like proportion for any greater or less sum ..	1	0	0
For £10 of Rent and not exceeding £20	0	2	0
Exceeding £20	0	3	0
" 30	0	4	0
" 40	0	5	0
" 50	0	10	0
Exceeding £50 and not exceeding £100	0	10	0
And for every additional £100 rent, or fraction thereof	0	10	0

On every lease for any period exceeding one year, the amount of the above stamp shall be multiplied by the number of the years of the duration of the lease; and for this purpose, every broken portion of a year shall be deemed to be an entire year.

No. 20—1884.

When any lease or agreement for a lease shall be made, not for any definite period, but for and during the natural life of a person named therein, whether lessor or lessee, the value of such lease or agreement for a lease shall be calculated according to the tables for calculating the value of annuities contained in the schedule annexed to the Act of the Imperial Parliament, called the "Succession Duty Act, 1853," and the stamp to be affixed to such lease or agreement for a lease shall be upon the value thereof as so ascertained, and according to the aforesaid scale of ten shillings for every hundred pounds or fraction of a hundred pounds of said value.

When any lease or agreement for a lease shall not be made for any definite period, but terminable on any notice stipulated in the said lease to be given, the stamp to be affixed to such lease shall be calculated as if the lease were for a period of three years.

When any lease or agreement for a lease shall be for a term or period which is partly definite and partly indefinite, the value of the stamp to be affixed to such lease shall, as regards the definite period stated therein, be calculated according to the above tariff, and as regards the indefinite period by an additional stamp of *twice* the value of the first-named stamp.

In case of the assignment of a lease by a lessee before the expiration thereof, such assignment shall bear a stamp of one-half of the amount payable according to the above scale upon a lease for the unexpired term assigned.

On all articles of apprenticeship to any of the following professions, that is to say :

Attorney,
Notary Public,
Conveyancer,
Surgeon,

In case no premium be paid on such articles, or a premium which, reckoning at the rate of ten pounds sterling per centum, would not exceed ten pounds sterling £10

In case a premium be paid on such articles which, reckoning at the rate of ten pounds sterling per centum, would exceed ten pounds sterling, then the premium shall be reckoned as one gross sum, whether payable in one sum or by instalments, or as an annual or other periodical payment to be made during the apprenticeship, or to be paid partly or wholly, or at the end of the apprenticeship, and shall pay per centum, £10.

On all articles of apprenticeship to any of the following trades, that is to say :—

Apothecary,
Chemist or
Druggist,

Half the above rates.

In case any one shall combine in his own person any two or more of the above professions or trades, the one stamp shall cover articles of apprenticeship to such person in respect of all such professions or trades as aforesaid as shall be so jointly practised by such person.

Every agreement and assignment mentioned in the foregoing tariff must, as to some part thereof, be written upon stamped paper, or

otherwise have an adhesive stamp affixed and cancelled, as in the fourteenth section of the "Stamp Act, 1864," is mentioned.

No. 20—1884.

The foregoing Tariff shall be and the same is hereby substituted in lieu of Tariff No. 2 of the schedule to the Stamp Act, 1870, as amended by section 8 of the Stamp Act, 1877.

FEEES OF OFFICE.(1)

I. In the Deeds Registry Offices at Cape Town, Kimberley, and King William's Town.	Fees of office.
For the preparation of any Deed of Transfer or Hypothecation of Immovable Property, prepared in the Deeds Registry Office	£ s. d. 2 0 0
For the registration of any such last mentioned Deed prepared elsewhere ⁽²⁾	1 0 0
For the Registration of a Notarial Bond or Obligation in the name of each debtor and each surety—	
For each debtor and surety respectively	0 6 0
For the registration of every Ante-nuptial Contract, and every Notarial Contract of Servitude—	
At the office where such instrument shall be first registered	1 0 0
At any office where the same shall subsequently be registered	0 6 0
On each application to search the Index of the Register of Transfers and Hypothecations—	
For each letter searched	0 1 0
For an inspection of the entries under each name in the Debt Register or in the Land Register, or of every Bond, Deed of Transfer or Hypothecation, Ante-nuptial Contract, or Contract of Servitude	0 2 0
NOTE.—No fee is to be charged to any Conveyancer in respect of any search or inspection connected with any Deed about to be passed or registered by him or to any surveyor engaged in surveys of Crown Land, or land for transfer.	
For Office Copies of Deeds or other documents not exceeding four folios of 100 words	0 5 0
Every additional folio of 100 words	0 0 6
For every registration, cancellation, entry, certificate or other act to be made or done in the Deeds Registry Office, not being any of the matters or things aforesaid	0 3 0
For every deduction from a Diagram	0 10 0

Transfer of property for school purposes free from payment of transfer duty, stamp duty or fees of office—Act 6, 1893.

² See Act 43, 1895, § 4.

No. 20—1884.

II. In the Offices of the Master of the Supreme Court and of the Master of the High Court of Griqualand.

a. ORPHAN CHAMBER BRANCH.

	£	s.	d.
For filing and Registering any Will, Codicil, or Testamentary Writing	0	10	0
On every application to search the Index of Names of Deceased Persons; for every name searched for ..	0	1	0
On every application to search the Index of Names of Executors, Tutors, Curators, or Sureties; for each name searched for	0	3	0
For every inspection of any Will (including Codicils, if any) Of Liquidation Accounts:	0	2	0
One Account, or the first of a series	0	2	0
Each subsequent Account	0	1	0
Of any other document	0	1	0
For Office Copies of Wills or other documents, not exceeding one folio of 100 words	0	3	0
Every additional folio of 100 words	0	1	0
For Letters of Administration as Executor Testamentary, Assumed or Dative, or Certificates of Appointment as Curator Bonis, each:			
Where the value of the Estate does not exceed £40	0	10	0
Where value exceeds £40	1	0	0
For Letters of Confirmation of the Appointment of Tutors Testamentary, Assumed or Dative, or of Curators, Nominate, Assumed, or Dative, each	0	10	0
For every Edict, including cost of publication in the <i>Government Gazette</i>	1	0	0
For attending any meeting of Next-of-Kin, Legatees, or Creditors of Deceased Persons, Minors, or Absentees, whether by the Master or Resident Magistrate	0	10	0
For approving Security given by Executors, Tutors, or Curators	0	5	0
For filing Deeds of Assumption, each	0	10	0
For filing every Act repudiating an Inheritance	0	5	0
On every Inventory of an Estate or any part thereof—			
Without a valuation:			
First sheet, not exceeding one folio of 100 words ..	0	3	0
Every additional folio of 100 words	0	2	0
With a valuation:			
If such valuation do not exceed £40	0	1	0
Do. do. £100	0	3	0
And for every additional £100 or part thereof ..	0	1	0
For registering Accounts of Executors, Tutors, or Curators, each	0	3	0
For every Report, in the discretion of the Master, subject to a taxation before the Court, or a Judge thereof; or not less than	0	10	0
For filing and registering any Order of Court	0	10	0
For every Certificate in respect of which no other fee is payable	0	3	0
For taxing the Remuneration of Executors, Tutors, Curators, or Appraisers, on every £ or fraction of a £ of the taxed amount	0	1	0

b. INSOLVENT AND LAW BRANCH.

No. 20—1884.

	£	s.	d.
For every Order of Sequestration filed	0	10	0
For every other Order of Court filed,	0	3	0
For every Advertisement of Meeting of Creditors	0	5	0
For every Attendance at a Meeting of Creditors	0	12	0
On every Report of the filing of an account or of election of a Trustee	0	10	0
On every Certificate of Appointment of a Trustee, or of the confirmation of an Account	0	5	0
For each attendance in matters referred by the Court ..	1	5	0
For every report in the same, not exceeding five folios of 100 words, each	0	10	0
Each additional folio	0	1	0
For every search or inspection of any Account or Document	0	1	0
For certified Copies of Documents when not exceeding four folios of 100 words, each	0	5	0
Each additional folio	0	1	0
For Office Copies not certified one-half of the preceding charges.			
On all moneys received, paid, or distributed by the Master, in pursuance of any Order or Court			One per cent.

III. In Civil Cases in the Court of Appeal, the Supreme Court, the Court of the Eastern Districts, the High Court of Griqualand, and the Circuit Courts.

	£	s.	d.
For every Summons for a Defendant or Witness	0	12	0
For every Warrant of Attorney to Sue or Defend	0	6	0
For every Declaration or Special Case	1	0	0
For every Plea, Answer or Subsequent Pleading.	0	10	0
Upon every Notice, entering or setting down any Illiquid Default, or Provisional Case	0	5	0
Upon every Notice, setting down for Trial, Argument or Judgment, any Contested Case	0	10	0
For every Certified Copy of any Document not exceeding four folios of 100 words each	0	5	0
Every additional folio of 100 words	0	1	0
For every Writ or Process of Execution	0	10	0
For every Writ of Arrest, or for the Attachment of the Person or of Property to found Jurisdiction	1	0	0
For every Petition to Appeal to the Queen in Council ..	2	0	0
For every Recognizance in such Appeal Cases, for each person	0	10	0
For every other Recognizance or Bond of Security for Restitution	0	10	0
For affixing the Seal of the Court to Commissions for examination of Witnesses, or to any other Document ..	0	15	0
Upon every Liquid Document upon which provisional sentence is prayed, not being a document for which a stamp is by law provided	0	5	0

No. 21—1884.		£	s.	d.
	For every Order of Rehabilitation or Release from Sequestration of an Insolvent	1	0	0
	For every other Rule or Order of Court	0	10	0
	Searching for any Entry, Record, or Document :			
	Through one year	0	2	0
	For every additional year	0	1	0
	Upon every Petition, Memorial, Notice of Motion, or other Application to the Court filed	0	5	0
	On every Certificate of Completion of Security on Application for Rehabilitation	0	5	0
	On every Balance Sheet on application for Rehabilitation ..	0	5	0
	Taxation of Costs, for each £ or fraction of a £ taxed ..	0	1	0

No. 21—1884.]

[July 25, 1884.]

ACT

To Sanction the use of the Dutch Language equally with the English in Courts of Justice. ⁽¹⁾

Preamble.

WHEREAS it is expedient to afford facilities for the use of the Dutch Language equally with the English in Courts of Justice and in legal proceedings: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Charter of Justice and previous enactments not to affect this Act.

Judges may, and judicial officers shall, allow use of either Dutch or English in Courts of Justice.

Divisional Councils or number of voters may apply for summonses and notices to be in Dutch.

Power of Governor by Proclamation to authorise the same.

1. Notwithstanding anything contained in the Charter of Justice or in the Act No. 20 of 1856, or in any other statutory enactment having the force of law in the Colony, the judges of the superior Courts of Justice may, and Resident Magistrates, Special Justices of the Peace and Field-cornets shall allow the use of the Dutch language equally with the English language at the hearing of any suits, cases, or enquiries, civil or criminal, in their respective Courts when requested so to do by any of the parties to such suits or other proceedings; and upon such allowance it shall be lawful for either of the parties to such suits, cases, or other proceedings, or their respective counsel, attorneys, or agents, to use either the English or Dutch language in the conduct of their cases before such Courts.

2. Whenever any Divisional Council shall by a majority of its members, resolve at a meeting duly convened for that purpose; or whenever no fewer than one-third of the voters registered for parliamentary elections in any division shall in writing, by petition, apply to the Governor to order the issuing of summonses, notices, and documents referred to in any summons, in all suits brought in any of the courts within such division, in the Dutch as well as in the English language, it shall be lawful for the Governor in either of the cases before-mentioned by proclamation in the *Gazette* to grant such order. ⁽²⁾ Provided, however, that if it shall appear to the officer issuing any such process as aforesaid, either

¹ Dutch language may be used in Parliament. See Act 1, 1882.

² Printed as amended by § 14, Act No. 17, 1886.

from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the English language to understand the purport of such process, or is not sufficiently acquainted with the Dutch language to understand the purport of such process if it be drawn in the Dutch language then it shall not be necessary to issue such process in the Dutch language as well as the English language: (1) Provided, further, that if it shall appear to the officer issuing any such process as aforesaid, either from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the Dutch language to understand the purport of such process if drawn in that language, or is not sufficiently acquainted with the English language to understand the purport of such process if it shall be drawn in the English language, then it shall not be necessary to issue such process in the English language, but issue thereof in the Dutch language shall, for all legal purposes, and notwithstanding anything to the contrary contained in any law in force in this Colony, be good, valid and effectual.

No 23—1884.
Provision as to issuing process in Dutch or English.

Provision as to issuing of legal process in the Dutch language in certain cases.

3. This Act may be cited as "The Dutch Language Judicial Use Act, 1884."

Short title.

No. 22—1884.]

[July 25, 1894.]

Act for Authorising the Governor to Grant a Rebate of Customs Duty in respect of Goods removed Overland to certain Places beyond the Borders of the Colony.

[Repealed by Act 1, 1889.]

No. 23—1884.]

[July 25, 1884.]

ACT

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

WHEREAS it is desirable to provide for the performance under certain circumstances of the duties appertaining to the office of Attorney-General: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the Governor when, and so often as, by reason of the absence or incapacity, through sickness or other cause, of the Attorney-General for the time being, it shall appear to him necessary or expedient to do so, to appoint some other fit and proper person to act as and in place of the said Attorney-General, during such absence or the continuance of such incapacity, and

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

¹ Printed as amended by Act 15, 1888.

No. 24—1884.

thereupon every right, duty, power, and function, conferred or imposed by law upon the Attorney-General, shall and may be exercised and performed by such person as fully and effectually as the same may be exercised by the Attorney-General himself: Provided that nothing herein contained shall be taken to entitle such person to sit and take part in any proceedings in either the Legislative Council or the House of Assembly, nor to confer upon him any privilege, function, or power, possessed by the Attorney-General solely in his capacity as a Minister of the Crown under the provisions of the "Constitution Ordinance Amendment Act,⁽¹⁾ 1872."

Short title.

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

No. 24—1884.]

[July 25, 1884.]

ACT

To Impose a Duty on the Export of Ostriches and Ostrich Eggs.

Preamble.

WHEREAS it is desirable to impose a duty on Ostriches and Ostrich Eggs exported from this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Duty on export of ostriches and ostrich eggs.

1. Upon every ostrich exported from this Colony, except as hereinafter provided, there shall be payable a duty of one hundred pounds sterling, and upon every ostrich egg so exported there shall be payable a duty of five pounds: Provided, however, that no duty shall be payable on the export of any ostrich or ostrich egg to any neighbouring State or Colony which shall by its own Legislature have imposed a duty on the export of ostriches or ostrich eggs not less in amount than the duty imposed by this Act.

Penalty for contravention.

2. Every person who shall contravene the provisions of this Act by exporting any ostrich or ostrich egg (except as hereinbefore excepted) without payment of the duty imposed by this Act, shall on conviction be liable to a fine of not less than twenty-five pounds nor more than one hundred pounds for every such ostrich or ostrich egg so exported, or to imprisonment with or without hard labour, for any term not less than one month nor more than six months or until such fine be paid.

How penalty to be recovered.

3. All penalties under this Act may be recovered or enforced in the Court of the Resident Magistrate of the District in which the offence was committed.

Governor may frame rules, &c.

4. It shall be lawful for the Governor from time to time to make such rules and regulations as he may deem advisable for

carrying out the provisions of this Act: Provided that such rules and regulations shall be published in the *Gazette*.

No. 25—1884.

5. This Act may be cited as the “Ostrich Export Duty Act, 1884.”

Short title.

No. 25—1884.]

[July 25, 1884.]

ACT

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

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

Preamble.

1. It shall be lawful for the Governor to expend, from time to time, as occasion may require, a sum not exceeding five hundred and thirty-five thousand pounds (£535,000), for the following purposes, that is to say:—

Power to raise
£535,000.

- (1) For the purpose of constructing and equipping the railway from Beaufort West to Hope Town, the sum of one hundred and seven thousand pounds (£107,000).
- (2) For the purpose of constructing and equipping the line of railway from Wynberg to Kalk Bay, the sum of fifty-six thousand pounds (£56,000).
- (3) For the purpose of constructing and equipping the line of railway from Cradock to Colesberg, the sum of one hundred and eighty-two thousand pounds (£182,000).
- (4) For the purpose of creating a reserve of stores for the service of the Railway System generally, the sum of one hundred and ninety thousand pounds (£190,000).

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

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

No. 26—1884.

- (1) From the appropriation for the purpose of constructing and equipping the railway from a point at or near Colesberg on the Cradock Extension, to a point at or near the one hundred and eightieth mile from Beaufort West on the Beaufort West Extension (being from Naauw Poort to De Aar), the sum of one hundred and sixty-nine thousand pounds (£169,000).
- (2) From the appropriation for the railway from Queen's Town to Aliwal North, the sum of eighty-four thousand pounds (£84,000.)

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

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

Short title.

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

No. 26—1884.]

[July 25, 1884.

ACT

To Relieve the Government from the Charge of a certain Road in the Division of Stockenstrom and Queen's Town.

Preamble

WHEREAS, by Acts No. 32 of 1868, and No. 5 of 1871, the Governor may be called upon by the Divisional Councils of Stockenstrom and Queen's Town, to take charge of a certain road running from Blinkwater, in the division of Stockenstrom, to Poplar Grove, in the division of Queen's Town, and thence to Penhoek, also in the division of Queen's Town, and to maintain the said road; and whereas the Governor having been so called upon under the provisions of the said Acts, the said road is now in charge of the Chief Inspector of Public Works; and it is desirable that the Governor should be relieved from the liability to be called on as aforesaid: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repeal of 3rd Section of Act 32 of 1868, and 3rd Section of Act 5 of 1871.

1. The third section of the Act No. 32 of 1868, and the third section of Act No. 5 of 1871, are hereby repealed; and the said road in the preamble of this Act mentioned shall from and after the date of the passing of this Act cease to be a main road.

No. 27—1884.]

[July 25, 1884.

Act to Provide for the Definition of the proper Width of Main and other Roads.

[Repealed by Act 40, 1889.]

No. 28—1884.]

[July 25, 1884.

No. 29—1884.

Act for Applying a sum not exceeding Four Hundred and Forty-two Thousand Two Hundred and Fifty-four Pounds Eleven Shillings and Sevenpence Sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 29—1884.]

[July 25, 1884.

ACT

To Provide for the Proper Registration of Newspapers. (1)

WHEREAS no law at present exists in this Colony under which the proprietors and printers of newspapers can be compelled to register said publications, and it is desirable that provision should be made for such registration: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the taking effect of this Act, it shall not be lawful for any one to print or publish, or cause to be printed or published, any newspaper until there shall have been registered at the office of the Civil Commissioner of the division within which any such newspaper shall be intended to be printed and published the full and correct title thereof, and the full and correct names and places of abode of every person intended to be or who shall be a proprietor, printer, and publisher of such newspaper, and the description of the house or building where the same is to be published; and any person who shall contravene the provisions of this section shall be liable on conviction to pay a fine of not exceeding £100.

Newspaper to be registered in office of Civil Commissioner with address of publisher, &c

Penalty for contravention.

2. It shall be the duty of every Civil Commissioner within whose division any newspaper is published, to keep a register, in which shall be entered the particulars in the last preceding section of this Act mentioned.

Register to be kept.

3. Any person desirous of having an extract from the register in the last preceding section mentioned signed by the Civil Commissioner of the division shewing the particulars in the second section of this Act, shall be entitled to obtain the same on application to the Civil Commissioner of the division, and on payment of a fee of two shillings and sixpence for every such extract.

Extracts from Register.

4. The production of such an extract as in the last preceding section mentioned and signed as aforesaid in any suit civil or criminal in any Court of Justice, shall be sufficient proof of the facts therein stated in regard to the names of the proprietors, printers and publishers of the newspaper therein named.

Certified extract proof as to publisher, &c.

5. The penalty provided for in the second section of this Act may be recovered by any person suing for the same in the Court

Penalty how recovered.

¹ See Act 8, 1859. Extended by Proclamation No. 212 of 1890 to Transkei, Tembuland, and Griqualand East.

No. 30—1884.	of the Resident Magistrate of the district in which such penalty is incurred ; and one-half of such penalty shall be paid to the party so suing, and the other half shall go into the Public Treasury.
Act No. 8 of 1859 not affected.	6. Nothing in this Act contained shall be taken to remove any of the penalties imposed by the Act No. 8 of 1859.
Short title.	7. This Act may be cited as the "Newspaper Registration Act, 1884."

No. 30—1884.]

[July 25, 1884.]

ACT

To Explain and Alter certain Provisions of the Kimberley Borough Act, No. 11 to 1883, and to Increase the Powers of the Borough Council of Kimberley. (1)

Preamble.

WHEREAS doubts have arisen, which it is desirable to remove, as to the validity of certain bye-laws passed by the Borough Council of Kimberley, and whereas it is desirable to alter and amend in certain particulars certain sections of Act No. 11 of 1883, known as the Kimberley Borough Act, 1883, and to fix and determine the powers of the said Borough Council, and to explain certain of the provisions of the said Act : Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Repeal of former Ordinances.

1. The first section of the Kimberley Borough Act, 1883, shall be and hereby is repealed, and instead thereof the following shall stand as and be the first section of the said Act :

Except rules made thereunder.

The Ordinance No. 17, 1879, and No. 10 of 1880, and the Ordinance No. 7 of 1876 of Griqualand West, so far as such last-mentioned Ordinance applies to the Borough of Kimberley, are hereby repealed ; provided, however, that such repeal shall not affect the bye-laws of the corporation at the time of the passing of the said Act in force, but the said bye-laws shall continue to be of force and operation until such time as the same shall be altered or new ones are published under the provision of the Kimberley Borough Act, 1883, or this Act ; and such bye-laws or borough regulations passed or purporting to have been passed under the authority of the Kimberley Borough Act, 1883, shall be taken to be and to have been of equal force and virtue as if the same had been published either under the authority of the various provisions of this Act or of the Kimberley Borough Act, 1883.

And provided, also, that the present Mayor, councillors, and officers shall, until other persons shall be elected or appointed in their places respectively be, and they are hereby declared to be and to have been the Mayor, councillors, and officers of the Borough of Kimberley created by the said Kimberley Borough Act, 1883, and

this Act, and shall during the time aforesaid do and perform all such acts and things, and be vested with all the rights and powers, and be subject to all liabilities which are authorised or required to be done or performed by or are vested in or imposed on the Mayor, councillors, and officers respectively of the borough by the said Acts.

2. The forty-ninth section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and instead thereof the following shall stand as and be the forty-ninth section of the said Act:

Powers of Council.

The council shall have power and authority to do the following acts on all land within the limits of the borough:

To make, alter, and keep in repair roads, tramways, streets, thoroughfares, dams, ditches, sewers, drains, and bridges; to dig, deepen, preserve, fence in, and cover or fill up wells, to excavate, construct and lay watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, and other works supplying the borough with water; and to keep the same in repair, or to grant leave to any person or company of persons to lay down pipes, dig or deepen wells, or to execute any other like works; to take means for the prevention and extinguishment of fires, and for that purpose to provide and keep fire-engines, with pipes and utensils; to establish and maintain fire-brigades and salvage corps under the control of such officer or officers as may be from time to time appointed by the said Borough Council, with power to do all things necessary to save any building or buildings from destruction by fire; to make regulations for the storing, carriage, and removal of gunpowder, dynamite, kerosene, and other explosives within the borough; to order, establish, hold, alter or remove markets, outspans, and to lease or purchase any land, and to erect, lease, or purchase, or keep in repair any building for any municipal requirement or purpose; to cause all buildings, bridges, and other erections, which may be found to be unsafe to the public to be placed in a state of security, or, if necessary, removed at the expense of the owners of such buildings; to lease, purchase, or erect and maintain such school buildings and manage such schools as the Borough Council shall from time to time think fit, and to enter into such guarantees in respect of such schools as may be required by the Government, in case any aid from the Government in support of such school may be required under any Act in force for this purpose, and to grant annually, half-yearly, or quarterly sums of money in aid of any school now existing or which hereafter may be established within the borough, such sums to be determined in such manner and according to such system as to the Borough Council, from time to time may seem good; to appoint an Inspector or Inspectors of Schools; to grant such sums of money in aid of public libraries within the borough as may from time to time be voted by a majority of two-thirds of the Borough Council; to cause all

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buildings to be used by the public, capable of containing more than three hundred persons, to be provided with sufficient and proper means of egress in case of fire or other casualty : to regulate from time to time the materials of which all future buildings shall be constructed, the distances, spaces, and character of party walls which shall be left between them, the height the foundation shall be above the level of the surrounding ground, and the height the floor shall be above the same ; and no proprietor of any house or building found with insufficient foundations, or with floors lower than the height allowed after the taking effect of the Kimberley Borough Act, 1883, shall be entitled to any compensation for damages caused by flooding from heavy rains or thunderstorms ; to assize weights and measures according to the standards in force by law, and to appoint an officer for that purpose ; to grant permits and licences for any purpose to be defined by the borough regulations for the time being ; to levy dues as hereinafter provided ; and by borough regulations duly approved to do any of the following acts, that is to say :—To regulate the time and place for slaughtering cattle, and the state and condition of slaughter houses or slaughter places ; to make due provisions for the licensing, confining or killing of dogs, the confining or killing of pigs, goats and fowls : to appoint one or more competent persons to examine meat, fish, or other provisions exposed for sale, and to test or analyse any drinks offered for sale, and who, in case such meat, fish, or other provisions, or beverages be unfit for human food or drink, shall be empowered to cause the same to be destroyed ; to prevent and abate nuisances, and generally to devise and carry out all such measures as shall appear to be for the advantage and convenience of the borough ; to establish and provide for the management of public pounds within the borough limits ; to make due provisions for the lighting of the streets, to regulate the width and direction of roads, streets, and thoroughfares, to make regulations for the licensing of carts, wagons, or other vehicles belonging to residents, whether plying for hire or not, within the limits of the borough ; to fix a tariff of charges which the owners or drivers of vehicles plying for hire may make within the radius of four miles from the centre of the market-square ; and to order, establish, alter, maintain, or remove, and to make regulations for the maintenance and control of Native Locations, and of locations for Indian immigrants commonly called “Coolies,” at the time of the passing of the said Kimberley Borough Act, 1883, existing or thereafter to be created by the Borough Council ; and for the good government and control of natives, coolies and immigrants within the borough ; to regulate the proceedings of the council and the duties of their officers and servants, and to preserve order at council meetings ; to regulate and licence market guides, market agents, porters, public carriers, carters ; to regulate public sales, to suppress

houses of ill-fame and gaming-houses; to restrain noisome or offensive trades; to compel residents to keep their premises free from offensive or unwholesome matters; to preserve public decency; to prevent the spread of contagious or infectious diseases, and to preserve the public health; to regulate the removal of night-soil, stable litter, filth and refuse from private premises, and from all streets, roads, and public places; to prevent impure water being supplied to the inhabitants; to establish and maintain cemeteries; to plant and preserve trees and shrubs; to grant licences for the making of bricks or for digging or removing clay or gravel, or for quarrying stone, or for cutting grass upon municipal commonage or lands; to fix the number and description of live-stock any inhabitant shall be allowed to keep within the limits of the borough; to grant temporary grazing rights, to carriers, travellers, and others frequenting or passing through the municipality or attending the markets thereof; to establish, maintain, and regulate public libraries, museums, botanical gardens, parks, public baths, wash-houses, and places of public recreation to regulate traffic and processions; provided that no dues or charge for any permit or licence or any punishment or penalty shall be imposed by reason of anything in this section contained, unless the same shall have been imposed by some such municipal regulation as is in the fifty-fifth section of the Kimberley Borough Act, 1883, provided.

3. (1) The fiftieth section of the said Act No. 11 of 1883, shall be and hereby is repealed, and the following shall stand as and be the fiftieth section of the said Act:

Powers of Council
in Mining Areas.

Save and except as is hereinafter in this section and in section seventy-two of the Kimberley Borough Act, 1883, provided, nothing in this Act contained shall be construed so as to authorise the said Borough Council to exercise any of the powers vested in them within any mining area at the time of the passing of the Kimberley Borough Act, 1883, existing, or which may thereafter be created, so as to interfere with the rights and privileges of the claimholders of any mine at such time existing or which may thereafter be proclaimed on their depositing floors, or with the rights of the Government, or any mining board, proprietor or claimholder of any mine, or any tramways, tipping sites, roads or other works connected with such mine, whether the same at such time existed or shall thereafter be constructed or fixed; provided, nevertheless, that in case the said Borough Council shall deem it necessary for the proper municipal management of the said borough that drains or other public works should be constructed or carried out within such mining area, whether such works are or are not connected with any works situate without such area, or that any other of the duties or powers imposed or conferred upon the said council under the provisions of the Kimberley Borough

¹ See § 17 Act 31, 1887

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Act, 1883, or of this Act, shall be performed and carried out within any such area, then and as often as the same shall happen the said Borough Council shall by writing notify to the mining board as is provided in the fifty-eighth section of Act 19 of 1883, or joint-stock company as aforesaid exercising jurisdiction over such mining area or mining works as aforesaid, the nature, accompanied by sufficient particulars, of the work or duty which the said Borough Council may desire to have done or performed, and such mining board or body of persons or joint-stock company as aforesaid, shall within seven days after receipt of such notice, notify its sanction or refusal to do or perform such work or duty as aforesaid; then and in case and as often as the said mining board shall refuse to do the work thought necessary by the said Borough Council, or to sanction the same being done, the matter at issue shall forthwith be referred to arbitration under the provisions of Act No. 6 of 1882, save and except that the period limited by the said Act within which the arbitrators or umpire shall make their or his award shall not exceed seven days from the date of reference: Provided, further, that all such works or duties within any such mining area as aforesaid as may be sanctioned, approved or directed as aforesaid, shall forthwith be performed and carried out by such mining board, or body of persons, or joint-stock company as aforesaid, or by the Borough Council at the expense of such mining board, or body of persons, or joint-stock company as aforesaid, as may be determined by mutual arrangement, or by the award of the said arbitrators or umpire; provided, further, that the said Borough Council shall in no case be or be held liable in damages or otherwise by reason of any injury to person or property within any mining area, whether the same shall arise from flooding, defective drainage, or any other cause whatever, or by reason of such injury outside any mining area, provided the same shall have been caused by accumulation of water, flooding, defective drainage, or other cause within such mining area; provided, further, that in case any mining board or body of persons, or joint-stock company as aforesaid, shall neglect to carry out proper sanitation within its mining area to the satisfaction of the sanitary inspector for the time being of the Borough Council nothing in this section contained shall be deemed to prevent the Borough Council from enforcing such sanitary regulations, and claiming and charging such sanitary dues within such mining area as aforesaid, either as against the mining board or the claimholders and residents in such mining area, as may have been framed by the Borough Council specially for application within such mining area, and duly sanctioned by His Excellency the Governor; and in the event of any mining board ceasing to exist from any reason whatsoever, and no such board of persons as is provided in the fifty-eighth section of Act 19 of 1883 being appointed, or any joint-stock company acquiring

the said mine, and who shall have notified to the Borough Council its willingness to discharge the duties herein imposed on mining boards or body of persons, then and in that case the Borough Council shall be vested with the same power as the mining board to carry out the provisions of this section, and the expenses incurred in connection therewith shall be borne by such mining board, or if there be no mining board or such body of persons appointed as aforesaid, by the owners of claims and other property in such mining area as aforesaid *pro rata*, according to the assessed value of the claim and other property in such mining area; and provided, further, that in such case as last aforesaid the Borough Council shall have the power from time to time, when necessary, to make an assessment of such claim and other property, and to levy rates thereon; and provided, further, that the proceedings in respect of the said assessment, levy and recovery shall be as far as possible in the manner provided for in respect of the assessing, levying and recovery of rates on other property within the borough, according to the provisions of this Act and of the Kimberley Borough Act, 1883.

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4. The seventy-second section of the said Act No. 11 of 1883 shall be and hereby is repealed, and instead thereof the following shall stand and be the seventy-second section of the said Act:

Repeal of 72nd Section of Act 11 of 1883.

For the purpose of raising the means for making and repairing the roads, streets, market-places, bridges, drains, sewers, water-courses, reservoirs, wells, aqueducts, and other waterworks; for the purchase of such lands or erection of such buildings as may be required in or about the execution of the powers hereby given to the council; for the purchase of water-pipes, fire-engines and appurtenances, for the effecting of all other public works and improvements within the borough; for the purpose of raising the means for effecting the repairs of all such works as the council is hereby empowered to make or to have made; for the maintaining of water-works, fire-engines, police establishments, markets, and pounds; for the payment of salaries and all other current expenses required to be borne by the borough, the council shall have the power to impose, levy, and recover all such market dues, water rates, pound fees, sanitary fees or charges, outspan fees, grazing fees, fees or charges for all such licences which may be granted by them, location fees, dog taxes, charges or expenses for services rendered in the extinction of fires, cemetery fees, and dues on all firewood not being delivered on contract, but being sold or hawked within the limits of the borough exclusive of the public market, and shall be authorised by the said borough regulations as aforesaid, and shall also have the power, as often as shall be deemed necessary and in manner hereinafter and in the Kimberley Borough Act, 1883, provided, to assess the value of all immovable property within the borough, and to levy a rate on such assessment; provided that no rate shall be made or levied by the

New section substituted.

Power to impose rates.

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council unless there shall be present at the meeting at which such rate shall be imposed at least eight members of the said council; and provided, also, that no rate shall be imposed on any immovable property belonging to Her Majesty the Queen and used for public purposes, nor on public prisons, or police stations, alms-houses, or hospitals, nor any public building appropriated to public worship, nor upon burial-grounds, nor upon buildings and land solely appropriated to the purposes of education, nor upon any claim in the Kimberley or Old De Beer's diamond mines, nor upon any claim in any declared digging or mine within the borough, save and except in such manner and under such conditions as are in section three of this Act provided: provided, further, that notwithstanding anything in this section or in section three of this Act contained, the said Borough Council shall have the power to assess the value of and to levy and recover rates in respect of all houses and buildings within such mining area, whether the same are used for mining purposes or not; which assessment, levy and recovery shall be, as far as possible, in the manner provided for in respect to the assessment, levying, and recovery of rates on other property within the borough.

Ratepayers.

5. The seventy-third section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and the following shall stand for and be the seventy-third section of the said Act:

All persons owning or occupying properties within the limits of the borough, excepting such property as is hereinbefore exempted, shall be liable to be rated on account of such property in such manner and to such extent as is hereinafter and in the Kimberley Borough Act, 1883, provided; and provided, further, that in any case where a house, building, or other erection shall have been erected on any land the property of any person not the owner of such house or building or erection, the owner of such land shall be liable to be separately rated in respect of the value of such land, which value shall be computed on the principle that the annual rental receivable by the landlord in respect of such land is six per cent. of such rateable value; and the owner of such house, building, or erection shall be liable to be separately rated in respect of the value of such house, building, or erection; and it shall not be lawful for the owner of such land to enter into any contract with the occupier of such house, building, or erection, whereby the liability of the owner of such land shall be in respect thereof transferred to the owner of such house, building, or erection. And in case such house, building or erection shall have become abandoned or unoccupied, then the owner of the land on which such building shall have been erected shall further be liable to be rated in respect of such house, building, or erection.

Power to appeal
against Valuation
Roll.

6. (1) The seventy-seventh section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and instead thereof

¹ See § 1, Act 10, 1886.

the following shall stand for and be the seventy-seventh section of the said Act :

It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him upon or for the purpose of the valuation roll aforesaid, to appeal within twenty-one days against such valuation from the decision of the Court in the last preceding section mentioned, to the Court of the Resident Magistrate, and such Court shall inquire into such valuation ; provided, however, that if any question of law shall arise as to the principle upon which any valuation has been or should be made, it shall be incumbent on such Resident Magistrate, at the request of the council or party objecting, instead of himself deciding such question, to record such question of law for the decision of the High Court of Griqualand, and such question shall be stated in the form of a special case, the terms of which shall be agreed upon between the respective parties, or, in case of their disagreement by such Resident Magistrate, and such case shall be argued before and determined by the said Court, and the said Court may make such order as to the costs of such special case as to it shall seem fit ; provided no objection shall be taken to the principle of any such assessment, or rate, or to the amount payable in respect thereof by any person, unless such person shall have appealed against such assessment or rate ; provided, also, that in case any assessment or rate shall have been either wholly or partly upset, varied, or amended by any Court of Appeal, it shall be lawful for the council forthwith to cause to be made when and as often as it shall be necessary, a fresh valuation, assessment, and rate, and for such purpose the various sections of the Kimberley Borough Act, 1883, in respect of the valuation, assessment, and rating of property within the borough shall be held to be as far as may be applicable to such proceedings.

7. The eighty-first section of the said Kimberley Borough Act, 1883, shall be and hereby is repealed, and the following shall stand as and be as the eighty-first section of the said Act :

Power to sue for rates due by absent owner.

The council may, in suing for the recovery of rates, proceed against the owner, or in case of his absence from the borough, his agent or the person receiving rents for him, or the occupier, either separately or both of them, in one or the same action, each for the whole rate, in any competent Court, and may recover the same by the judgment and process of the Court ; provided that any person who as occupier may have become liable for any rate as aforesaid, shall be liable for the payment of the same, although he may have ceased to occupy the property in respect of which the rate has been imposed ; and provided, further, that nothing herein contained shall affect the liability of any owner of land in clause 5 mentioned in respect of any abandoned or unoccupied house, building, or other erection, but proceedings for the recovery of rates may be taken against such owner in respect of his interest in

- No. 30—1884. the land as well as of his interest in such unoccupied or abandoned house, building, or other erection.
- Repeal of 83rd Section of Act 11 of 1883. 8. The eighty-third section of the said Act No. 11 of 1883 shall be and hereby is repealed, and instead thereof the following shall stand and be as the eighty-third section of the said Act.
- Fresh Valuation. The first valuation to be made as aforesaid for the purpose of this Act shall subsist and be in force for one year from the date of the same; at the expiration of which term, and of each successive term of three years, a fresh valuation shall be made in the same manner as hereinbefore directed with regard to the first valuation.
- Triennial. 9. The ninetieth section of the said Act No. 11 of 1883 shall be and hereby is repealed, and the following shall stand and be as the ninetieth section of the said Act :
- Repeal of 90th Section of Act 11 of 1883. All rates assessed under the authority of this Act and of the Kimberley Borough Act, 1883, shall be and be deemed to be a charge upon the property and recoverable as against the present or any future owner or occupier thereof.
- Recovery of rates. And whereas it is necessary for the proper management and good government of the Borough of Kimberley that the said Borough Council shall exercise uniform control and authority within the limits of the said borough.
- Further preamble. Now, therefore, be it enacted as aforesaid as follows :—
- Bye-laws to be submitted to Borough Council and approved by Governor. 10. Notwithstanding anything in any Act of Parliament to the contrary, no bye-law or regulation now made or hereafter to be made of any public water or lighting company carrying on business or established now or hereafter within the Borough of Kimberley, shall become binding on any person within the said borough till such bye-law or regulation shall have been submitted to the said Borough Council for consideration, and have been approved of by the Governor.
- Short title. 11. This Act may for all purposes be cited as “The Kimberley Borough Amendment Act, 1884.”

No. 31—1884.]

[July 25, 1884.

Act to authorise a Company, to be styled the Green Point and Sea Point Railway Company (Limited), to construct a Line from Cape Town to Sea Point.

[Repealed by Act 23, 1889.]

No. 32—1884.]

[July 25, 1884.

ACT

To Enable the "Gill College Corporation" to sell certain Property and Appropriate the Proceeds thereof to certain purposes, and to Raise certain Moneys upon Loan.

WHEREAS one WILLIAM GILL, of Somerset East (hereinafter called the testator), did by his last will and testament, bearing date the 19th day of January, 1863, appoint certain seven persons therein named, under the style of the "Gill College Corporation," his sole and universal heirs, subject to the payment of certain legacies, and to the provisions of the said will generally, and did make due provision for the filling up of any vacancies that might arise in the said "Gill College Corporation," by reason of the death or resignation of any of its members from time to time: and whereas the said testator did further by the said will direct that the property bequeathed to the said corporation as aforesaid should remain in the custody of his executors, in the said will nominated, who should pay to the said corporation the annual interest, rents and revenues derived from such property, to be by the said corporation applied in the formation and maintenance of an institution for public education at some convenient place in the Eastern Province of this Colony to be by the said corporation or the majority of its members selected: and whereas the said testator did further direct that after the death of all the said executors the said corporation should enter upon and execute all such trusts and duties by the said will committed to the said executors as should then be unfulfilled or incomplete: and whereas the said testator did by the said will order that the said corporation should apply no part of the property bequeathed to it as aforesaid in the erection or purchase of any buildings: and whereas by a codicil to the said will, bearing date at Somerset East, the 25th day of July, 1863, the said testator did direct that his landed property should not be sold, but should be retained as it then existed, as long and in as far as should be consistent with his said will: and whereas the said testator died in the year 1863, without having altered the said will or codicil in any manner material to the matters above recited, and leaving certain property which has devolved upon the said corporation subject to the provisions aforesaid: and whereas the Governor of the Colony, by deed under his hand and the public seal, under date the 16th day of April, 1867, granted to the said corporation, under the style of the Trustees or Corporation of the Gill College at Somerset East, and to their successors, a certain piece of land, situate at Somerset East, and in the said deed fully described, on condition that the said land should be used as a site

Preamble.

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for the erection of the college proposed to be erected for the purposes of such educational institution as aforesaid, and other buildings connected therewith and for no other purpose whatsoever; and whereas the said corporation has, with funds provided by public subscription, caused to be erected such college as aforesaid upon the land granted as abovementioned, and has established and maintained, and continues to maintain, such educational institution, styled the Gill College, under the provisions of the said will: and whereas a certain erf, known as Erf No. 57, in Paulett-street, with the buildings thereon, in the town of Somerset East, formed part of the estate left by the said testator at his death, and is now vested in the said corporation as aforesaid: and whereas it is expedient, in the interests of the public and of the said Gill College, that the said corporation should provide suitable buildings for the establishment of a boarding house for students in connection with the said college, and should be placed in a position to erect such buildings upon the land granted as aforesaid: and whereas it is advisable that, for the purpose of providing the funds necessary for the erection of the buildings last abovementioned, the said corporation should be empowered to sell the aforesaid erf with the buildings thereon, and also to raise money upon the security of the land granted as aforesaid, and the said college buildings and any other buildings that may be erected thereon: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Power to sell certain erf in Somerset East.

1. It shall be lawful for the said Gill College Corporation, in pursuance of any resolution passed by a majority of its members, to sell the aforesaid Erf No. 57, situate in Paulett-street, in Somerset East, with the building thereon, in such manner as may be found most advantageous, and to devote the proceeds of such sale to the erection upon the land granted, as aforesaid, of buildings for the purpose of a boarding-house for the use of students, as in the preamble of this Act mentioned.

Power to borrow.

2. The said Gill College Corporation is hereby authorised, in pursuance of any such resolution as in the last section abovementioned, to borrow, upon the security of the land granted as aforesaid and the said college buildings and other buildings erected thereon, such sum or sums of money as may be needed, in addition to the proceeds of the erf above described, for the erection and completion of the buildings required for the purposes of the said boarding-house, and to execute all mortgage bonds, deeds, or other documents, and to do all things necessary to give effect to such security for the due repayment of such sum or sums, anything in the said deed of grant to the contrary notwithstanding.

How deeds to be executed.

3. Any mortgage bond, deed of transfer, or other document necessary to be signed or executed by the said corporation for the purposes of giving effect to the provisions of this Act may be

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signed or executed by any number of the members of the said corporation not being less than four, and when so signed and executed shall be as valid and effectual as if signed by the whole of the members of such corporation.

No. 33—1884.

4. This Act may be cited as the "Gill College Corporation Act, 1884."

Short title.

No. 33—1884.]

[July 25, 1884.

ACT

To Authorise the Trustees of the Port Elizabeth Volunteers to raise a Sum of Money on Mortgage for their Drill-hall.

WHEREAS by a deed of grant bearing date the 27th day of October, 1864, His Excellency Sir PHILIP EDMOND WODEHOUSE, the Governor of the Cape of Good Hope, did grant a freehold unto the Civil Commissioner of Port Elizabeth for the time being, the Mayor of Port Elizabeth for the time being, and the senior officers of volunteers at Port Elizabeth for the time being, as trustees for the volunteers at Port Elizabeth, a piece of land upon the Hill in the Town of Port Elizabeth, as a site for a Drill-house and Gymnasium for the use of the aforesaid volunteers, and for no other use or purpose whatsoever, the said piece of land being fully described in such deed of grant: And whereas it was in such deed made a condition that the said land should, by the said trustees, be held in trust for the Town Council of Port Elizabeth, in case and as soon as it should no longer be required for the purpose aforesaid: And whereas the said Town Council were thereupon to be entitled to have the said land transferred to them by the said trustees or by the two first of them, should the third of such trustees have ceased to exist: And whereas the said trustees being desirous of raising a sum of four thousand pounds for the purpose of paying off part of the cost of the Drill-hall of the said volunteers at Port Elizabeth, seek to do so by giving as security a mortgage for that amount upon the said piece of land granted to them as aforesaid, and upon the building erected thereon; but under the condition in the said grant hereinbefore cited they are unable to make such security satisfactory to persons who would otherwise be willing to advance the required amount: and whereas it is desirable that the said trustees should be empowered to raise the said sum and to give the requisite security: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall be lawful for the trustees of the piece of land on the Hill in the town of Port Elizabeth, granted to them on the 27th day of October, 1864, as in the preamble of this Act mentioned, to

Power to trustees to mortgage notwithstanding the provisions of the Deed of Grant.

No. 34—1884.

mortgage such land and any building or buildings erected thereon for any sum not exceeding £4,000; and thereupon such mortgage shall remain a charge upon such land and buildings until the capital and interest thereby secured shall have been paid off, whether such land shall continue vested in the hands of such trustees or shall be transferred to the Town Council of Port Elizabeth as in the said deed of grant provided, any conditions in such deed to the contrary notwithstanding.

Short title.

2. This Act may be cited as the "Port Elizabeth Volunteers Drill Hall Act, 1884."

No. 34—1884.]

[July 25, 1884.]

ACT

To Alter and Amend Act No. 9 of 1865, entitled "An Act for Incorporating the Malmesbury Board of Executors and Trust Company, and enabling them to sue and be sued in the name of their Secretary."⁽¹⁾

Preamble.

WHEREAS a company styling themselves the Malmesbury Board of Executors and Trust Company was incorporated by Act 9 of 1865, and has heretofore carried on business under the provisions and stipulations in the said Act contained: and whereas by the trust deed of the said company it is provided *inter alia* that the said co-partnership shall continue for a period of ten years, and thereafter for a further period of ten years: and whereas the said period of twenty years will expire on the third day of October, 1884: and whereas at a meeting of the shareholders of the said company, held at Malmesbury on the 15th day of January, 1884, it was resolved to alter and amend the trust deed of the said company in certain respects, to increase the capital of the company to be incorporated by this Act from twelve thousand five hundred pounds sterling to twenty thousand pounds sterling, and to enable the said Malmesbury Board of Executors and Trust Company to continue for a further period of twenty years: And whereas the directors of the said company are desirous of more effectually legalising the provisions and stipulations in the said amended trust deed contained, and of having the conditions and limitations under which the business of the said co-partnership is to be conducted, during the said extended period, incorporated under the provisions of this Act: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Act No. 9 of 1865
incorporated.

1. So much of the provisions of Act No. 9. of 1865 as are not repugnant to or inconsistent with the conditions and stipulations of this Act are hereby incorporated, and shall, *mutatis mutandis*,

¹ See Act 10, 1889.

apply to the Malmesbury Board of Executors and Trust Company established under the provisions of this Act.

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2. It shall and may be lawful for the said persons, and such others as may become entitled to the privileges of Act No. 9 of 1865, and of this Act under the provisions of the said amended deed, to be and continue joint-stock proprietors of the capital of twenty thousand pounds sterling, and of all such other sum or sums of money as they may hereafter acquire under the provisions of the said last-mentioned deed.

Institution of Proprietors.

3. (1) The several persons who are or shall become shareholders in the said company, their respective heirs, executors, and administrators, shall be and are hereby united into one body corporate under the name and title of "The Malmesbury Board of Executors and Trust Company."

Incorporation of and title of company.

4. The capital stock of the company shall consist of two thousand shares of the value of ten pounds sterling each, which said sum of ten pounds sterling shall be paid and satisfied in the manner following, that is to say:—

Capital stock.

The sum of five pounds sterling upon signing the said amended trust deed, and the remaining five pounds sterling as provided in the sixth section of the Trust deed aforesaid.

5. It shall be lawful for the directors, in terms of the said amended deed, and subject to the provisions of the same and under the restrictions therein contained, upon a resolution of three-fourths of the shareholders present at any special general meeting, from time to time to call upon shareholders to pay up the full amount of their shares not exceeding one pound sterling per share at one and the same time, and at intervals of not less than two months between each call.

Directors may call up full amount due on share.

6. This Act may for all purposes be cited as "The Malmesbury Board of Executors and Trust Company Incorporation Amendment Act."

Short title.

¹ See § 3 Act 10, 1889.

2236 WALFISH BAY AND ST. JOHN'S RIVER TERRITORIES
ANNEXATION.

No. 35—1884.]

[July 25, 1884

ACT

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

Preamble.

WHEREAS it is expedient that the Port or Settlement of Walfish Bay, situated on the West Coast of South Africa, to the North of the Tropic of Capricorn, together with certain Territory surrounding the same, and bounded as follows, viz.:—On the south by a line from a point on the coast fifteen miles south of Pelican Point to Schepmansdorp to the Rooibank, including the plateau, and thence to ten miles inland from the mouth of the Swakop River; on the north by the last ten miles of the course of the said Swakop River, and on the West Coast by the Atlantic Ocean, be annexed to this Colony; and whereas by Her Majesty's Letters Patent, bearing date at Westminster the 14th day of December, 1878, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorised by proclamation under his hand and the Public Seal of this Colony, to declare that from and after a day to be therein mentioned, the said Port, Settlement, and Territory, as in the said Letters Patent described, should be annexed to and form part of this Colony. And further whereas it is expedient that the Port and Tidal Estuary of the St. John's River in South Africa, and certain lands on the banks of the said River forming part of Her Majesty's Dominions be also annexed to this Colony; and whereas by Her Majesty's Letters Patent, bearing date at Westminster, the 10th day of October, 1881, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorised by proclamation under his hand, and the Public Seal of this Colony to declare that from and after a day to be therein mentioned, the said Territory should be annexed to and form part of this Colony, and by proclamation to signify the limits of the said Territory so annexed, provided that in the case of either of the Territories to be so annexed, no such proclamation should be issued until the Legislature of this Colony should have passed a law providing that the said territories shall, on the day aforesaid, become part of this Colony and subject to the laws in force therein: and provided also, that the application of the said laws to the said Territories might be modified either by such proclamation as aforesaid or by any law or laws to be from time to time passed by

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ANNEXATION.

the Legislature of this Colony for the government of the said Territories so annexed: And whereas it is expedient that a law should be enacted providing that the said respective Territories shall on the day to be mentioned in that behalf in a proclamation or proclamations of the Governor as aforesaid, become part of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

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1. (1) From and after such day as the Governor shall, pursuant to the powers in that behalf contained in the said Letters Patent, by proclamation under his hand and the Public Seal of this Colony, fix in that behalf the Port or Settlement of Walfish Bay on the West Coast of Africa, and certain Territory surrounding the same, the limits of which are defined in the Letters Patent of the 14th December, 1878, aforesaid, and the said British Territories on the St. John's River, with the limits and name in any such proclamation signified, shall respectively become and be part of the Colony of the Cape of Good Hope, and subject to the laws in force therein, except as the application of the same to the said respective territories may be modified by any such proclamation.

Governor may proclaim date from which Walfish Bay and St. John's River shall become part of the Colony.

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

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

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

When Colonia Acts to apply.

Jurisdiction of E. D. Court

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

Short title.

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

No. 37—1884.

No. 36—1884.]

[July 25, 1884.]

Act to Authorise the Governor to enter into a Contract under certain Conditions for the Completion of the Railway from the Orange River to Kimberley.

[Spent. See Act 1, 1885.]

No. 37—1884.]

[July 25, 1884.]

ACT

To provide for the better and more effectual supervision and management of Native Locations, and for the more easy collection of Hut-tax. ⁽¹⁾

Preamble

WHEREAS it is desirable that the existing laws relating to Native Locations should be repealed, and other provisions made for the better and more effectual supervision and management of Native Locations, and for the more easy collection of hut tax: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Acts repealed.

1. The following Acts are hereby repealed, that is to say, the Act No. 2 of 1869, the Act No. 6 of 1876, and the Act No. 8 of 1878.

Definition of Native Locations.

2. ⁽²⁾ By Native Location on private property is meant any number of huts, or dwellings, on any one farm occupied by three ⁽³⁾ or more male adults, being Kafirs, Fingoes, Basutos, Hottentots, Bushmen, and the like such occupants not being in the *bonâ fide* and continuous employment of the owner of such land, either as his domestic servants, or in or about the farming operations, or any trade, business, or handicraft by him carried on upon such land.

Private proprietors must get Government permission to establish location.

3. Any private proprietor of land who is desirous of establishing a Native Location upon his property shall apply, the concurrence of the Divisional Council having been first obtained through the Civil Commissioner of the district in which such land is situate, to the Governor for leave so to do; and it shall be the duty of such Civil Commissioner to forward such application to the Secretary for Native Affairs, with his report or remarks thereon.

No location to continue without licence

4. No Native Location, as defined in section two shall be established, or if already established, shall be allowed to continue, without the express leave and licence of the Governor, acting under the advice of the Executive Council, first had and obtained, which licence the Governor, acting as aforesaid, may from time to time revoke ⁽⁴⁾ or suspend, as occasion may require: Provided, how-

¹ As to sale of Intoxicating Liquors in Native Locations see §§ 20-22, Act 28, 1883.

² See § 4, Act 39, 1887.

³ See § 2, Act 33, 1892.

⁴ See §§ 5, 7, Act 33, 1892.

ever, that Native Locations which are in existence at the time of the passing of this Act shall be deemed and taken to have been established, and to continue with such leave and licence, unless the Governor, with the advice aforesaid, shall give notice in the *Government Gazette*, that any such Native Location shall cease and be removed from a date to be named in such notice: Provided, moreover, that until the issuing of such notice, all such now existing Native Locations shall be subject to the conditions and provisions hereinafter in the fifth section of this Act contained: Provided, further, that nothing in this section contained shall be construed as giving any power to remove any occupant of a Native Location from any land of which he is the registered proprietor.

No. 37—1884.

Existing locations presumed to be licensed.

5. It shall be lawful for the Governor, by and with the advice of the Executive Council, to point out or cause to be pointed out, within any Native Location, the place, or area, or limits upon or within which alone the huts or dwellings of such location shall be erected; and to limit the number of huts or dwellings which it shall be lawful to erect upon the place, or within the area or limits so pointed out; and the erecting of any hut or dwelling upon any other part of the location than that so pointed out, and the erecting or suffering to be erected any greater number of huts or dwellings than the number so limited, shall be deemed to be offences against this Act to be punished as hereinafter provided.

Governor may have limits of locations pointed out, and may limit number of huts, &c., therein.

6. Any person establishing a Native Location without the leave and licence hereinbefore mentioned, or continuing any such Native Location after the publication of the notice for its discontinuance and removal in the fourth section of this Act provided, and after notice thereof to such person, or after the revocation or suspension of the licence as aforesaid, any person contravening any of the provisions in the last preceding section of this Act shall be liable to a penalty (¹) of not exceeding £25 for the first offence, and to double the amount of the last inflicted fine or penalty for each subsequent offence.

Penalty for establishing location without licence.

7. By Native Location on Crown land is meant any number of huts or dwellings, occupied by any of the Native races, such as Kafirs, Fingoes, Basutos, Hottentots, Bushmen, and the like, on certain Crown lands reserved for the purpose of Native tribes within the Colony, commonly known as Native Locations.

Definition of Crown Lands Locations.

8. It shall be lawful for the Governor, from time to time, to appoint a fit and proper person, to be called an inspector, to supervise and manage every Native Location: Provided that no inspector shall be appointed over less than one hundred huts or dwellings, unless the huts or dwellings are situated on land belonging to a private person; and provided also that the same person may be appointed as inspector of more than one location.

Government Inspectors to be appointed.

¹ See § 4, Act 33, 1892, and § 13.

- No. 37—1884.
Salaries of Inspectors.
- Hut-tax.
- Liability thereof of proprietor of land.
- Hut-tax on Crown Lands.
- Powers of Inspectors.
- To keep a register.
- Inhabitants to give information.
Penalty for refusing.
- Notice to be given to Inspector of new huts, &c.
- Inspector may seize and impound unregistered cattle, &c.,
9. Every such inspector shall be paid from and out of the general revenue of the Colony, such salary as may from time to time be fixed by the Governor.
10. (1) A fixed annual amount of ten shillings each shall be chargeable as hut-tax on all such huts on private property as in the second section of this Act defined, and the proprietor of the land on which such huts are situate shall be liable for the payment thereof.
11. A fixed annual amount of ten shillings as hut-tax shall be payable by the occupiers of each hut or by the persons using or claiming such hut, situate on Crown land as defined in the seventh section of this Act.
12. Every inspector appointed under this Act shall have the same powers and authorities, and it shall be lawful for him to perform all such duties within the location or locations over which he has been appointed as if he were a field-cornet or police constable.
13. It shall be the duty of every such inspector as aforesaid to keep a true and correct register of the number of huts or dwellings within every location over which he is inspector, together with the names and occupation of the occupants of such huts or dwellings, and the number, marks, and other description of the horses, horned cattle, sheep, and goats belonging to every such occupier, and such register shall be open to inspection at all reasonable times.
14. For the purpose of enabling every such inspector to keep such register as aforesaid, it shall be the duty of every inhabitant of such location to give to the inspector of such location such information as he may require for the purpose, and every such person who shall, upon being required so to do by any such inspector, neglect or refuse to give any such information, shall be liable to a fine not exceeding two pounds, and in default of payment thereof, to be imprisoned with or without hard labour, and with or without spare diet, for a period not exceeding one month.
15. It shall also be the duty of every such inhabitant as aforesaid, without any request so to do, forthwith to give notice to the said inspector of any new hut or building erected by him in such location, of any horses, horned cattle, sheep or goats, which from time to time have come into the possession of such inhabitant, and of the way by which they came into his possession, and of the death of any person in the hut or dwelling of such inhabitant, and any such person who shall neglect to give any such notice as aforesaid shall be liable to the same penalties as in the last preceding section mentioned.
16. (2) All horses, horned cattle, sheep or goats, which may be found in any location, and which have not been so registered as aforesaid, or of whose arrival thereof no notice has been given to the inspector of such location, and of the right to or ownership

¹ See § 2, Act 4, 1889.² See § 24, Act 15, 1892.

of which no satisfactory account shall be given to such inspector, may be seized and taken possession of by him and impounded in the nearest accessible pound; and shall thereupon be dealt with and treated as other impounded animals in the said pound: Provided that no animals so impounded as aforesaid by any inspector shall be delivered up by the poundmaster to any inhabitant of any such location without a written order for such delivery signed by the said inspector.

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17. It shall be lawful for any person who may feel himself aggrieved by any seizure so made by the said inspector or by his refusal to grant any such written order as aforesaid to complain to the Resident Magistrate of the district, who shall enquire into and summarily adjudicate upon the matter of such complaint, and make such order thereon as to him shall seem proper.

Aggrieved persons may complain to Resident Magistrate.

18. Any person who shall obstruct any inspector as aforesaid in the execution of this duty shall, on conviction, be liable to a fine not exceeding five pounds, and in default of payment thereof to imprisonment with or without hard labour, and with or without spare diet, for a period not exceeding three months, or to such imprisonment without the option of paying a fine.

Penalty for obstructing Inspector.

19. In case any inhabitant of any Native Location as aforesaid shall be charged with having stolen any horse, head of horned cattle, sheep or goat, or with having received any such animal, knowing it to have been stolen, the fact of the animal in respect of which the charge is made having been found in the possession of such person without the same having been registered as aforesaid (a reasonable time to enable such person to have had such animal registered as aforesaid having elapsed from the time he became possessed of the same) shall be *prima facie* evidence of the guilt of such person, and the onus of proving that he is not guilty shall be thrown upon him.

Persons in possession of unregistered cattle, &c., presumed to have stolen them.

20. Any person having no right or authority to be in any Native Location as aforesaid may be directed to remove therefrom, by order in writing signed by the Resident Magistrate of the district in which such location is situated, such person having been first summoned before the Court of such Resident Magistrate to show cause why he should not remove from such location, and no sufficient cause to the contrary having been proved to the satisfaction of such Court, and any person who may be so ordered to remove as aforesaid, who shall disobey such order, shall be liable to be summarily removed from such location by the inspector of such location, or by any police constable.

Persons unlawfully in location may be removed.

Process provided.

21. All horses, horned cattle, sheep, and goats belonging to residents within any Native Location, shall be branded or otherwise marked in such manner as the inspector of such Native Location may require; and any resident within a Native Location who shall refuse to brand or mark, or to suffer to be branded or marked, any of his horses, horned cattle, sheep, or goats when thereto

Branding of cattle, &c.

No. 37—1884.

required by the said inspector, or who shall have in his possession or custody any horse, horned beast, sheep or goat which shall not be branded or marked as aforesaid, shall be liable to imprisonment with or without hard labour for a period not exceeding one month, or to a fine not exceeding £2, and in default of payment to imprisonment with or without hard labour for a period not exceeding one month, unless the said fine be sooner paid.

Unbranded cattle to be dealt with under section 16.

22. All horses, horned cattle, sheep, and goats, which may be found in any Native Location, and which have not been branded or marked as aforesaid, may be dealt with in the same manner as by law is now provided for dealing with horses, horned cattle, sheep, and goats which have not been registered, and for that purpose the provisions of the sixteenth section of this Act shall be taken to apply also to cases of horses, horned cattle, sheep, and goats which have not been branded or marked as aforesaid.

Recovery of hut-tax.

23. It shall be lawful for the Civil Commissioner of the division within which any such Native Location as aforesaid shall be situate, or for any other person thereto authorised by the Governor by publication of such authority in the *Government Gazette*, to demand and sue for the amount of hut-tax payable under the provisions of this Act.

Proceedings in case of default of payment of hut-tax.

24. (1) In case default shall be made by the person liable to pay any such hut-tax in any year within three calendar months after the same shall become due and payable, as hereinafter by the twenty-sixth section provided, it shall be lawful for such Civil Commissioner or other person authorised to demand the same as aforesaid, in addition to the ordinary remedy by action for the recovery of such sum to attach and seize, to answer the same, and the costs of such levy and seizure and subsequent proceedings, a sufficient amount of the cattle, stock, and other movable property of the person liable to pay the same, and if payment shall not be made within fourteen days after such seizure, sufficient of such cattle, stock, and other movable property, to answer the demand and the costs of levy and seizure and sale, shall be sold by public auction, unless before such sale shall have been actually made, the person claiming such cattle, stock, and movable property, shall commence in some competent Court an action for the recovery of such cattle, stock, and movable property, and shall also find and give sufficient security to prosecute such action without delay, and abide and perform the judgment thereof in the premises, which judgment, if adverse to the plaintiff, may be not only for the amount of hut-tax for which such seizure as aforesaid shall have been made, but also for the costs of such levy and seizure lawfully incurred up to the time of such security as aforesaid being duly given, as well as for the costs of the action itself.

Seizure of cattle.

Restoration thereof on security.

25. (2) Upon such security as in the last clause mentioned being given and approved of by the Court in which the action for the

¹ See § 17 Act 33, 1892; also § 2 Act 4, 1889, and § 14 Act 11, 1895.

² See § 14 Act 11, 1895.

recovery of the said cattle, stock, and movable property shall have been commenced, the said cattle, stock, and movable property shall be re-delivered to the person claiming the same.

No. 37—1884.

26. The annual sum of ten shillings fixed under the tenth and eleventh sections of this Act, respectively, shall become due and payable in each year on the thirty-first day of December in respect of the year ending on such day, and shall thereupon be paid by the person liable to pay the same, to the Civil Commissioner of the division in which the location or locations containing the huts are situated, or to such other person duly authorised to receive the same, without the necessity of any demand being made.

Sums payable under sections 10 and 11, to be due on 31st December.

27. In case no person can be found who shall claim or shall have occupied or used any hut chargeable under this Act at any time during the year ending with the thirty-first day of December in any year, the Civil Commissioner, or such other person so authorised as aforesaid, may cause such hut to be destroyed.

Abandoned huts to be destroyed.

28. Whenever any occupier of such hut or dwelling on private property as defined in this Act, shall be convicted of the theft of any cattle, sheep, goats, horses, or ostriches, the proprietor of the land on which such hut or dwelling is situated, shall be liable for so much of the value of the property stolen as the rightful owner thereof shall fail to recover, after due process of law taken for such recovery, from the person guilty of such theft.

Liability of landed proprietor for value of stolen cattle.

29. It shall be lawful for the Governor, with the advice of the Executive Council, by notice to be published in the *Government Gazette*, from time to time, to make, alter, and amend all such regulations not inconsistent with the provisions of this Act as may appear to be necessary and expedient for the better carrying the same into effect, and to provide that persons contravening any such regulations may, on conviction, be sentenced to imprisonment with or without hard labour, and with or without spare diet, for any term provided by such regulations, not exceeding one month, or to pay a fine not exceeding five pounds, and in default of payment thereof to such imprisonment, hard labour, and spare diet as aforesaid, and all fines so levied shall be paid into the Public Treasury, and all such regulations and any alterations and amendments of the same when so published as aforesaid shall have the force of law for all purposes mentioned therein and allowed thereby.

Power to Governor to make, alter, and amend regulations under this Act.

Regulations may provide penalties for infraction of the same.

30. This Act shall not apply to any Native Locations situate within the limits of any municipality: Provided, however, that it shall be lawful for any municipality by any municipal regulations made as by law required to apply the provisions of this Act, or any of them, to any such Native Location, so far as they can be so applied.

Act not to apply to municipal native locations.

31. All proceedings for any contravention of this Act or of any regulations made thereunder shall be had and taken in the Court of the Resident Magistrate of the district in which the offender

Magistrates to have jurisdiction.

- No. 38—1884. resides, and may be instituted and carried on by the inspector of the location in which the offence has been committed.
- Short title. 32. This Act may be cited for all purposes as the "Native Locations Act, 1884."

No. 38—1884.]

[July 25, 1884.]

ACT

To amend in certain respects the Law relating to Insolvent Estates. (1)

Preamble.

WHEREAS it is expedient to amend the law relating to insolvency and the administration of insolvent estates: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ten days' notice of desire to surrender to be given in *Government Gazette*.

1. From and after the passing of this Act, every person who may be desirous of voluntarily surrendering any estate as insolvent under the provisions of the Ordinance No. 6 of 1843 entitled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony," (hereinafter referred to as the said Ordinance), shall give public notice in the *Gazette*, at least ten days before he makes application for the surrender of such estate, of his intention to make such application and of the date upon which and the place where he intends to make the same; and shall prepare for the inspection of the creditors of such estate a statement of its affairs and all such schedules, statements, accounts or other documents as he intends to lay before the Court or Judge, to whom such application as aforesaid is to be made, in support of the same; and shall lodge such statement or statements, schedules, accounts or documents at the office of the Resident Magistrate of the district in which he resides, where the same shall lie for the inspection of creditors at all reasonable times for a period not less than seven days from a date to be stated in such notice; and no estate shall be surrendered as insolvent until proof shall have been given to the satisfaction of the Court or Judge to whom such application as aforesaid is made that the provisions of this section have been complied with.

Schedules, &c., to be lodged with Resident Magistrate.

No sale of property after notice, except by order of Court.

2. From and after the publication of any such notice as in the last preceding section mentioned it shall not be lawful to sell any property belonging to the estate to which such notice relates, attached under any writ of execution or other process in the nature of an execution, at any time before the application for the surrender of such estate shall have been made and adjudicated upon.

¹ Extended by Proclamation No. 31 of 1886 to Transkei, Tembuland and Griqualand East, and by Proclamation No. 340 of 1894 to East and West Pondoland.

except by order of some competent Court; and if the proceeds of any property sold under legal process for the satisfaction of any debt due by such estate shall remain in the hands of the Sheriff or other officer of the law at the date of the publication of any such notice, such proceeds shall be retained by such Sheriff or officer and shall not be paid over or distributed, except by order of some competent Court, before such application as aforesaid shall have been made and adjudicated upon. (¹)

3. It shall be lawful for the Supreme Court and for the Court of the Eastern Districts, and the High Court of Griqualand respectively, within the limits of the jurisdiction of such Courts, or for the Chief Justice or any other of the Judges of the Supreme Court, upon the petition of any creditor or creditors having a claim or claims amounting in the aggregate to one hundred pounds against any person, company, or estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, and whether such claim or claims shall or shall not be actually due or payable at the time, stating that such person, company, or estate of any person deceased, or any person legally or actually incapable of the administration of his estate is insolvent and that it would be for the benefit of the creditors that such estate should be sequestered, and setting forth the grounds upon which such statements are based, to grant a provisional order for the sequestration of such estate in terms of the fifth, ninth, or tenth section, as the case may be, of the said Ordinance, and thereupon all and singular the provisions of the said Ordinance relating to the compulsory sequestration of persons, or companies, or estates of persons deceased, or of persons legally and actually incapable of the administration of their estate, shall, *mutatis mutandis*, apply to such provisional order.

4. It shall be lawful, at any meeting of creditors of any insolvent estate, by resolution passed by the votes of the greater part in number and value of the creditors or their agents present and entitled to vote, to require from the trustee of such estate reasonable security for the due administration and distribution thereof, to such amount as may by such resolution be fixed and determined, such security to be approved of by the Master of the Supreme Court or other officer before whom such meeting may be held, and to be filed with the proceedings in the said estate; and if any trustee shall fail to provide such security within fourteen days after the date of the passing of such resolution, his election if not confirmed shall be void, and if confirmed he shall be removed from his trust: Provided, that it shall be competent to such trustee or any person interested in the due administration of the said estate, to bring the amount of such security in review before the Supreme Court, and such Court may thereupon make such order as justice may require.

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Supreme, E. D. and High Courts on petition of creditors to grant provisional order of sequestration.

Security may be demanded from Trustee.

¹ See § 11 Act 17, 1886.

No. 38—1884.

When security to be cancelled.

5. Every security given by a trustee under the provisions of the last preceding section shall be cancelled by the said Master as soon as the final account of the liquidation and distribution of the estate shall have been confirmed according to law, and receipts for all dividends awarded to creditors of the estate shall have been lodged with the said Master from all such creditors by the said trustee; or in the case of unclaimed dividends the amount thereof lodged with the said Master as required by the one hundred and fifteenth section of the said Ordinance: Provided that the cancellation of such security shall not be taken in any manner to affect the liability of the said trustee in respect of his trust.

Attorney may be a Trustee.

6. So much of the forty-first section of the said Ordinance as prohibits the election of any attorney as trustee of an insolvent estate is hereby repealed.

Examination of insolvent.

7. It shall be lawful for any creditor or the attorney or agent of any creditor, as well as for the Master of the Supreme Court or the Resident Magistrate, as the case may be, to examine any insolvent upon oath under the provisions of the sixty-first section of the said Ordinance. And if at any such examination it shall appear to the said Master or Magistrate that there are reasonable grounds for suspecting that the said insolvent has been guilty of culpable or fraudulent insolvency, it shall be the duty of such Master or Magistrate to call for such further evidence and documents as he may deem necessary, and submit such evidence to the Attorney-General or Solicitor-General or Crown Prosecutor, as the case may be, for the purpose of instituting criminal proceedings against such insolvent; and at any such examination no insolvent shall be entitled to refuse to answer any question on the ground that the answer, if given, might tend to criminate him.

Master or Magistrate may send papers, &c., to Public Prosecutor.

Contemplation of insolvency to be presumed from certain acts of insolvent.

8. If at the trial of any action brought for the purpose of setting aside any alleged undue preference, under the provisions of the eighty-fourth, eighty-fifth, eighty-seventh, ninety-second or ninety-fifth section of the said Ordinance, it be proved that the alienation, transfer, cession, delivery, mortgage, pledge, or payment, forming the subject of such action, was made, granted or given within six months before the sequestration of the estate of the insolvent, and at a time when his liabilities fairly calculated exceeded his assets fairly valued, it shall be presumed that the insolvent at such time contemplated the sequestration of his estate unless proof be made to the contrary by the defendant in such action.

Not keeping proper books to be culpable insolvency.

9. Every insolvent whose estate shall be surrendered or sequestrated after the passing of this Act, and who shall not have kept or caused to be kept such reasonable and proper books or accounts containing all such entries concerning and exhibiting the nature of his dealings and transactions as (regard being had to his particular trade or calling) might reasonably be expected or required, shall be deemed to be guilty of the crime of culpable insolvency, and

shall be liable to the punishment by the seventy-first section of the said Ordinance provided, anything in the said section to the contrary notwithstanding.

No. 38—1884.

10. Every insolvent who shall fail, when thereto required in writing by the trustee of his insolvent estate, to give a true and sufficient explanation of the cause or causes of his insolvency, shall be deemed to be guilty of the crime of culpable insolvency, within the meaning of the seventy-first section of the said Ordinance, and shall be liable to punishment accordingly.

Not giving proper account of estate, culpable insolvency.

11. The last proviso to the one hundred and fifth section of the said Ordinance shall in future be read and construed as if a period of ten days instead of three days were thereby allowed within which to reclaim by notice in writing the possession of any property sought to be recovered by virtue of the said proviso.

Property reclaimable within ten days.

12. If the estate of any person holding a commission as a Justice of the Peace shall be surrendered or sequestrated as insolvent, such commission shall upon such surrender or sequestration be considered as annulled and cancelled.

Justice of Peace becoming insolvent to lose his commission.

13. The rate of remuneration to be paid to trustees who shall be appointed after the passing of this Act shall henceforth be,

Rates of trustees' commission.

Upon the proceeds of immovable property for the first £1,000 or less than £1,000, $2\frac{1}{2}$ per cent.; for every following £100 or fraction thereof, $1\frac{1}{2}$ per cent.;

Upon the proceeds of movable property for the first £1,000 or less than £1,000, 5 per cent.; for any following £100 or fraction thereof, $2\frac{1}{2}$ per cent.;

but such rate may be increased or reduced, as occasion may require, by the Supreme Court.

14. The "Insolvents' Rehabilitation Act, 1859," and the rules of court having reference thereto and confirmed by the Act No. 15 of 1867, are hereby repealed, and the one hundred and seventeenth section of the said Ordinance is hereby re-enacted: Provided:—

Insolvents' Rehabilitation Act, 1859, and rules thereunder repealed.

(1) That it shall be lawful for the Supreme Court, upon motion made by any insolvent, who shall not have been convicted of the crime of fraudulent insolvency, at any time after the lapse of four years from the date of the surrender or sequestration of his estate, to make an order for the discharge of such insolvent without the production of any certificate from his creditors (subject to such conditions as to the giving of notice to creditors and otherwise as the Court may impose) and such discharge shall have the same force and effect as the certificate and the allowance thereof in the said section of the said Ordinance mentioned; and

Insolvent not convicted of fraudulent insolvency entitled to discharge on lapse of four years.

(2) That nothing in this section contained shall affect the rights of any insolvent whose estate shall have been sequestrated before the passing of this Act; and that any

No retrospective effect.

No. 38—1884.

application for discharge made by any such insolvent shall be dealt with as if this Act had not been passed.

Filing of accounts
by trustees.

15. If any trustee shall neglect to lay before the Master of the said Court any account by the said Ordinance required, within the time prescribed, it shall be lawful for the said Master, and he is hereby required, to call upon any such trustee to show cause before the Supreme Court why he should not forthwith be ordered to file the said account, and the said Court shall summarily make such order thereon and impose such penalty for the non-observance thereof as to such Court shall seem fit and proper: Provided that, in rendering all such accounts as aforesaid, the trustee shall be guided by and conform to all such rules, orders, and regulations as may be made in that behalf by the Supreme Court under and by virtue of the one hundred and thirty-eighth section of the said Ordinance.

Evidence of facts.

16. A copy of the *Gazette*, containing any notice inserted therein in pursuance of any law relating to or regulating the administration of insolvent estates, shall be evidence of the facts stated in the notice.

No decree of civil
imprisonment or
writ of execution
against insolvent af-
ter lapse of 4 years.

17. It shall not be lawful for any person to make application for the process of any Court for the civil imprisonment of any insolvent under the provisions of the one hundred and twenty-fourth section of the said Ordinance, or for leave to issue execution against any insolvent under the provisions of the one hundred and twenty-seventh section of the said Ordinance, or to proceed in any manner against such insolvent in respect of any debt or demand proved or provable against his insolvent estate, at any time after the lapse of four years from the date of the surrender or sequestration of his estate as insolvent: Provided that nothing in this section contained shall apply to any insolvent who shall have been convicted of the crime of fraudulent insolvency.

Insolvency com-
missioner may be ap-
pointed by Governor
when necessary pro-
vision made by Par-
liament

18. It shall be lawful for the Governor, upon the necessary provision being made by Parliament, to direct that all or any of the duties imposed upon or the powers or functions exercised by the Master of the Supreme Court, under or by virtue of the laws relating to insolvency and the administration of insolvent estates, shall be performed or exercised by an insolvency commissioner or such other officer as may be appointed for the purpose: and such commissioner or other officer shall during his tenure of office be in all respects in the same position as if his name were substituted for that of the said Master wherever the said Master is mentioned in any of the said laws.

Short title.

19. This Act shall be read as one with the said Ordinance, and may be cited as the "Insolvent Law Amendment Act, 1884."

No. 1—1885.]

[May 30, 1885.]

ACT

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

WHEREAS it is expedient to complete the trunk or main line of railway from the Orange River Station to Kimberley at as early a date as possible: and whereas it is expedient to raise the necessary funds for the aforesaid purpose: and whereas Her Majesty's Imperial Government have consented to advance to the Government of this Colony the sum of four hundred thousand pounds sterling to be expended in the construction of the said railway as a temporary loan out of the Consolidated Fund of the United Kingdom for a period of five years bearing interest at the rate of three pounds ten shillings per centum per annum: and whereas it is required that the negotiation of the said loan upon the conditions of payment of interest aforesaid and eventual repayment to the Imperial Government of the capital sum so advanced as a temporary loan, should have the sanction of the Legislature of this Colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. The Governor shall immediately after the passing of this Act cause to be constructed a line of railway from the present terminus at the Orange River Station, to Kimberley, at an expenditure not exceeding the sum of four hundred thousand pounds sterling, exclusive of the cost of erecting bridges over the Orange River and Modder River for which provision has already been made by Acts No. 30 of 1882 and No. 21 of 1883, the said line of railway to be completed ready for traffic not later than the 28th November, 1885.

2. For the purposes mentioned in the preceding section of this Act, the Government of this Colony is authorised to accept from Her Majesty's Imperial Government advances, by way of loan, not exceeding in the whole the sum of four hundred thousand pounds sterling, bearing interest at the rate of three pounds ten shillings per centum per annum, for a period of five years reckoned from the day on which such advances shall have been made: provided that the said loan shall be appropriated to the construction of the said line of railway and to no other purpose whatsoever; and provided further that the said loan shall not be subject to the terms and conditions of Act No. 16 of 1881.

3. The general revenues of this Colony shall be, and they are hereby charged, firstly, with the payment half-yearly of the said interest on the said loan to Her Majesty's Imperial Government, for the period of five years aforementioned, and secondly, with the

No. 1—1885.

Mode of repay-
ment.

sum or sums required to repay to Her Majesty's Imperial Government at the expiration of five years, the capital sum of the loan of four hundred thousand pounds sterling, the said repayment to be made in precisely the same manner as regards numbers and amounts of respective instalments by which the said advance shall have been made, that is to say that repayment of each instalment shall be made at the expiration of five years from the day on which and at the place where such instalment shall have been advanced.

Debentures to be deposited with Imperial Government as security for advances.

4. In order to meet the requirements of the Act of the Imperial Parliament entitled the "Cape of Good Hope (Advance) Act, 1885," the Treasurer of the Colony is hereby authorised to issue and deposit with Her Majesty's Imperial Government as security for any advance to be made under the provisions of this Act such number of debentures of the Government of the Colony of the Cape of Good Hope, bearing interest at the rate of five per centum per annum, as in nominal amount shall be equal to the amount of the said advance with an addition of one-sixteenth of the amount of such advance. And the value of such debentures as well as the interest thereon shall in like manner be chargeable, and are hereby charged to the general revenues of the Colony. ⁽¹⁾

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

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

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

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

Certain Sections of Act 19 of 1874 to apply.

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

Short title.

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

No. 2—1885.]

[June 27, 1885.]

Act for applying a further Sum not exceeding Twenty-six Thousand Three Hundred and Ninety Pounds Sterling for the Service of the Year ending the 30th June, 1885.

[Spent.]

No. 3—1885.]

[July 14, 1885.]

ACT

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

WHEREAS by resolution of both Houses of Parliament of this Colony, passed in the Session of Parliament held in the year of our Lord 1884, it was resolved that it is expedient that the British Territories known as Tembuland, Emigrant Tembuland, Gealekaland and Bomvanaland should be annexed to this Colony: And whereas by Her Majesty's Letters Patent, bearing date at Westminster the 2nd day of October, 1884, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was authorised by proclamation under his hand and the Public Seal of the said Colony, to declare that from and after a day to be therein mentioned, the said Territories, or so much thereof as to him after due consideration and consultation with his Ministers, shall seem fit, shall be annexed to and form part of this Colony; and was authorised and directed to determine and by proclamation to signify the limits of the said Possessions and Territories so annexed: Provided that no such proclamation should be issued until the Legislature of this Colony should have passed a law providing that the said Territories should on the day aforesaid become part of this Colony, and subject to the laws in force therein: and provided that the application of the said laws to the said Territories might be modified either by such proclamation as aforesaid, or by any law or laws to be from time to time passed by the Legislature of this Colony for the government of the said Territories so annexed: And whereas it is expedient that a law should be enacted providing that the said respective Territories shall, on the day to be mentioned in that behalf in a proclamation or proclamations of the Governor aforesaid, become part of this Colony, but in consequence of the said Territories being for the most part occupied by natives who are not yet sufficiently advanced in civilization and social progress to be admitted to the full responsibility granted and imposed respectively by the ordinary laws of this Colony to and upon other citizens thereof, subject to the laws in force therein only as the same may from time to time be applied and modified as hereinafter mentioned and hereinafter provided: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. From and after such day as the Governor shall, pursuant to the powers in that behalf contained in the said Letters Patent, by

Governor may pro-
claim date from
which Tembuland,

No. 3—1885.

Emigrant Tembuland, Gcalekaland, and Bomvanaland shall become part of this Colony.

Provision as to laws.

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

Eastern Districts Court to have jurisdiction over annexed territories.

Jurisdiction of Magistrates' Courts in annexed territories in criminal case

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

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

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

4. ⁽²⁾ The Resident Magistrates of such annexed Territories shall, until the Governor shall by any proclamation otherwise

¹ Proclamation No. 140, dated 26th Aug., 1885, in Gazette 1st Sept., 1885.

² But see §§ 250, 259 and 268 of Act 24, 1886, which came into force on 1st January, 1887.

direct, have jurisdiction respectively in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death; and may sentence any person convicted, to any punishment allowed by law; anything in the forty-second section of the Act No. 20 of 1856 to the contrary notwithstanding.

No. 4—1885.

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

Review of such Magistrates' decisions.

6. [Repealed by § 1 Act. 26, 1894]

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

Short title.

No. 4—1885.]

[July 14, 1885.]

ACT

To Authorise the Post Office Department to Issue Postal Drafts for the Collection of Small Sums of Money.

WHEREAS it is expedient that provision should be made for the collection of small sums of money through the agency of the Post Office by means of Postal Drafts: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Subject to such regulations as may be made by the Governor under the provisions of this Act, the Postmaster-General may authorise his officers, or any of them, to issue postal drafts and to collect the amounts thereof.

Postmaster-General may authorise issue of postal drafts.

2. No postal draft shall be issued for a higher amount than ten pounds sterling, nor for any sum which shall include the fractional part of a penny.

No draft to exceed £10 sterling.

3. The Governor may from time to time make, alter and repeal regulations for all or any of the following purposes:

Power of Governor to make, alter and repeal certain regulations.

(1) The fees to be received in respect of the issue to the drawer and presentation to the drawee of postal drafts.

(2) The charges to be made for the collection from the drawee and transmission to the drawer or other person authorised to receive the same of the amounts for which any such drafts shall have been drawn.

¹ But see §§ 250, 259 and 268 of Act 24, 1886, which came into force on 1st January, 1887.

No. 4—1885.

- (3) For regulating the manner in which any fees payable under the provisions of this Act shall be paid and brought to account.
- (4) For regulating the persons by or through whom and the places where and the times when such drafts shall be issued, and the person by or through whom and the places where and the times when such drafts shall be presented for payment, and the payment of the amounts thereof received.
- (5) For regulating the length of time for which such drafts shall remain current, and the manner in which the demands for the payment thereof shall be made.
- (6) For regulating the conduct of all Postmasters and other officers charged with the issue of such drafts and the collection of the amounts thereof.
- (7) For any other purposes whatsoever necessary for the effectual carrying out of the object and provisions of this Act.

Amounts payable to Post Office to be paid in coin.

Drafts to be paid in full.

By whom and in what manner demands under this Act to be made.

Production of draft returned for non-payment to be *prima facie* evidence of dishonour.

4. All amounts payable to the Post Office in respect of any postal draft shall be payable in current coin.

5. Every draft shall be payable in full, and it shall not be lawful for any Postmaster or other officer of the Post Office to accept the payment of any sum in instalments.

6. All demands which, under the provisions of this Act, or the regulations to be framed by virtue thereof, shall be authorised by the drawer of any postal draft, shall be made by the Postmaster in person, or by some other officer of the Post Office duly authorised by the Postmaster-General in that behalf, if the drawee resides in the immediate neighbourhood of the Money Order Office on which such draft is drawn; but if the drawee should reside at a distance, or cannot be communicated with personally, a letter of demand on the form prescribed in the regulations to be framed under the provisions of this Act shall be addressed to him at the address given by the drawer, and be forwarded by post to the nearest Post Office to such address, and in the event of no reply being received to such demand, the postal draft, in respect of the payment of the amount of which such demand shall have been issued, shall be returned to the drawer at the termination of the currency thereof, accompanied by a statement on the proper form, certifying to the non-payment thereof.

7. The presentation in accordance with the provisions of this Act, or the regulations to be framed by virtue thereof, of any postal draft, shall be of the same force and effect as a legal demand, and the return of any such draft so presented, by reason of the non-payment of the amount thereof by the drawee, and the report thereon by any Postmaster or other duly authorised officer, shall, in any suit or action on the account or claim, in respect of which such draft was drawn, be taken on the mere production

of such returned draft, together with the report thereon, as evidence of the facts stated in such report, unless the contrary shall be proved.

No. 4—1885.

8. No receipt, demand, or other document issued under the provisions of this Act shall be chargeable with any fees or duties whatsoever, excepting such as shall be imposed by the regulations made by the Governor under the authority of the third section hereof.

Receipts, &c., not chargeable with fees or duties.

9. The Governor may from time to time make conventions with the proper authorities of any other British possession or Foreign country for the institution of a system of postal drafts between this Colony and such other British possession or Foreign country as the case may be, and by proclamation in the *Government Gazette*, define the time when such convention shall come into operation, and the regulations under which it shall be carried into effect.

Governor empowered to make conventions with foreign countries for system of postal drafts.

10. The presentation of a draft to the drawee, or the non-presentation within the prescribed period when the drawee cannot be communicated with, and in the case of payment, the collection of the amount of a postal draft and the transmission of the money in the form of a money order or postal order in a registered letter to the drawer shall discharge the Postmaster-General and his officers from all liability whatsoever in respect of such draft, notwithstanding any forgery, fraud, or mistake, which may have been committed or have occurred in reference to such draft, or to the procuring thereof, or to obtaining payment thereof, or by reason of any default, delay, or loss, in respect of any sum collected or to be collected, and notwithstanding any disregard of any regulations to be framed under the provisions of this Act.

When Postmaster-General and officers discharged from liability on drafts.

11. In the interpretation of this Act the term Postmaster-General shall mean the Postmaster-General of the Colony for the time being; the term Postmaster shall mean the Postmaster or other officer duly authorised to issue, or collect the amounts of postal drafts; the term drawer shall mean the person in whose favour or on whose behalf a postal draft shall be issued; the term drawee shall mean the person from whom the amount of a postal draft is to be collected.

Interpretation Clause.

12. Copies of all regulations and conventions, and orders made by the Governor under the provisions of this Act shall from time to time be laid before both Houses of Parliament within thirty days after the making thereof, respectively, if Parliament be in session, and if Parliament be not then in session, after the commencement of the next session.

Copies of rules and conventions to be laid before Parliament.

13. This Act shall come into operation on such day as may be fixed by the Governor by Proclamation, and may be cited for all purposes as the "Postal Drafts Act, 1885."

Short title.

No. 6—1885.

No. 5—1885.]

[July 11, 1885.]

Act to apply a Sum not exceeding Two Hundred Thousand Pounds Sterling, towards the Service of the Year ending the 30th day of June, 1886.

[Spent.]

No. 6—1885.]

[July 14, 1885.]

ACT

To Amend and Add to the 'Laws relating to Customs Duties. (1)

Preamble.

WHEREAS it is expedient to amend in certain respects the laws relating to Customs duties, and to provide more effectually for the collection of duties on goods imported across the inland border of the Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Customs laws to extend to goods imported over inland border.

Governor may prescribe forms of bills of entry and other necessary documents

Penalty for contravention of regulations.

Forfeiture of goods imported without duty paid.

1. All laws now or hereafter to be in force relating to the Customs, and all regulations of the Customs, shall so far as the same are applicable, extend and apply to all goods imported across the inland border of this Colony, as fully and effectually as if such inland border were part of the high seas within one league of the coast of this Colony: Provided always that the Governor may, from time to time, prescribe the several forms of bills of entry, reports, warrants, and other necessary documents, and frame such rules and regulations as may be necessary for the due and more convenient collection of duties payable on goods imported across the inland border of this Colony: and any person who shall contravene any such rule or regulation shall be liable to a fine not exceeding three hundred pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding twelve months, or to both such fine and such imprisonment; and provided further that the owner, driver, or other person in charge of any animal or vehicle in or upon which any such goods are so imported, shall, *mutatis mutandis*, be in the same position as the master of any vessel importing such goods by sea.

2. If any goods liable to the payment of duties shall be imported by land or sea into any part of this Colony, the Customs and other duties thereon not having been first paid or secured according to law, then such goods shall become forfeited to the Colonial Treasury: provided that nothing herein contained shall be taken to affect or remove any other penalty which shall be incurred under any other law in force by such importation.

¹ Extended by Proclamation No. 120 of 1885 to Griqualand East and Port St. John's, and by Proclamation No. 342 of 1894 to East and West Pondoland and to the Transkei and Tembuland.

3. For the purposes of the twenty-sixth section of the "Customs Act, (1) 1872," and of the declaration and the oaths thereby required to be made, the current value of any goods the duties on which are imposed *ad valorem*, or according to the value thereof, shall be taken to be the cost or value of such goods when placed on board the ship or vessel by which the same are imported and brought into this Colony, and shall include the cost of all packages in which the said goods are contained, and also all cost and charges attending the transport of the said goods from the place where the same were manufactured or purchased to the place or port of shipment to this Colony, but shall not include marine insurance or freight to the Colony, nor shall it include agents' commission for purchasing, provided such commission does not exceed five per cent.: Provided that in respect of any such goods brought into this Colony across the inland border thereof the value upon which Customs duties shall be payable shall be the current value of such goods and the packages wherein the same are contained at the place in Africa from whence the same were imported into this Colony: and so much of the said section and of any other law as may be inconsistent with or repugnant to the provisions hereof is hereby repealed.

No. 7—1885.

How goods charged with *ad valorem* duty to be estimated.

How in regard to goods imported across inland border.

4. The Act No. 1 of 1864, entitled "An Act for the better Protection of the Customs Revenue in certain cases," shall be read and construed as if the words "taken out of bond by being" in the first section thereof were omitted therefrom; and the twenty-sixth section of the "Customs Act, 1872," shall be read and construed as if the words "with the addition of ten pounds per centum" were omitted wherever they occur therein, and the words "with the addition of five pounds per centum" were substituted for the words so omitted; and "The Customs Tariff Amendment Act, 1884," shall be read and construed as if in the Schedule of Customs Duties thereunto annexed the words "not perfumed" occurring between the words "soap, common, brown, blue, yellow, or mottled," and the words "the 100 lbs." were omitted.

Act 1 of 1864, the "Customs Act, 1872," and "The Customs Tariff Amendment Act, 1884," amended.

5. This Act may be cited as "The Customs Amendment Act, 1885."

Short title.

No. 7—1885.]

[July 31, 1885.]

ACT

To Amend in certain respects Act No. 19 of 1882, intituled "The Town of Aliwal (Mossel Bay) Water Supply Act, 1882."

WHEREAS it is expedient to amend in certain respects the Act No. 19 of 1882, intituled "The Town of Aliwal (Mossel Bay) Water Supply Act, 1882": Be it enacted by the Governor of the

Preamble.

No. 8—1885.

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

In Act No. 19 of 1882, £26,000 to be inserted instead of £24,000.

1. Anything in the provisions of Act No. 19 of 1882 or of Act No. 45 of 1882 to the contrary notwithstanding, the preamble to the said Act No. 19 of 1882, and sections one and eighteen thereof, shall be read as if the words “twenty-six thousand pounds” had been originally inserted in the said preamble and sections in place of the words “twenty-four thousand pounds” contained in the said preamble and in the said sections.

Provisions of Act No. 19 of 1882 not affected.

2. All and sundry the other provisions of the said Act No. 19 of 1882 shall be of the like binding force and effect as if the words “twenty-six thousand pounds” had been originally inserted in the said preamble and sections in place of the words “twenty-four thousand pounds.”

Costs, &c., of obtaining Act paid out of moneys borrowed.

3. The necessary costs, charges, and expenses of obtaining this Act may be paid by the municipal commissioners in the Act No. 19 of 1882 referred to, out of the moneys by them borrowed, or to be borrowed, under and by virtue of the provisions of that and this Act.

Short title.

4. This Act may be cited for any purpose as “The Town of Aliwal (Mossel Bay) Water Supply Act Amendment Act, 1885.”

No. 8—1885.]

[July 31, 1885.]

ACT

To Authorise the Divisional Council of Tarka to borrow Moneys upon the Security of Road Rates for the purpose of paying off certain debts.

Preamble.

WHEREAS the Divisional Council of Tarka has been ordered by the Honourable the Court of the Eastern Districts of the Colony of the Cape of Good Hope to pay to the Divisional Council of Cradock, certain sums of money which were due to the said Divisional Council of Cradock, under and by virtue of the provisions of Section II of Act 24 of 1858; and whereas the payment of the sum so ordered to be paid will involve a larger outlay of money than could be met by immediate taxation under the powers by law vested in the said Council: and whereas it is expedient that the said Council should be authorised to borrow moneys upon the security of the road rates of the said division, for the purpose of paying off the debt abovementioned, and that provision should be made for the gradual extinction of the debt to be incurred for the purpose of paying off the aforementioned debt: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly, as follows:—

1. So much of Act No. 9 of 1858, entitled "An Act to provide for the management of the Public Roads," and so much of the "Road Act No. 10 of 1864," as is repugnant to or inconsistent with the provisions of this Act, shall in so far as it relates to this Act, but not otherwise, be and the same is hereby repealed.

No. 8—1885.
Repugnant Laws
repealed.

2. It shall be lawful for the said Council from time to time to borrow and to take up at interest such sum or sums of money not exceeding two thousand pounds sterling in the whole, as may be required for the purpose of this Act, upon such terms and conditions as shall be most favourable to the said Council.

Loan of £2,000.

3. No loan under this Act shall be capable of being raised except in pursuance of a resolution passed at an ordinary meeting of the said Council, of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be capable of being raised in any year in which the rates assessed by the said Council shall be less than one half-penny ($\frac{1}{2}$) in the pound sterling upon the value of the property to be rated in the said division.

Conditions precedent to raising any part of loan.

4. For the due payment of moneys to be raised as aforesaid and the interest thereof, the road rates of the said Council are hereby charged and hypothecated, and it shall be lawful for the said Divisional Council to apply to the payment of interest or principal of the money raised under this Act any such revenues.

Security for repayment of loans and interest.

5. The said Council shall grant written acknowledgments of or for such sums of money borrowed as aforesaid, which acknowledgments shall be as nearly as may be in the form annexed to this Act and shall be signed on behalf of the said Council, by three of its elected members thereto duly authorised by resolution of the said Council.

Acknowledgment for loans to be given in form provided in Schedule.

6. All moneys raised under this Act shall on receipt thereof be deposited in a bank to be chosen by the said Council, and all sums required shall be drawn by cheques signed by the Secretary and countersigned by the chairman of the Divisional Council.

Moneys raised to be kept separate.

7. As a fund for the payment of the interest upon and the gradual extinction of the loans to be raised under this Act, there shall be charged and chargeable upon, and set apart out of the annual revenues of the said Council, an annual sum equal to the interest on the whole amount of such loans, or the balance thereof remaining due and unpaid, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans or the balance thereof remaining due and unpaid, and such sum shall annually be charged upon and be paid out of the revenues of the said Council so long as any portion of the loans to be raised as aforesaid shall remain unpaid and unextinguished: Provided, however, that in the event of there being any balance of the ordinary revenue available after payment of the ordinary annual expenditure of the said Council, such balance being not less than

Fund for repayment of loan.

Provision for reduction of loan.

No. 8—1885.

two hundred and fifty pounds, it shall be competent to the said Council to apply such balance or surplus to the reduction of the said debt of two thousand pounds, or such portion as shall at any time be due, and the said Council shall be and is hereby authorised to give the person or persons or body who shall have lent and advanced the money to be borrowed by virtue of this Act, three months' notice in writing of their intention so to reduce the existing debt as aforesaid, and thereupon after the expiration of the three months to pay over the said balance or surplus as aforesaid.

Separate accounts
to be kept.

8. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, shewing all moneys received and expended up to the 30th June and 31st December then preceding, and all liabilities and assets on the same days.

Accounts audited
by Divisional Council's
Auditors.

9. The accounts in the last preceding section mentioned shall be audited and examined by the auditors of the Divisional Council appointed under the provisions of the Divisional Council Act, 1865, and the provisions of the eighty-third and eighty-fifth sections of the said Act shall apply to all accounts, books and papers connected with this loan.

Expenses of Act,
how to be paid.

10. All the necessary costs and expenses attending the providing of this Act, and carrying the provisions thereof into effect, shall be paid out of the general revenue of the said Council.

Short title.

11. This Act may be cited for all purposes as the "Tarka Divisional Council Loan Act, 1885."

SCHEDULE.

Schedule.

TARKA DIVISIONAL COUNCIL LOAN ACT, 1885.

Acknowledgment of Loan £

We, the undersigned members of the Divisional Council of Tarka, duly authorised thereto by resolution of the said Council, do hereby acknowledge that the Divisional Council of Tarka is indebted to

in the sum of

being so much money borrowed for the purposes mentioned in the Tarka Divisional Council Loan Act, 1885, and certify that the said sum is secured by the said Act in manner and form as by the said Act is provided. And we further covenant and agree in our said capacity that the capital and interest of the said debt shall be payable and paid by the said Council in manner following, that is to say:—

Given under our hand at this day of

Entered

Secretary.

Members of the Divisional Council
of Tarka.

No. 9—1885.]

[July 31, 1885.

No. 10—1885.

ACT

To amend the provisions of Ordinance No. 9 of 1836, and to extend the provisions of the twenty-second section of Act No. 45 of 1882, to Municipalities which have not yet come under the operation of that Act.

WHEREAS it is expedient to amend in certain respects the provisions of Ordinance No. 9 of 1836, and to extend the provisions of the twenty-second section of the Act No. 45 of 1882, to municipalities which have not yet come under the operation of that Act: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. So much of Ordinance No. 9 of 1836, as may be repugnant to or inconsistent with the provisions of this Act shall be and is hereby repealed.

Repugnant or inconsistent provisions of Ord. 9 of 1836 repealed.

2. The provisions of the twenty-second section of Act No. 45 of 1882, commonly called the "Municipal Act," shall apply, *mutatis mutandis*, to municipalities which have not yet come under the operation of that Act, and the office or seat of any person duly elected a commissioner in such municipality shall be deemed to be vacant upon any of the grounds of vacancy set forth in the said twenty-second section.

Section 22 of Act 45 of 1882 to apply *mutatis mutandis* to municipalities not under operation of Act.

3. This Act may be cited as the "Municipal Law Amendment Act, 1885."

Short title.

No. 10—1885.]

[July 31, 1885.

ACT

To confer Additional Powers upon the Body Corporate styled "The Mayor, Councillors and Citizens of Graham's Town."

WHEREAS it is expedient to confer additional powers upon the body corporate styled "The Mayor, Councillors, and Citizens of Graham's Town": Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. All laws repugnant to or inconsistent with this Act shall be, and the same are hereby repealed.

Repugnant laws repealed.

2. Whenever any rateable property situated within the Municipality of Graham's Town shall be unoccupied and any rates accrued thereon shall have been unpaid for five years, the council of the said body corporate may in the name of the said body corporate take possession of such property and grant leases of the same subject to the provisions of this Act.

What unoccupied rateable property in arrears for rates may be taken possession of and leased by Council.

No. 10—1885.

Conditions on which Council may lease such property.

3. Every such lease shall be for such term not exceeding five years as the said council may deem fit, and shall be granted for the best rent which may be reasonably had for such property, and subject to such covenants and conditions as the said council may determine.

What Council do before taking possession of such property

4. The said council shall not take possession of any such property until three months after a notice in writing, setting forth that rates in respect of such property are unpaid and demanding payment thereof, and stating that in the default of payment the said council will take possession of such property under the provisions of this Act has been served upon the owner of such property, if within this Colony, and whose name and address is known to the said council, or if there is no such owner within this Colony, or no such owner whose name and address is so known, until such notice has been affixed to some conspicuous place on such property and published in the *Government Gazette* at least once a month during three months; and every such notice shall contain a sufficient description of the property to identify the same; but every lease granted by the said council otherwise in accordance with the provisions of this Act shall be valid notwithstanding the non-compliance with the provisions of this section, unless all arrear rates and interest thereon are paid within twelve months after the said council shall have taken possession.

On what conditions owner entitled to resume possession of such property.

5. Within three months after demand by the owner of any property taken possession of by the said council as aforesaid made within thirty years after the date of taking possession, and after payment of all arrears of rates due in respect thereof and interest upon such arrears at the rate of six per centum per annum, such owner shall be entitled to resume possession of such land subject to the terms of any lease theretofore lawfully granted by the said council under the provisions of this Act.

By whom rent, &c., payable under such lease to be received and how to be applied.

6. All rent and other moneys payable under any such lease shall, until the payment of all arrears and interest as aforesaid by the owner, or the expiration of thirty years from the date of taking possession of such property by the said council, whichever shall first happen, be received by the said council and shall be applicable

- (1) In defraying the expenses of and incidental to the giving of the notices as aforesaid and the execution of such lease and the collection of rents.
- (2) In payment to the said council of all arrears of rates and other payments due in respect of such property together with interest on all arrears of rates at the rate of six per centum per annum from the time when interest upon such rates shall accrue respectively, and in payment of all rates and other payments becoming due thereon.

And the residue of such money shall belong to such person as would have been entitled to receive the rents or profits of such property if this Act had not been passed.

7. Unless some person entitled to resume possession of any property of which the said council has taken possession as aforesaid shall within thirty years after the date of taking possession pay all arrears of rates, interest and incidental expenses properly chargeable under this Act, such property and all accumulations of rent and other moneys received in respect of such property shall vest absolutely in the aforesaid body corporate.

No. 11—1885.
Such property if possession not resumed within thirty years to vest in Municipality.

8. This Act may be cited for all purposes as the "Graham's Town Municipal Amendment Act, 1885."

Short title.

No. 11—1885.]

[July 31, 1885.]

ACT

To Legalise certain Unauthorised Loan raised by the Divisional Council of Calvinia.

WHEREAS great expenses have heretofore been of necessity incurred by the Divisional Council of Calvinia in and about the making or maintenance of certain pass called the "Boterkloof Pass" and of certain other roads in the said division: and whereas such expenses were incurred for the advancement of the said division, and for the benefit of its inhabitants: and whereas an unauthorised loan of the capital sum of £1,700 was raised by the said Council and expended in meeting the great expenses aforesaid: and whereas it is expedient to legalise the said loan, and to constitute it a just debt of, and legal liability and obligation against the said Council, and to make legal provision for the proper repayment of the said sum, with interest: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1 The loan of the capital sum of £1,700, heretofore raised without legal authority by the Divisional Council of Calvinia to meet the necessary costs and expenses incurred in and about the making, alteration, or maintenance of a certain pass called the "Boterkloof Pass" and of roads within the division of Calvinia, together with the interest now due upon the said capital sum, shall be deemed, and is hereby declared to have been, at and from the date of the raising of the said loan, a just debt, liability and obligation of the said Council, within the meaning of the preamble and provisions of the Act No. 11 of 1867, commonly called the "Public Bodies Debts Act, 1867":—Provided, however, that no legal proceedings, under the said Act or otherwise, shall be taken for the recovery of the capital sum aforesaid or any portion thereof or of any sum of interest due thereon, until after the expiration of six months from the passing of this Act.

Provisions of Public Bodies Debts Act, 1867, to apply to unauthorised loan.

Stay of proceedings.

2. Notwithstanding anything to the contrary contained in the Act No. 9 of 1858, entitled "An Act to Provide for the Management of the Public Roads of the Colony," or in any Ordinance or

Authority to repay loan or pass debentures for security.

No. 12—1885.

Act having the force of law in this Colony, it shall be lawful for the said Divisional Council, and it is hereby empowered, at any time after the passing of this Act, out of any rates at that time in its possession, to make payment to any person entitled thereto under the first section of this Act of the whole or any portion of the aforesaid capital sum, together with interest to the date of payment; or it shall be lawful for the said Council, in order to secure the repayment of the said capital sum, together with interest, to issue to any such person debentures for the amount due at the date of issue, and such debentures shall bear interest at a rate not exceeding six per cent. per annum, and shall, subject to any then existing preferential claim, charge, or hypothecation, bind, pledge, and hypothecate the rates and revenues of, and the immovable property vested in, the said Council for the due payment of the amount of such debentures and of such interest.

“Local Loans Act, 1882,” to apply.

3. The said capital sum, together with all interest thereon due at the date of the passing of this Act, shall be deemed and taken to be a loan legally heretofore raised by the said Council within the meaning of the eleventh sub-section of the second section of Act No. 11 of 1882, commonly called the “Local Loans Act, 1882,” for the purposes specified in the first sub-section of that section.

Cost of obtaining Act to be paid out of rates.

4. All necessary costs, charges and expenses incurred in obtaining the passing of this Act shall be paid by the said Council out of the revenue derived from rates.

No. 12—1885.]

[July 31, 1885.]

ACT

To Include Domesticated Ostriches within the several meanings of the terms Cattle, Stock, and Animal, employed in certain Acts of Parliament.

Preamble.

WHEREAS it is expedient that domesticated ostriches should be included within the several meanings of certain terms employed in certain Acts of Parliament: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Domesticated ostrich included under cattle, stock, animal in certain Acts.

1. From and after the passing of this Act, and notwithstanding anything to the contrary contained in the several Acts hereinafter mentioned, the several terms cattle, stock, and animal shall each of them be deemed to denote and include domesticated ostriches wherever any one of the said terms shall be employed in any portion of any one of the following Acts:—Act No. (1) 16 of 1864, Act No. (1) 17 of 1867, Act No. 14 of 1870, Act No. 21 of 1876, Act No. (1) 18 of 1879, and Act No. (1) 19 of 1884.

Short title.

2. This Act may be cited for all purposes as the “Cattle and Stock Definitions Amendment Act, 1885.”

No. 13—1885.]

[July 31, 1885.

No. 14—1885

Act to make further provision for the Repression of Thefts of Ostrich Feathers, Skins, Mohair, and Wool.
[Repealed by Act 35, 1893.]

No. 14—1885.]

[July 28, 1885

ACT

For the Regulation of the Trade in Diamonds within the Colony, and to provide for the punishment of certain offences therein. ⁽¹⁾

WHEREAS it is expedient to regulate the trade in Diamonds, and to provide for the punishment of certain offences within the districts of the Colony other than Griqualand West: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. It shall not be lawful for any person, firm, or joint-stock company, except as in this Act is excepted, to have in his or its possession, or to buy, deal in, or receive by way of barter, pledge or otherwise, either as principal or agent, or to sell, offer, or expose for sale, barter, pledge, or in any way, either as principal or agent, to dispose of or deliver any diamonds, or to be an accessory to such buying, dealing in, receiving, selling, offering, exposing, disposing, or delivering as aforesaid, unless such person, firm, or joint-stock company so buying, dealing in, receiving, selling, offering, exposing, disposing, or delivering, as aforesaid, shall be duly licensed, or authorised to deal in diamonds, either as buyer, seller, broker, factor, or otherwise as the case may be, or shall be duly licensed to carry on the business or trade of a diamond cutter or unless such person, firm, or joint-stock company buying, dealing in, receiving, selling, offering, exposing, disposing, or delivering as aforesaid shall be a banker or registered claimholder within this Colony: Provided that it shall not be lawful for such banker, licensed diamond dealer, registered claimholder, or duly authorised person, firm, or joint-stock company to deal in diamonds otherwise than in the manner specially authorised by his or their licences or authority, or to sell, offer, or expose for sale, barter or pledge, either as principal or agent, or in any way to dispose of, or deliver any diamonds, unless such diamonds shall be actually the property or in the lawful possession of such banker, licensed diamond dealer, registered claimholder, duly authorised person, firm, or joint-stock company: Provided also that the onus of proof of the *bonà fide* possession of or authority to deal in any such diamonds as aforesaid within the meaning of this section shall

Who authorised to buy, deal in, &c., or sell, offer, &c., any diamonds or to be an accessory thereto.

And then only if the diamonds are the property or in lawful possession of the authorised person.

Onus of proof of *bonà fide* possession of diamonds rests on authorised person.

¹ See Acts 48, 1882; 34, 1888; and 31, 1893.

No. 14—1885.

in all cases rest on such banker, licensed diamond dealer, registered claimholder, duly authorised person, firm, or joint-stock company as aforesaid. And provided further that any person who shall be unable to account satisfactorily for, or to prove his right to the possession of any diamonds found in his possession, or to produce his proper permit for the same in accordance with the provisions of this Act, shall be liable on conviction to the penalties of the following section.

Penalty for contravening Section 1.

2. Any person convicted of contravening the above section shall be liable to a penalty not exceeding one thousand pounds, or to imprisonment with or without hard labour, for a period not exceeding fifteen years, or to both such penalty and imprisonment, and all diamonds the subject of any transaction in contravention of this Act may be confiscated to the Crown by the Court before which the proceedings relating thereto shall be taken, or by any other competent Court, and such diamonds shall be sold and disposed of as hereinafter provided; provided, however, that when any person shall have been sentenced under the provisions of this Act to any greater term of imprisonment than five years, it shall be lawful for the Governor to remit any portion of such term in excess of such five years, on condition of such person so sentenced leaving and not returning to any part of this Colony, including Griqualand West, during the remainder of his sentence; and if any person, a portion of whose sentence shall have been so remitted, shall notwithstanding return within the time aforesaid, such person shall be liable to be re-arrested and imprisoned for a term equal to the portion of the sentence unexpired at the time of his release from custody: Provided, also, that nothing herein contained shall in any manner affect Her Majesty's prerogative of mercy.

Penalty on authorised persons for buying, dealing in, &c., any diamonds from, with, &c., person not authorised.

3. Any banker, licensed diamond dealer, registered claimholder, joint-stock company, licensed cutter of diamonds, or duly authorised person buying or receiving by way of barter, pledge, or otherwise, either as principal or agent, any diamonds from any person, or in any way dealing with the same with any person not being a banker, licensed diamond dealer, registered claimholder, joint-stock company, licensed cutter of diamonds, or duly authorised person, shall be liable upon conviction to the penalties in the second section in this Act provided, and shall in addition forfeit any licence which such person may hold, and any right of renewal of the same for such period as the Court may direct, and no such person shall thereafter be registered as the agent of any claimholder or joint-stock company.

Forfeiture of licence.

Penalty under Section 2 extended to any dealing not specially authorised by the licence held by an authorised person.

4. Any licensed or authorised diamond dealer or diamond cutter in any way dealing in diamonds otherwise than in the manner specially authorised by the licence or authority held by or vested in him, shall on conviction thereof be liable to the penalties in the second section in this Act provided, and shall in addition forfeit his licence, and any right of renewal of the same for such time as the Court may think fit to direct.

Forfeiture of licence.

5. If in any proceeding under this Act the Court has to be satisfied either that the prisoner or any witness or any other person, is not authorised or licensed to deal in diamonds within the meaning of the section under which such accused person is being tried, such prisoner, witness, or other person shall be deemed to be unlicensed or unauthorised, unless such prisoner, witness, or other person shall prove to the satisfaction of the Court that he is duly authorised or licensed as aforesaid.

No. 14—1885.

Onus of proof of authorisation rests on the person whose authority to deal in diamonds is in question.

6. All diamonds imported into this Colony or intended for transit from any outside country or state through this Colony, shall, before importation or introduction, be first registered with the Chief of the Detective Department of Griqualand West or such other person as may be appointed by him in that behalf, who shall have authority and power to require the importer or introducer to account satisfactorily to him for the possession of such diamonds, and to give such proof as may be demanded by the said Chief of the Detective Department, or other person so appointed as aforesaid regarding the mine or mines wherein such diamonds were produced, and thereupon to grant a certificate of registration to such importer or introducer, and any person importing diamonds into, or sending diamonds through this Colony without such registration, or, when required to do so as aforesaid, failing to account satisfactorily for the possession of such diamonds, shall upon conviction be liable to the penalties in the second section of this Act provided, and all such diamonds so imported or introduced without such registration shall be liable to be confiscated and sold, and the proceeds of such sale shall be disposed of as in this Act provided: Provided, however, that it shall be lawful for His Excellency the Governor to make such arrangements with the authorities of the Free State, for the transmission of diamonds through this Colony for export, as may to him appear not to endanger the efficient working of this Act, or of the Diamond Trade Act of the Free State.

Registration of diamonds to be imported into this Colony.

Penalty on importation without registration.

Governor may arrange for export of diamonds from Free State through Colony.

7. It shall be lawful for the Resident Magistrate, or any Commissioner, Inspector, or other Chief Officer of the Police of any district, or any officer duly authorised by the Governor in that behalf, whenever he shall have good cause to believe that any letter parcel or package is being dispatched through the Post Office by any person, which letter, parcel, or package contains diamonds which have not been registered according to the provisions of the sixth and twenty-fifth sections of this Act in the register of the person so sending them as aforesaid, or of which he may at any time have become unlawfully possessed, to stop or cause to be stopped such letter, parcel, or package as aforesaid at any Post Office within the Colony, either during the transit of such letter, parcel or package, or otherwise, and thereupon the said Resident Magistrate, Commissioner, Inspector or Chief Officer of the Police of the district as aforesaid, or officer duly authorised by the

Certain persons authorised to search letters, &c., passing through the post, or good cause to suspect that unregistered diamonds are therein contained.

No. 14—1885.

Penalty on person despatching such letters, &c., containing unregistered diamonds, on failure to account for possession of such diamonds.

Governor in that behalf as aforesaid, may proceed to open and examine such letter, parcel or package, in the presence of the Postmaster of such Post Office as aforesaid, and if there shall be discovered therein any diamonds which shall not have been duly entered in the register of such person as aforesaid in accordance with the provisions of this Act, or for the possession of which the person who has despatched such letter, parcel or package is not able satisfactorily to account, such person shall be liable to the penalties provided in the second section of this Act, and all diamonds contained in such letter, parcel or package shall be forfeited and sold as hereinafter provided: Provided that if any person shall within six months after such discovery be able to prove a *bonâ fide* right to the possession of such diamonds, the said diamonds or the value thereof shall be restored or paid to such person.

Search warrant to issue upon good cause to suspect concealment of diamonds in any buildings, &c., arrest of persons there found and reasonably suspected of being in possession of diamonds found in such buildings, &c.

8. It shall be lawful for any detective officer, constable, or policeman of any district when thereto authorised by a warrant granted under the hand of any Resident Magistrate of such district, or any officer duly authorised by the Governor in that behalf, to enter into and upon, and search any buildings, premises, vehicles, ships or boats, where he may have good cause to suspect that any diamonds are unlawfully concealed, and to arrest and search any person then being upon such building, premises, vehicle, ship, or boat, whom he may have good cause to suspect of having upon his person, or in his possession any diamonds unlawfully obtained, or without having a proper permit for the same, and should there be found any diamonds in or upon such building, premises, vehicle, ship or boat, or upon such person, to seize and detain such person then being in or upon such building, premises, vehicle, ship, or boat, who may reasonably be suspected of being the possessor of, or interested in such diamonds, and as soon as possible bring such person before any Magistrate or Justice of the Peace; and if such person shall then fail to produce a proper permit or licence for such diamonds, or to account for the possession thereof to the satisfaction of the Magistrate or Justice of the Peace before whom such person shall be brought, such person shall be liable to the penalties provided for by the second section of this Act; and all such diamonds found in such building, premises, vehicle, ship or boat, or on such person as aforesaid, shall be forfeited, and sold as hereinafter provided: Provided that if any person be able to prove a *bonâ fide* right to the possession of such diamonds, or to produce a proper permit for the same, the said diamonds, or the value thereof, shall be restored or paid to such person.

Penalty on person convicted under this section.

Order of Court sufficient warrant for the sale of diamonds seized, &c., under this Act.

9. No person who by the order in writing of any Court or Resident Magistrate shall sell any diamonds seized, detained, or forfeited under this Act, shall be liable in respect of such sale to any of the penalties provided for in this Act.

Fines and proceeds of diamonds sold un-

10. All fines recovered, and the proceeds of all diamonds forfeited and sold under the provisions of this Act, shall be paid into

the public treasury: Provided, however, the Governor shall allow any person upon whose information any diamonds are captured and confiscated, such sum out of the proceeds of such diamonds as he may deem just and reasonable, such reward being not less than twenty-five and not more than fifty per cent. of the value of the same.

No. 14—1885.
der this Act paid in-
to Public Treasury.
Rewards to infor-
mers.

11. Every person who shall at the time of the taking effect of this Act have in his possession any diamonds which shall not be registered, shall within thirty days thereafter obtain from an officer duly authorised thereto, a permit stating the number and weight of such diamonds, and after the expiration of such period of thirty days, such permit shall upon any prosecution be the sole evidence of the lawful possession of such diamonds.

Permit for the
possession of dia-
monds in possession
at the passing of this
Act.

12. It shall not be lawful for any person to deal in diamonds, either as buyer, seller, exporter, or importer, or to carry on the business or trade of a diamond cutter, or the business or trade of a diamond broker or factor, unless such person shall be duly licensed for such purposes as aforesaid, either as dealer, broker, or factor, or diamond cutter as aforesaid, and any person contravening this section shall be liable to the penalties provided in the second section of this Act: Provided that registered claimholders can sell or deliver to, and licensed bankers receive but not purchase from, authorised persons, diamonds, without any licence first obtained.

Dealing in dia-
monds as buyer,
seller, &c., unlawful
except by licence to
buy, sell, &c.

Penalty for contra-
vention of this sec-
tion.

13. Every licence to deal in diamonds within the Colony shall be written upon or covered with stamps to the value of thirty pounds sterling for a yearly licence, or ten pounds sterling for a quarterly licence, and every such licence shall be in the form A set forth in the schedule to this Act.

Licences to deal,
how to be stamped.

14. Every licence to be a diamond broker or factor shall be written upon or covered with stamps of the value of fifteen pounds sterling for a yearly licence, or five pounds sterling for a quarterly licence, and shall be in the form B set forth in the schedule to this Act.

Broker's or factor's
licences how to be
stamped.

15. It shall not be lawful for any distributor of stamps to issue any licence to deal in diamonds, or to be a diamond broker, factor, or cutter, unless the person so applying for the same produce and lodge with the distributor of stamps a certificate under the hand of the Resident Magistrate of the district in the form C set forth in the schedule to this Act; and it shall not be lawful for any such Resident Magistrate to sign or issue such certificate until the person applying for the same shall have satisfied such Resident Magistrate or other duly authorised officer that he is a fit and proper person to hold such licence: Provided that it shall not be lawful for any Resident Magistrate of any district, or any person duly authorised thereto by the Governor, to grant such certificate as aforesaid to any person holding a retail or bottle licence for the sale of intoxicating liquors, and any such person convicted of any

Certificate of ma-
gistrate required that
applicant is fit and
proper person, before
licence is issued.

No certificate to be
granted to certain
persons.

No. 14—1885.

contravention of this Act shall, upon conviction, in addition to the penalties provided for in this Act, forfeit such licence.

Diamond cutter's licences, how to be stamped.

16. Every licence to carry on the business of or trade of a diamond cutter shall be written upon or covered with stamps to the value of ten pounds sterling for a yearly licence, or three pounds ten shillings sterling for a quarterly licence, and every such licence shall be in the form D set forth in the Schedule to this Act.

Termination of licences.

17. All such licences as are quarterly shall, no matter when taken out, terminate upon the last day of the current quarter, such quarters ending respectively on the 31st March, 30th June, 30th September, and 31st December in each year, and all such licences as are annual, no matter when taken out, shall expire upon the 31st December then next.

Forfeiture for licence for concealment or misrepresentation. Further penalty.

18. Any licence or permit which may be obtained by concealing or misrepresenting matters which, if known, would have prevented the issue of any certificates under this Act for any of the reasons aforesaid, shall upon proof of such concealment or misrepresentation before any Resident Magistrate be forfeited, and the person who by such concealment or misrepresentation shall have obtained or have attempted to obtain such licence or permit shall, upon conviction, be liable to a penalty not exceeding five hundred pounds sterling, or be imprisoned with or without hard labour for any period not exceeding five years, or to both such fine and imprisonment.

Diamond cutter may receive diamond from person producing permit.

19. Any licensed diamond cutter may, without permit, as in the following section provided, receive for the purpose of his trade, any diamond from any person not otherwise licensed or authorised as in this Act provided, on the production by such person of a written authority or permit from any Resident Magistrate or other officer duly authorised in that behalf, as in the following section of this Act provided.

Stamped permit to buy, sell, &c., diamonds upon solemn declaration by applicant.

20. It shall be lawful for any Resident Magistrate or other officer duly authorised to give any person a permit, bearing a stamp of the value of one shilling, to buy, sell, deliver, or receive any diamonds, such permit to set forth clearly the person from whom and to whom such diamonds are to be bought or received, sold or delivered, and to be in the form E, as set forth in the schedule to this Act: Provided that no such permit shall be granted unless the applicant shall make a solemn declaration that the person from whom he is to receive such diamonds is duly authorised under the provisions of this Act to be in possession of the same, and that the intended purchase, sale, delivery, or receiving is not for the purpose of trade, and in the case of an applicant for a permit to sell or deliver, that such applicant is the lawful owner of such diamonds; provided, further, that the Magistrate or other duly authorised officer shall keep a record of all such permits, and of all such declarations as aforesaid.

Purchase, sale, &c., not to be for purposes of trade.

Record of permits to be kept.

Office of buyer or cutter to be described in licence; name to

21. Every licensed dealer in or cutter of diamonds shall have an office or place of business at some place to be described in his

licence, and shall have affixed on some conspicuous place on the outside of or over, or by the side of the outer door of such place of business his name at full length (or where there are partners the name or style of the firm or partnership), and after such name or style the words "licensed diamond dealer (or dealers)," or "licensed diamond cutter (or cutters)," as the case may be, such name or style and such description to be publicly visible and legible in letters at least two inches in length, and every licensed diamond buyer, seller, or cutter contravening this section shall incur a penalty not exceeding twenty pounds, and shall be liable to forfeit any licence held by him, or any right of renewal of the same, for such period as the Court may direct.

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to be affixed on or near
outer door of office.

22. It shall not be lawful for any licensed diamond buyer, seller, or cutter, to carry on his business as such otherwise than in his said office or place of business, and any such licensed person as aforesaid convicted of contravening this section shall be liable to the penalties provided in the preceding section of this Act.

Penalty for carrying on business of buyer, &c., away from office.

23. It shall not be lawful for any licensed diamond dealer or cutter, to remove his office or place of business, at which he is licensed to deal in or carry on his business to another place, unless the distributor of stamps shall endorse on the licence of such diamond buyer, seller, or cutter, a certificate that such licence is transferred to the place to which such diamond buyer, seller, or cutter, desires to remove his office or place of business. Any licensed diamond buyer, seller, or cutter contravening this section shall be liable to the penalties provided by the twenty-first section of this Act.

Penalty for removal of office without endorsement on licence.

24. Every licensed broker or factor in every case in which he concludes a contract of purchase or sale of diamonds, for or on account of any person employing him as such broker or factor, shall deliver to the seller a proper and sufficient broker's bought note, stamped as by law required, such broker's note to be in the form F set forth in the schedule to this Act, and shall also deliver to the purchaser a proper and sufficient broker's sold note according to the said schedule, and every registered claimholder, authorised or registered agent of a registered claimholder or joint stock company, shall in every case in which a sale is effected by him personally, pass a seller's note, and receive a buyer's note, or otherwise as the case may be; and every such broker's, seller's, and buyer's note shall respectively set forth all the parties to the transaction in the form F set forth in the schedule to this Act, and shall set forth the weight of the parcel sold, the number of diamonds of the weight of ten carats and upwards, and the price per carat, and the amount for which such diamonds were sold: Provided that every diamond above the value of one hundred pounds sterling, shall be separately described in every such broker's, seller's, and buyer's note; and provided also that every such broker's, seller's,

Brokers' notes to be delivered to purchaser and seller by licensed broker or factor.

Particulars of broker's notes.

Penalty for contravening this section.

No. 14—1885.

and buyer's note shall be certified as correct by the licensed dealer disposing of the same; and any person convicted of any offence against this section shall be liable to a penalty not exceeding five hundred pounds, and in default of payment to be imprisoned with or without hard labour for any period not exceeding five years, and shall in addition be liable to forfeit any licence held by him, and any right of renewal of the same for such period as the Court may direct.

Register to be kept of dealings in diamonds by authorised persons.

Particulars of register.

25. Every banker, dealer, importer, exporter, broker, factor, cutter of diamonds, registered claimholder, accredited and registered agent of any registered claimholder, or joint stock company, holder of a washing permit or prospecting licence, shall keep a true and correct register in the English language of all their respective dealings in diamonds, in which they shall enter, or cause to be entered immediately

- (a) The date of all purchases, sales, exports, imports, or receipts.
- (b) The name of consignor, cutter, prospector, seller, buyer, and broker, or consignee, or owner.
- (c) Total weight of each parcel.
- (d) The number of stones of ten carats and upwards in each parcel.
- (e) The price received or paid, or duty on import.
- (f) The weight of any single stone found, received, bought, sold, cut, or consigned (separately or with others), the buyer's valuation of which exceeds one hundred pounds.

And every such register shall be in the form G set forth in the schedule to this Act, and any person so required to keep a register as required by this Act, who shall be convicted of neglecting or failing to keep a proper register shall be liable to a penalty not exceeding five hundred pounds, and in default of payment thereof, to be imprisoned with or without hard labour for any period not exceeding five years, or to both such fine and imprisonment, and shall in addition forfeit any licence held by him, or any right of renewal of the same for such period as the Court may decide.

Penalty for contravening this section.

Copy of register to be forwarded monthly to Resident Magistrate, together with solemn declaration.

Register to be produced on order of magistrate.

Penalty.

Official register of imported diamonds kept in every district.

26. Every person so required to keep a register shall, within three days after the expiration of each month, forward to the Resident Magistrate of the district a true copy of such register for the previous month, together with a solemn declaration of the correctness thereof, and shall also produce and exhibit such register whenever the same may be required in any competent Court on the written order of the Resident Magistrate of the district as aforesaid; and if he shall refuse or fail to do so, he shall be liable to the penalties in the last preceding section of this Act mentioned.

27. The Resident Magistrate of every district wherein this Act may be in force, or such other officer as may be appointed by the Governor in that behalf, shall keep a register in the form H in

the schedule to this Act, showing the weight, description and value of all diamonds brought or imported into such district, the name of the person bringing or importing the same, and the place whence they are brought or imported, and shall upon application made and upon production of a certificate as provided in clause six of this Act, grant to the person bringing or importing such diamonds a certificate of registration, setting forth all the particulars above mentioned in the form I in the schedule to this Act, and any person who shall neglect to obtain such certificate as aforesaid within forty-eight hours of his arrival in any district, shall be liable upon conviction to a penalty not exceeding five hundred pounds, and in default of payment to imprisonment with or without hard labour for any term not exceeding five years, or to both such fine and imprisonment, and shall in addition forfeit such diamonds.

No. 14—1885.

Penalty on person failing to obtain official certificate of registration within forty-eight hours.

28. No diamonds shall be exported from any district in which this Act shall be in force, until the weight and value of the same, and the name of the person exporting them, shall have been entered in a register, to be kept in such form as the Governor may direct, by the Resident Magistrate of such district, or such other officer as may be appointed by the Governor in that behalf, and a registration fee of one-half per cent. on the value of such diamonds shall have been paid. Any person contravening the provisions of this section shall be liable to the penalties provided in the second section of this Act.

Official register of exported diamonds kept in every district.

Penalty for contravening this section.

29. The proceeds of such registration fees as are provided for in this Act shall be paid by the Resident Magistrate into the Public Treasury.

Registration fees paid into public Treasury.

30. Every licensed diamond dealer or cutter of diamonds, and every holder of a permit granted under the twentieth section of this Act shall be bound to exhibit his licence or permit to any person authorised by the Resident Magistrate of the district in writing to demand it, and every such person as aforesaid who shall refuse or neglect to produce and exhibit his licence or permit when called upon to do so by any person exhibiting such authority as aforesaid to demand it, shall incur a penalty not exceeding one hundred pounds, and shall in addition be liable to forfeit any licence held by him or any renewal of the same for any such period as the Court may direct.

Penalty for failure to produce licence when called on by writing under hand of Resident Magistrate.

31. Every licensed broker or factor shall keep copies or counterfoils of his bought and sold notes as in the form F contained in the schedule to this Act, and shall produce and exhibit such copies or counterfoils to any person authorised by the Resident Magistrate of the district to demand them, and every licensed broker or factor refusing or neglecting to do so when called upon by any officer exhibiting his authority to demand them, shall incur the penalties provided in the last preceding section of this Act.

Counterfoils of broker's notes to be kept by broker or factor.

No. 14—1885.

or uncut diamonds, within for
 ending on the 18 , and no longer.
 This Licence expires on the day of
 18
 Distributor.

Form B.

B.
 DIAMOND BROKER'S LICENCE.
 (Under Act , of)

I, distributor of stamps in
 on this day of
 18 , do hereby authorise and empower
 of (who has produced to me the certificate required
 by law), to act as a Diamond Broker within for
 ending on the day of 18 , and no longer.
 This Licence expires on the day of 18
 Distributor.

Form C.

C.
 DIAMOND BROKER'S AND CUTTER'S CERTIFICATE.
 (Under Act , of)

I, Resident Magistrate of
 do hereby certify that
 of is a fit and proper person to receive a
 licence to act as a Diamond Dealer, Broker, Factor (or Cutter).
 R. M. Office, R.M.
 day of 18 .

Form D.

D.
 DIAMOND CUTTER'S LICENCE.
 (Under Act , of)

I Resident Magistrate of
 do hereby certify that of , whose place
 of business is situated at , is a fit and proper
 person to receive a licence to carry on the trade or business of
 cutting, cleaving, and polishing rough or uncut Diamonds.
 Resident Magistrate.
 Resident Magistrate's Office,
 day of 18 .

Form E.

E.
 FORM OF PERMIT.
 (Granted under Section 20, Act of)

Resident Magistrate's Office, 18 .
 Permission is hereby granted unto , of
 to purchase (or receive, sell, or deliver)
 Diamonds from (or to) of the
 approximate weight of
 Dated at this day of 18 .
 Resident Magistrate of

[F.]
 BROKERS', COMPANIES', AND OTHER
 LICENSED SELLERS' NOTES OF SALE.

[F.]
 BROKERS', COMPANIES', AND OTHER
 LICENSED SELLERS' NOTES OF SALE.

[F.]
 BROKERS', COMPANIES', AND OTHER
 LICENSED SELLERS' NOTES OF SALE.

A.
 COUNTERFOIL TO BE KEPT BY SELLER OR
 BROKER AS REGISTERED.

B.
 NOTE TO BE HANDED BY BROKER TO
 SELLER.

C.
 NOTE TO BE HANDED BY BROKER, DEALER,
 ETC., TO BUYER.

No. 18

No. 18

No. 18

Sold for _____
 Sold to _____

Sold to _____

Bought of _____

DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.				
Stones under 10 Carats each in Lump.	Stones 10 Carats each, or over.	Stones of a Value of £100 or over.	CARATS. PRICE.	AMOUNT.			CARATS.	AMOUNT.		
				£	s.	d.		£	s.	d.

DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.				
Stones under 10 Carats each in Lump.	Stones 10 Carats each or over.	Stones of a Value of £100 or over.	CARATS. PRICE.	AMOUNT.			CARATS.	AMOUNT.		
				£	s.	d.		£	s.	d.

DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.				
Stones under 10 Carats each in Lump.	Stones 10 Carats each, or over.	Stones of a Value of £100 or over.	CARATS. PRICE.	AMOUNT.			CARATS.	AMOUNT.		
				£	s.	d.		£	s.	d.

Certified correct. _____
 Licensed Seller or Broker.

Certified correct. _____
 Licensed Seller or Broker.

Certified correct. _____
 Licensed Seller or Broker.

DIAMOND TRADE.

2277

2280

OUDTSHOORN MUNICIPAL LOAN.

No. 16—1885.

No. 15—1885.]

[August 7, 1885.]

Act to Amend in certain respects the Law with relation to the Imposition of Duty on Dogs.

[Repealed by Act 40, 1889.]

No. 16—1885.]

[August 7, 1885.]

ACT

To Authorise the Municipality of Oudtshoorn to borrow a Sum not exceeding Four Thousand Five Hundred Pounds, for the purpose of paying the Colonial Government the Purchase Price of certain Two Pieces of Crown Land, for the purpose of paying existing Liabilities, and for other purposes.

Preamble.

WHEREAS it is expedient to empower and enable the Municipality of Oudtshoorn to borrow money for the purpose of paying the Colonial Government the purchase price of certain two pieces of Crown land called "Rhenoster Hoek" and "Doornkuil," for the purchase price of which certain mortgage bond was passed by the said municipality, and for the purpose of paying existing liabilities and effecting local improvements, and to levy rates for the payment of the amount so borrowed, with interest:

And whereas at a public meeting of the ratepayers of Oudtshoorn convened for that purpose on the second day of April, one thousand eight hundred and eighty-five, it was resolved that the commissioners of the said municipality be authorised to borrow the sum of four thousand five hundred pounds sterling for such purposes:

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

1. The Municipality of Oudtshoorn is hereby authorised and empowered to borrow and take up at interest on debentures or otherwise, from time to time, such sum or sums of money as may be needed for the purpose in the preamble to this Bill mentioned, not exceeding in the whole the sum of four thousand five hundred pounds sterling: Provided that after payment of the aforesaid purchase money and interest and the existing debts the said municipality shall in all cases convene a meeting of ratepayers by notice of not less than fourteen days in at least one of the local newspapers and obtain the sanction and approval of such ratepayers in manner as is now or hereafter may be provided by any Municipal Ordinance now in force or hereafter to be enacted, before expending on any public works any balance of the moneys to be raised under this Act.

Municipality authorised to borrow a sum not exceeding £4,500.

2. It shall be lawful for the said municipality for the purpose of providing for the payment of the interest, and also for the payment of the annual contribution in repayment of the principal, as hereinafter described, of the money or moneys aforesaid to levy a special rate or rates upon the immovable property situate within the Municipality of Oudtshoorn and liable to be rated for municipal purposes.

No. 16—1885.

Power of Municipality to impose rates.

3. As a fund for the payment of interest and gradual extinction of the loan or loans to be raised under the authority of this Act, there shall be charged and chargeable upon and set apart out of the special rate or rates as aforesaid, an annual sum sufficient to pay the interest on the amount of such loan or loans, or the balance thereof, and a further sum equal to nine pounds per centum on the total amount of the capital sum of such loan or loans so long as any portion of the money to be raised as aforesaid, shall remain unpaid, and the amount yielded by the said sum of nine pounds per centum shall be applied annually in paying off the debentures (if debentures be issued), or, otherwise in part discharge of the loan. Should debentures be issued, the said debentures shall be numbered in rotation, and the selection of debentures for repayment shall be by an annual drawing to be made and determined by lot by the chairman of the municipality or Mayor in public at a meeting of the municipality.

Payment of interest and gradual extinction of loan.

4. It shall be lawful for the said municipality to apply to the payment of the interest and principal or interest or principal of the money or moneys aforesaid, any funds or moneys coming to the said municipality from any source whatever and not specially appropriated or required for any other object.

Application of moneys.

5. The municipality shall keep or cause to be kept a separate and distinct account of all moneys borrowed under this Act; and of the expenditure of such moneys for the purposes aforesaid, and the said municipality shall yearly as long as any part of the debt contracted under the authority of this Act shall be owing, prepare and deposit in the municipal office at Oudtshoorn for the inspection at all reasonable times of rate-payers, an account showing the particulars aforesaid, and giving any other information which the said municipality may deem it necessary or expedient to impart: Provided that every such account so prepared shall be made up to the 31st day of December in each year, and shall be deposited in the office of the said municipality not later than the 1st day of March in the year next succeeding.

Accounts of all moneys to be kept.

6. All moneys borrowed for the purposes of this Act shall be subject to the provisions of the "Public Bodies Debts Act, (1) 1867"; provided however that it shall and may be lawful for the Supreme Court in case any such petition shall be presented to such Court under the provisions of the said Act, for enforcing payment of any

All moneys borrowed to be subject to provisions of Public Bodies Debts Act, 1867.

No. 19—18-5.

judgment for the recovery of money borrowed under the provisions of this Act, to assess and impose such rates exceeding one penny in the pound as to such Court shall seem fit, anything in the third section of the "Public Bodies Debts Act, (1) 1867," to the contrary notwithstanding.

Costs and expenses.

7. The necessary costs, charges and expenses of obtaining this Act, and all costs of raising the loans or other expenses incurred in carrying out the provisions of this Bill, shall be paid by the said municipality out of the moneys so to be borrowed as aforesaid.

Short title.

8. This Act may be cited as the "Oudtshoorn Municipality Loan Act, 1885."

No. 17—1885.]

[August 7, 1885.]

Act to amend the law relating to Jurors.
[Repealed by Act 22, 1891.]

No. 18—1885.]

[August 7, 1885.]

Act to amend in certain respects the provisions of the "Cape Mounted Riflemen Act, 1878," and of the "Cape Infantry Act, 1881."

[Repealed by Act 32, 1892.]

No. 19—1885.]

[August 11, 1885.]

ACT

To Amend in certain respects Act No. 39 of 1879, entitled
"An Act for the Incorporation of the Municipality
of Queen's Town."

Preamble.

WHEREAS it is expedient to amend in certain respects the Act No. 39 of 1879, entitled "An Act for the Incorporation of the Municipality of Queen's Town," and whereas it is expedient that the council for the municipality of Queen's Town should exercise and possess powers other and further than those conferred on the council by the said Act: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Certain words in section 9 of Act 39, 1879, omitted.

1. The ninth section of the said Act shall be read and construed as if the words "Provided that for the purposes of this section owner and occupier shall not both be entitled to vote in respect of one and the same property, and that the occupier shall at all times be entitled to exercise the right of voting," had not been included in the said section and had been entirely omitted therefrom.

And in section 10 of same Act: and other words substituted.

2. The tenth section of the said Act shall be read and construed as if the word "shall," after the words "each of such co-occupiers,"

had not been inserted therein, and as if the words "may claim to have his name enrolled in the list of the ward in which such property is situated and" had been substituted; also as if the word "shall" had been inserted after the word "mentioned."

No. 19--1885.

3. The thirtieth section of the said Act shall be read and construed as if the words "At the first ordinary meeting of the council annually in the month of March," had been substituted therein for the words "on the day following every annual election of councillors," also as if the words "or subject to the provisions of the thirty-second section until such time as his successor in office has been appointed," had been inserted after the word "ensuing."

Section amended thirty

4. The thirty-seventh section of the said Act shall be read and construed as if after the words "or cutting firewood on the commonage," there had been inserted the following words:

Additional powers for making regulations.

As to the duties of any servant, any police or other officer of the council, or any officer or member of any fire brigade when there shall occur any fire by which any house, building or property shall be in danger of being destroyed or injured.

Regulations as to fires.

As to determining the amount of all occupation rents, fees for residence, permits, water taxes, health board rates, or special taxes for any sanitary purpose that shall be due and payable from time to time by the inhabitants of the Native Location, and for the recovery of the same by the council or its agents.

Location rents &c.

As to the procedure which may be adopted by the council in the case of any inhabitant of the Native Location who shall make default in respect of the payment of any house duty, hut or other tax made and levied by the Colonial Government.

Location inhabitants in default of house duty, &c.

As to the recovery of all rates lawfully made and levied on rateable property. As to the amount of any water or other tax which may from time to time be lawfully demanded by the council from inhabitants within the municipality or within any particular area of the municipality and for the collection and recovery of the same by the council or its agents.

Rates. Taxes.

As to the fees for grazing licences which shall be payable to the council by butchers and by other inhabitants and by travellers depasturing any animals on the common pasturage lands and for the impounding of any animals that may be depastured on the same the owners of which have not obtained such licence.

Grazing licences.

As to the inspection, approval, and registration of all plans for buildings within the municipality or within any area of the municipality, and for preventing persons proceeding with the erection of any building the plans of which have not been so inspected, approved and registered.

Inspection of plans.

As to the measure which may lawfully be taken in respect of buildings certified by competent authority and in the opinion of the council believed to be dangerous to the safety of the public.

Dangerous buildings.

As to the duties of owners or persons in charge of any cattle or other animals affected with any contagious disease, or of any

Animals affected with contagious diseases, or dying or dead.

- No. 19-1885. animal that may be found in a dying state, or of any carcase of any animal that may be found dead on any public place or near any public watercourse, or on the common pasturage lands.
- Section fifty-two amended. 5. The fifty-second section of the said Act shall be read and construed as if the words "subject to the exception provided for in the thirty-second section of the said Act," had been inserted therein after the word "council."
- Section fifty-eight repealed. 6. The fifty-eighth section of the said Act is hereby repealed and the hundred and twenty-fifth and hundred and twenty-sixth sections of the "Municipal Act, 1882," shall be read and substituted in its place as if, *mutatis mutandis*, such section had been incorporated in the said Act 39 of 1879.
- Section sixty repealed. 7. The sixtieth section of the said Act is hereby repealed, and in its place there shall be substituted and read the hundred and twenty-seventh, hundred and twenty-eight, hundred and twenty-ninth, hundred and thirtieth, hundred and thirty-first, hundred and thirty-second, hundred and thirty-third, hundred and thirty-fourth, hundred and thirty-fifth, hundred and thirty-sixth, hundred and thirty-seventh, hundred and thirty-eighth, hundred and thirty-ninth, hundred and fortieth, hundred and forty-first, hundred and forty-second, and hundred and forty-third sections of the Municipal Act, 1882, as if such sections, *mutatis mutandis*, had been incorporated with the said Act 39 of 1879.
- Raising money by debentures. 8. The council may with the consent of the majority of the ratepayers as provided in section ten and of His Excellency the Governor first had and obtained, raise by debentures (or otherwise), any sum or sums of money which shall be necessary in order to liquidate the capital and interest or interest alone of any debt or debts at present due, or which hereafter may become due and payable by the municipality of Queen's Town. The debentures herein mentioned shall be as near as is material to form in schedule No. 1 to Act 39 of 1879, and all transfers of such debentures shall be registered in the books of the municipality: Provided that in respect of any sum and sums of money which at the time of the passing of this Act have already been taken up by the council from the Colonial Government for the construction of a storage reservoir, or from any bank for paying the cost of public works and improvements, it shall not be necessary to have the further consent of the majority of the ratepayers or of His Excellency the Governor, as herein set forth.
- Hypothecation of rates and other revenues. 9. The council may for any of the purposes of this Act, hypothecate or charge by debentures the municipal rates and other sources of revenue of the said municipality for a period not exceeding twenty-four years in security for any sum and sums of money borrowed by the said council: Provided that no sums of money other than those referred to in the last preceding section of this Act as having been borrowed by the municipality at the time of the passing of this Act, and to which this provision shall not be

applicable, shall be capable of being borrowed under the provisions of this Act, except with the previous consent of a majority of the said ratepayers first obtained as provided in section ten as aforesaid: Provided also that it shall be lawful for the said ratepayers to sanction, and after such sanction, for the said council to borrow upon the security of the said rates or other revenues or property of the municipality any sum and sums of money which may be found necessary not exceeding in the aggregate the sum of one thousand pounds in any one year.

No. 19—1885.

10. In every case in which it is by the Act provided that the consent of the majority of ratepayers shall be first had and obtained for the purpose of any of the provisions hereof, the word "ratepayers" shall mean and be taken to refer and apply only to such ratepayers as are entitled to vote at the election of councillors, under the provisions of section nine of Act 39 of 1879: and for the purpose of recording their votes the said ratepayers shall be summoned to appear at a public meeting, by notice published in such of the local newspapers, if any, published within the municipality as to the council may seem fit, or by a notice affixed on some conspicuous place, upon or near the municipal office or market place, for at least twenty-one days previous to the holding of such meeting, which notice shall clearly set forth the object of such meeting, and the time and place for holding the same: and at every such meeting it shall be lawful for any two or more of the duly qualified ratepayers present to demand a poll of the ratepayers entitled to vote, which poll shall be taken on a day to be fixed by the Mayor not later than seven days from the date of the meeting, of which day not less than three days' notice shall be given in such manner as is hereinbefore provided for the publishing of notices,—which poll shall begin at 10 o'clock a.m. and be closed at 3 o'clock p.m. on such day, and the result of such polling shall be final and conclusive: Provided that when by such polling the consent of the ratepayers has not been obtained, it shall not be lawful for the council to submit the same proposal for the consent of the ratepayers at any time within twelve months thereafter except upon the receipt of a requisition in that behalf signed by twenty-five qualified ratepayers.

Who to vote.

Meeting of voters how summoned.

Poll may be demanded.

11. The council may defray any costs incurred in the passing of this Act out of the ordinary revenues of the council or out of the proceeds of any special rate levied for this purpose

Cost of Act how to be defrayed.

12. This Act may for all purposes be cited as the "Queen's Town Municipality Act Amendment Act of 1885."

Short title.

No. 20—1885.]

[August 11, 1885.

Act to amend the "Excise Spirit Duty Act, 1884."

[Repealed by Act 9, 1887.]

No. 21—1885.]

[August 11, 1885.]

ACT

To Authorise the Divisional Council of Oudtshoorn to borrow Moneys on the security of the Road Rates of the Division for the purpose of meeting certain Expenditure.

Preamble.

WHEREAS the Divisional Council of Oudtshoorn have contracted debts and incurred liabilities in the construction of the Schoeman's Poort and Zwartberg Pass, in altering the road between Oudtshoorn and Robinson's Pass and in repairing the roads throughout the division damaged by the late rains: and whereas it is expedient that the said Council should be authorised to borrow moneys upon the security of the rates of the said division, for the purpose of paying off the debts and liabilities abovementioned: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of any Act of Parliament, Ordinance, or other statutory enactment having the force of law as is inconsistent with or repugnant to the provisions of this Act, is hereby repealed so far as such inconsistency or repugnance may exist but not otherwise.

Loan of £10,000.

2. It shall be lawful for the said Council from time to time to borrow and take up at interest such sum or sums of money, not exceeding in the whole the sum of ten thousand pounds sterling, as may be required for the purpose of this Act.

Conditions precedent to raising of loan.

3. No loan under this Act shall be raised except in pursuance of a resolution passed at an ordinary meeting of the said Council of which due notice shall have been given at some ordinary meeting previously held, and in which resolution two-thirds of the elected members shall concur, and no such loan shall be raised in any year in which the rates assessed by the said Council shall be less than one half-penny ($\frac{1}{2}$) in the pound sterling upon the value of the rateable property in the said division.

Security for repayment of loans.

4. For the due payment of the moneys to be raised as aforesaid, and the interest thereof, the road rates of the said Council are hereby charged and hypothecated, and it shall be lawful for the said Council to apply to the payment of the interest or principal of the money raised under this Act any such revenues.

Acknowledgment for loans to be given in form provided in schedule.

5. The said Council shall grant and issue debenture certificates in acknowledgment of such sum or sums of money borrowed as aforesaid, which certificates shall be as nearly as may be in the form annexed to this Act, and shall be signed on behalf of the said Council by the chairman for the time being, and two elected members duly authorised thereto by resolution of the said Council.

Register of debenture certificates to be kept.

6. The Council shall keep a full and complete register of all debenture certificates granted under this Act, and it shall be

incumbent on the holder or cessionary of every debenture certificate to have such certificate duly registered in his name in the Council's register, and no money shall be paid under the provisions of this Act in reduction or extinction of any debt or interest due upon any such debenture certificate except to the person whose name shall be so registered, and only upon production of such certificate or of satisfactory proof that the same has been lost or destroyed.

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7. All moneys raised under this Act shall, on receipt thereof, be deposited in a bank to be chosen by the said Council, and all sums required shall be drawn by cheques signed by the secretary and countersigned by the chairman of the Council.

Money raised to be kept separate.

8. As a fund for the payment of the interest upon and the gradual extinction of the loans to be raised under this Act, there shall be charged and chargeable upon and set apart out of the annual revenues of the said Council, an annual sum equal to the interest on the whole amount of such loans, or the balance thereof remaining due and unpaid, and a further sum equal to one pound per centum on the total amount of the capital sum of such loans, and such sum shall annually be charged upon and paid out of the revenues of the said Council so long as any portion of the money to be raised as aforesaid shall remain unpaid and unextinguished: Provided, however, that in the event of there being any balance of the ordinary revenue available after payment of the ordinary annual expenditure of the said Council, such balance not being less than two hundred and fifty pounds, it shall be competent for the said Council to apply such balance or surplus, together with any money or moneys set apart to constitute the sinking fund aforesaid, to the reduction of the said debt of ten thousand pounds or such portion as shall at any time be due, and the said Council shall be and is hereby authorised to give the person or persons or body who shall have lent and advanced the money to be borrowed by virtue of this Act, or whose names shall appear on the register provided in the sixth section of this Act as holders of the Council's debenture certificates, three months' notice in writing of the intention to hold a public drawing specifying time and place, in order to decide to the reduction or extinction of whose debt the said surplus shall be applied, and thereafter at the time and place specified in the said notice the said Council shall hold a public drawing in manner following, that is to say, the name of every person appearing on the register as being the holder or cessionary of any debenture certificate under this Act shall be written on a slip of paper and the said slip shall be folded and placed in a covered box, and the secretary for the time being of the said Council or any member thereto authorised by a vote of the majority of the said Council shall in the presence of all persons assembled at the said time and place proceed to draw one of the slips of paper out of the said box, and the creditor whose name shall appear on the slip of paper thus drawn shall receive the said

Fund for repayment of loan.

Surplus revenue may be applied to reduction of debt.

Debenture holders to receive notice of drawing.

Proceedings at drawing.

2288 OUDTSHOORN DIVISIONAL COUNCIL LOAN.

No. 21—1885.

surplus in reduction or extinction of his debt on all debenture certificates held by him and, in the event of the said surplus being more than sufficient to cover such creditor's debt then a second or further drawing in manner aforesaid may in the discretion of the person drawing the said slips take place, and the balance of such surplus shall in manner aforesaid be applied to the reduction or extinction of the debt or debts of the creditor or creditors whose name shall appear on the second or further slips then drawn.

Separate accounts to be kept.

9. The said Council shall keep a separate and distinct account of all moneys received and expended by virtue of this Act, and shall cause an abstract of the said account to be transmitted to the Colonial Secretary half-yearly, shewing all moneys received and expended up to the 30th June and 31st December then preceding, and all liabilities and assets on the same days.

Accounts to be audited.

10. The accounts in the last preceding section mentioned shall be audited and examined by the auditors of the Divisional Council appointed under the provisions of the Divisional Council Act, 1865, and the provisions of the eighty-third and eighty-fifth sections of the said Act shall apply to all accounts, books and papers connected with this loan.

Expenses of Act how to be paid.

11. All the necessary costs and expenses attending the passing and working of this Act and carrying the provisions thereof into effect shall be paid out of the general revenue of the said Council.

Short title.

12. This Act may be cited for all purposes as the "Oudtshoorn Divisional Council Loan Act, 1885."

SCHEDULE No. I.

DIVISIONAL COUNCIL OF OUDTSHOORN.

DEBENTURE CERTIFICATE.

No..... £.....

This is to certify that the Divisional Council of Oudtshoorn is indebted to.....in the sum of.....for so much money borrowed for the purpose of (here state object for which loan has been raised), under and by virtue of the provisions of the Oudtshoorn Divisional Council Loan Act, 1885, and that the said money is secured by mortgage on the road rates of the division, and further that the said debt will be payable and paid by the said Divisional Council to the said.....Order or Assigns in the manner following (state rate of interest, time of payment, and other conditions that may be agreed upon).

In witness whereof we, the Chairman of the said Council and two directors appointed under resolution of the said Council, bearing date the....day of....have hereunto set our hands at.....on the....day of.....188..

Secretary.

Chairman.

} Directors.

No. 22—1885.]

[August 11, 1885.]

ACT

To Amend in a certain respect "The Precious Stones and Minerals Mining Act, 1883."⁽¹⁾

WHEREAS in and by the sixty-first section of the Act No. 19 of 1883, known as "The Precious Stones and Minerals Mining Act, 1883," provision was made to enable mining boards to borrow such moneys as might be required for the purpose of liquidating debts incurred, or for the due and efficient working of the mines under their control in manner in said section set forth: and whereas by the sixty-second section of said Act further provision was made for the event of legal proceedings being taken under the Public Bodies Debts Act of 1867, against any diggers' committee, mining board, or board appointed under the provisions of the said Act 19 of 1883, in respect of any debt or liability contracted for any loan or moneys received after the passing of said Act by such committee or board: And whereas the provision so made in and by the said two sections has been found to be insufficient for the purpose of enabling mining boards to liquidate debts incurred for the due and efficient working of the mines under their control, and it is therefore expedient and necessary to extend the provisions of the said sixty-second section so as to meet cases of loans of money raised for such purpose or other debts lawfully incurred before as well as after the passing of the said Act:

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

1. The sixty-second section of Act No. 19 of 1883 shall be read and construed as if the words "or any other debt lawfully incurred, either before or" were inserted after the word "raised" where it first appears in the said section.

Section 62 Act 19 of 1883 amended.

2. The proviso of the said sixty-second section is hereby expunged. ⁽²⁾

Proviso thereof expunged.

3. This Act may be cited as "The Precious Stones and Minerals Mining Act Amendment Act, 1885."

Short title.

No. 23—1885.]

[August 11, 1885.]

ACT

To Amend Act No. 15 of 1857, and Act No. 8 of 1873.

WHEREAS it is expedient in certain respects to amend the provisions of Act No. 15 of 1857, intituled "An Act for enabling Municipalities to obtain additional Police, by contributing towards the expense thereof," and of Act No. 8 of 1873, com-

Preamble.

¹ See Acts 10, 1888 and 12, 1889.

² Printed as amended by Act 18, 1886, § 10.

No. 25—1855.

monly called the "Divisional Police Act, 1873": Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Payments to be made quarterly by Municipalities and Divisional Councils, not annually as heretofore.

1. All payments which have heretofore been made annually, and which would, without the passing of this Act hereafter be made annually to the civil commissioners of the several divisions of this Colony, by municipal councils or commissioners, under the provisions of the Act No. 15 of 1857, or by divisional councils, under the provisions of Act No. 8 of 1873, shall, notwithstanding anything contained to the contrary in the two last-mentioned Acts, be after the passing of this Act made quarterly in advance, and so soon as in any year the first quarterly payment in advance shall have been made the several provisions of the said Acts shall respectively apply as though the whole annual payment for the said year had been duly made.

Short title.

2. This Act may be cited as the "Police Acts Amendment Act, 1885."

No. 24—1885.]

[August 11, 1885.]

Act to Provide for a Special Valuation of Landed Property in the Division of Barkly West, for the purpose of collecting Road Rates under the Acts No. 9 of 1858 and No. 10 of 1864.

[Temporary.]

No. 25—1885.]

[August 11, 1885.]

ACT

To Amend the Kimberley Waterworks Company (Limited) Ordinance No. 12 of 1880.

* Preamble.

WHEREAS, owing to the imperfect wording of section No. twenty-two of the Griqualand West Ordinance No. 12 of 1880, intituled "The Kimberley Waterworks Company (Limited) Ordinance, 1880," doubts have arisen as to powers thereby conferred on the said company with reference to the making of bye-laws: And whereas it is necessary that these doubts should be removed: And whereas it has been found necessary to amend in certain other respects the aforesaid section of the said Ordinance: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of section 22 of Ordinance No. 12 of 1880.

1. Section twenty-two of the Griqualand West Ordinance No. 12 of 1880, intituled "The Kimberley Waterworks Company (Limited) Ordinance, 1880," shall be and is hereby repealed, and the following sections shall be taken to be inserted in its place:—

Company to have power to make bye-laws.

2. It shall be lawful for the Board of Directors for the time being from time to time to make such bye-laws as they shall see fit, for

the purpose of regulating the conduct, whilst on duty, of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatever, and in such bye-laws to provide penalties for any breach thereof by any person or persons whomsoever, and from time to time to alter and repeal such bye-laws and to make others.

No. 26—1885

3. No bye-laws or regulations other than those imposing penalties upon servants of the company shall be of any force or effect until they shall have been submitted to the Borough Council of Kimberley and the Town Council of Beaconsfield for consideration, and have been approved of by the Governor and published in the *Government Gazette*.

Certain bye-laws to be approved by Governor.

4. The company shall cause the short particulars of the several offences for which any punishment or penalty is provided by the Ordinance or by any bye-law affecting persons other than the shareholders, officers or servants of the company and of the amount of every such penalty, to be painted on a board, or printed on paper or linen and posted thereon, in the English and Dutch languages, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company.

Notice of penalties under bye-laws how to be published.

5. This Act may be cited for all purposes as "The Kimberley Water Works Company (Limited) Ordinance Amendment Act, 1885."

Short title

No. 26—1885.]

[August 11, 1885.]

ACT

To Authorise the Cancellation of certain Existing Titles to certain properties vested in "The Simon's Bay Dock and Patent Slip Company," and to re-vest the said Properties in the Colonial Government, and further to authorise the Grant of the said Properties by the Governor to "The Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland."

WHEREAS by certain deeds of transfer and title-deeds, issued under certain laws of the Colony, the Simon's Bay Dock and Patent Slip Company stands invested and possessed of certain properties subject to the conditions, restrictions, or servitudes contained in the said title-deeds and laws: and whereas it is expedient to annul and cancel the said transfers and title-deeds, and to re-vest in the Colonial Government the said properties, and further to give title to and authorise and empower the conveyance of the said properties by the Governor to "the Commissioners for executing the office of Lord High Admiral of

Preamble.

No. 26—1885.

the United Kingdom of Great Britain and Ireland," free and unburdened by any of the conditions, restrictions, or servitudes contained in the said transfer and title-deeds or the said laws: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Cancellation of title deeds of certain properties held by Simon's Bay Dock & Patent Slip Company

1. Notwithstanding anything to the contrary contained in the law of this Colony, and especially in the Act No. 13 of 1859, the Act No. 17 of 1861, and the Act No. 18 of 1862, the transfer and title-deeds relating to the immovable properties specified in the agreement set forth in the schedule to this Act and vesting the said properties in "The Simon's Bay Dock and Patent Slip Company," shall be, and are hereby annulled and cancelled from the date of the passing of this Act, and the said properties shall on the said date become vested in the Colonial Government for the purposes set forth in the second section of this Act.

Property to vest in Colonial Government for certain purposes.

2. The Governor is hereby authorised forthwith, upon the passing of this Act, to grant the said properties to and in favour of "The Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland."

Conveyance of properties to be made to Admiralty Commissioners, and title registered free of servitude, &c.

3. All costs, charges, and expenses incurred or payable in respect of the grant provided for in the second section of this Act shall be borne and paid by the "Simon's Bay Dock and Patent Slip Company."

Costs, &c., and transfer duty to be paid by Company.

Schedule to this Act.

SCHEDULE TO THIS ACT.

An Agreement made this fifth day of May, one thousand eight hundred and eighty-five, between James Murison, Charles John Manuel, Henry Mathew Arderne, Patrick Dugald Martin, Petrus Jacobus Hugo, Heinrich Peter Hablutzel, George Willett, and William George Anderson, junior, all residing in the Colony of the Cape of Good Hope, and being all the directors of the Simon's Bay Dock or Patent Slip Company, acting by William James Anderson, of London, in England, their attorney and agent, duly constituted in that behalf by a power of attorney dated the ninth day of July, one thousand eight hundred and eighty-four (hereinafter called the vendors), of the one part, and the commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland (hereinafter called the purchasers) of the other part, whereby it is agreed as follows:—

1. The vendors will sell and the purchasers will purchase at the price of sixteen thousand pounds, first: the freehold in a certain piece of ground, with the buildings and erections thereon, being the lot marked No. 165, situated in Simon's Bay, in the Cape Division of the said Colony, and known by the name of "Sober Island," measuring three hundred square roods, extending, as a certain title deed with a diagram thereon granted to Henry Diedrich Jenken, on the ninth January, one thousand eight hundred and forty-five, and four subsequent deeds of transfer, the last of which made in favour of the said

company on the twenty-first of February, one thousand eight hundred and sixty, will more fully point out, but subject to such conditions as in the said title deed of the ninth January, one thousand eight hundred and forty-five, and certain memoranda written at foot thereof, and respectively dated the fourteenth of October, one thousand eight hundred and fifty-nine and the twenty-first day of August, one thousand eight hundred and sixty mentioned. Second, the freehold in a piece of land with the buildings and erections thereon, being the piece of land situate in the Cape Division in Simon's Bay aforesaid, adjoining the so-called "Sober Island" granted in freehold to the then directors of the said company and to the directors of the said company for the time being on the second day of October, one thousand eight hundred and sixty, containing one morgen three hundred and twenty-one square roods and twelve and a half square feet, extending as will more fully appear from the title deed thereof, with a diagram annexed, made in favour of the vendors on the said second day of October, one thousand eight hundred and sixty, subject, however, to the conditions contained in the said title deed. Third, all the buildings, sheds, erections, piers, wharves, and slip for refitting and repairing vessels now standing or being in or upon the said lands or any part of them or any adjoining land but used or occupied by the said company, together with the said slip, or as part of their property there. Fourth, all the plant, gear, articles and things specified in the schedule hereunder written, and fifth all other the plant, gear, articles and things belonging to the directors or the said company now used or being upon or about the said lands and buildings, and all the rights and privileges of the vendors or of the said company in the said land, buildings, slip, property and premises.

2. The said purchase money of sixteen thousand pounds shall be paid in sterling money of Great Britain or Bank of England notes or by bills on the Accountant-General of the Navy, as may be arranged by the purchasers to the vendors at Cape Town or Simon's Town so soon as the transfer and delivery to the purchasers of the property purchased shall have been completed to the satisfaction of the Commander-in-Chief of Her Majesty's Naval Forces at the Cape of Good Hope, and a certificate to that effect signed by him shall have been produced by the vendors to the purchasers in England, or to any agent or official at Cape Town or Simon's Town, who may have been empowered by the purchasers to act on such certificate and complete the purchase on behalf of the purchasers.

3. The vendors shall show and deduce a good title according to the law of Cape Colony to the whole of the real and personal property hereby agreed to be sold, and in particular, shall show to the satisfaction of the purchasers that the vendors as representing the said company, or the said company now have power to sell the said property, and that the vendors have power to appoint the said William James Anderson their attorney, to act for them in selling the said property and to delegate to him the sale thereof, and that the whole of the said property, both real and personal, is free from encumbrances; and if the purchasers shall be advised by competent legal authority at Cape Town that it is not certain that the vendors as representing the said company, or the said company, can sell the property, the vendors on behalf of the company will, or the company

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will obtain, at the expense of the company, an Act of the Colonial Legislature, or such other authority as shall be sufficient to enable the vendors or the company to make a good title to the property, and to sell and convey the same to the purchasers.

4. If any of the plant, gear, goods, chattels and effects hereby agreed to be sold shall for any reason not be handed over to the purchasers, the vendors shall make compensation for such of the said premises as shall not be handed over in the amount assessed by some independent person to be nominated by the Commander-in-Chief for that purpose.

5. If by reason of any neglect or default of the vendors the purchase shall not be completed on or before the thirty-first day of December, one thousand eight hundred and eighty-five (and in this respect time shall be of the essence of the contract), it shall be lawful for the purchasers by notice to the vendors signed by their secretary to determine the contract.

6. The vendors shall bear, pay, and discharge all their own law and other costs for or in connection with the sale and attending the completion thereof, and shall produce all deeds and other documents to the purchasers without expense to the purchasers. In witness whereof the said parties of this agreement have hereunto set their hands the day and year first before written.

SCHEDULE.

Cradle and donkey piece	Dwelling-house and Engine room
Hauling bars, links and pins	Engine and multiplying gear
Launching chain	Spare tubes for boiler
Chairs and rollers	Spare links for chain
Smith's shop, bellows and anvil	Ditto for bars
Work shop with tubular boiler.	Spare cheeks for connecting to chain
	Spare chairs and rollers.

Signed by Admiral Lord ALCESTER, G.C.B., and Rear-Admiral (Sig.) ALCESTER.
 Sir FREDERICK WILLIAM RICHARDS, K.C.B., two of the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, in the presence of
 "ARTHUR J. CLAYTON."
 Admiralty, Whitehall.

No. 27—1885.]

[August 11, 1885.

Act to amend the Provisions of the "Excise Beer Duty Act, 1884."

[Repealed by Act 25, 1887.]

No. 28—1885.]

[August 11, 1885.]

No. 30—1885.

Act to amend the Act No. 44 ⁽¹⁾ of 1882.
[Repealed by Act 26, 1893.]

No. 29—1885.]

[August 11, 1885]

ACT

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

WHEREAS it is expedient to alter and extend the Act No. 11 of 1882, commonly called the "Local Works Loans Act, 1882," and to authorise and empower the Governor to grant loans out of moneys provided for the purposes of the said Act to trustees of public cemeteries appointed under the provisions of the "Cemeteries Act, ⁽²⁾ 1883": Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the passing of this Act the term "local authority" shall, for the purposes of the Local Works Loans Act, 1882, be deemed and taken to include the trustees of any public cemetery duly appointed under the provisions of the "Cemeteries Act, ⁽²⁾ 1883."

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

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

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

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

Short title.

No. 30—1885.]

[August 11, 1885.]

ACT

To Authorise the Proclamation of a certain Main Road.

WHEREAS it is expedient to authorise the proclamation of a certain road in part already constructed and in part to be constructed as a main road: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

¹ The Cape Town Municipality Act of 1882, which is also repealed by Act 26, 1893.

² No. 3.

- No. 34—1885.
 Governor empowered to proclaim a certain main road.
1. Notwithstanding anything to the contrary contained in the second section of the "Roads Act, 1877," or in that or any other law of this Colony, the Governor may, at any time after the passing of this Act, by proclamation in the *Gazette* declare the road described and set forth in the second section of this Act to be a main road within the meaning of the "Public Roads Act, 1858," and of every other law of the Colony, and thereupon the said road throughout the entire length thereof shall be deemed and taken to be a main road declared by Act of the Legislature.
- Road described. 2. The said road shall run from Port Alfred in the division of Bathurst, to a point near the Round Hill, thence in the direction of the Great Fish River at Kafir Drift, thence in the direction of Peddie and East London, and thence to a point on the Great Kei River near its mouth in the division of Komgha.

No. 31—1885.] [August 11, 1885.]

Act to amend the Fourth Section of the "Roads Act, 1877."
 [Repealed by Act 40, 1889.]

No. 32—1885.] [August 11, 1885.]

Act for applying a Sum not exceeding Four Thousand One Hundred and Ninety-two Pounds and Five Pence Sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 33—1885.] [August 11, 1885.]

Act to provide for the Alteration and better Definition of Boundaries between adjoining Divisions.

[Repealed by Act 40, 1889.]

No. 34—1885.] [August 11, 1885.]

ACT

To Provide for the Importation of Goods Free of Duty through the Port or Settlement of Walfish Bay.

Preamble.

WHEREAS by Act No. 35 of 1884, commonly called the "Walfish Bay and St. John's River Territories Annexation Act, 1884," the port or settlement of Walfish Bay is annexed to the Colony: and whereas in consequence of the said annexation there are payable certain Customs duties under the provisions of Act No. (1) 13 of 1884, commonly called "The Customs Tariff Amendment Act, 1884," upon certain goods imported or brought through

¹ Repealed by Act 1, 1889.

and into the said port or settlement: and whereas it is expedient to provide for the importation of the said goods through and into the said port or settlement free of all duty: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 35—1885.

1. Notwithstanding anything to the contrary contained in the provisions of “The Customs Tariff Amendment Act, (1) 1884,” or in any other law of the Colony, there shall not be payable upon any of the goods specified in the schedule of the said Act the duties therein prescribed, or any duties whatsoever, in respect of the importation or bringing into the said port or settlement of such goods through the said port of Walfish Bay.

No duty on goods imported through Walfish Bay.

2. Whenever any goods, not being the produce of the Colony, of any nature or kind whatsoever shall be exported from any port in this Colony other than the said port or settlement, and shall be imported or brought through and into the said port or settlement, such goods shall for all purposes be deemed and taken to have been exported from such first-mentioned port to a foreign port, and whenever any such goods shall be imported or brought into this Colony from the said port or settlement, such goods shall be deemed and taken to be imported into the Colony from a foreign port.

Walfish Bay deemed a foreign port for purposes of export from other colonial ports, and of import into the Colony.

3. This Act shall come into operation upon a date to be fixed by the Governor by proclamation in the *Gazette*, and the operation thereof may be by proclamation thereafter suspended from a date to be named in such proclamation, and after the said date the then existing provisions of the law of the Colony shall come into and be in force as though this Act had not been passed.

Operation and suspension of Act.

4. This Act may be cited as the “Walfish Bay Customs Act, 1885.”

Short title.

No. 35—1885.]

[August 11, 1885.

ACT

To Authorise certain Public Bodies to introduce into and promote or to oppose in Parliament certain Private Bills, and to legalise expenses incurred by such Bodies in respect of the introduction and promotion of or the opposition to such Private Bills. (2)

WHEREAS it is expedient and desirable to authorise public bodies empowered to levy rates to introduce into Parliament and there promote private bills for the furtherance of the interests of the ratepayers represented by such public bodies, and to oppose in

Preamble.

¹ No. 13.

² Extended by Proclamation No. 80 of 1890 to all the Native Territories.

No. 35—1885.

Parliament private bills inconsistent or conflicting with those interests: and whereas it is furthermore expedient to legalise the necessary expenses incurred by any such body in respect of the introduction and promotion of or opposition to any such private bill: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Definition of certain terms.

1. "Public Body" shall, for the purposes of this Act, mean any public body empowered to levy rates.

"Local newspaper" shall mean any newspaper circulating in the neighbourhood wherein all or most of the persons reside who are liable to pay rates to such public body.

"Ratepayer" shall mean every person liable to the payment of rates to or qualified to vote in the election of members of such public body.

Public meeting to be convened to consider introducing or opposing private bill.

2. Whenever any public body shall deem it expedient and necessary to introduce into Parliament and there promote any private bill in furtherance of, or to oppose in Parliament any private bill inconsistent or conflicting with, the interests of the general body of ratepayers upon whom such public body is by law empowered to levy rates, it shall be lawful for such public body to summon and convene a public meeting of such ratepayers in manner hereinafter provided, for the purpose of laying before such meeting resolutions in favour of the introduction and promotion of or in favour of opposition to such private bill, as the case may be.

Public meeting, how convened.

3. Every such public meeting shall be summoned and convened to assemble at some convenient time and place and upon a day to be stated in a notice of such meeting, and such notice shall be published not less than four times in any one or more local newspapers, or in default of any such local newspapers in every issue of the *Gazette* during a period of not less than two weeks before the said day, and shall refer to this Act and shall contain as nearly as may be the words of the resolution or resolutions to be proposed for the consideration of the said meeting, and also a clear general statement of the object and purpose of such meeting.

Meeting assembled elects chairman, but may adjourn.

4. At the time and place and on the day specified in such notice the said meeting shall assemble, and a chairman shall be forthwith elected by a vote of the majority of ratepayers present and voting at such meeting by show of hands, but thereafter the said meeting may by resolution of the majority of ratepayers present and voting be adjourned, for any period not longer than one week, to reassemble at such time and place and on such day as by such resolution shall be determined.

Resolution carried by two-thirds of meeting to be authority to public body to introduce or oppose bill.

5. At such meeting, or at such adjourned meeting, as the case may be, the resolution or resolutions published in the aforesaid notice shall be submitted to the ratepayers thereat assembled, and if, by a vote of a majority of two-thirds of the ratepayers then present and voting, any such resolution to introduce and promote

or to oppose any private bill shall be carried, the public body which has convened the meeting shall be deemed and taken for all legal intents and purposes to be authorised to introduce and promote or to oppose such private bill.

No. 35—1885.

6. The voting at such meeting on the resolutions published in such notice as aforesaid shall in the first place be by show of hands to be declared by the chairman, and the declaration of the chairman shall be final and conclusive, unless not less than twenty ratepayers present shall demand that the voting shall be by signature, and whenever any such demand shall be made the voting on the resolution in question shall be determined by signatures to be affixed by each ratepayer signing his name in full upon one of certain lists to be ready for the purpose at the said meeting, and such lists shall be two in number for each resolution, and the signatures to the one list shall be in affirmation and to the other in negation of the resolution in question.

Voting by show of hands, or upon demand by signature of list.

7. The said lists shall, at a place or places to be notified from the chair at such meeting, lie open on a day to be named by the chairman, not being less than seven nor more than fourteen days from the date of meeting, and between the hours of 10 a.m. and 4 p.m. on such day, and may be signed by any ratepayer during the said period and hours.

Lists to lie open for signature by ratepayers on a day to be named by chairman.

8. Every such list shall, after the termination of such period, be scrutinised by the chairman elected by the meeting, together with such assistants as such public body may appoint, and the result of the voting shall be declared by the chairman by advertisement to be published at least twice in one or more local newspapers, or in the *Government Gazette*, at the expense of the ordinary revenue of the said public body.

Scrutiny of lists by chairman; result to be published at expense of public body.

9. Whenever any such published resolution shall be carried in manner aforesaid being not less than two-thirds of the total number of ratepayers voting, in favour of the introduction and promotion, or in favour of opposition to any such private bill, all necessary costs, charges and expenses by such public body incurred in and about the convening of such meeting and the introduction and promotion of or opposition to such private bill, shall be deemed and taken to constitute a just debt and liability against such public body within the meaning of the "Public Bodies' Debts Act (¹), 1887," and shall be payable out of the ordinary revenue derived by such public body from rates levied on the ratepayers, anything to the contrary contained in any law of the Colony notwithstanding.

When resolution passed costs, &c., of introducing or opposing private bill constitute debt of public body, payable out of rates.

10. If at any public meeting hereafter summoned, convened and assembled in manner and by such majority as is in this Act provided, a resolution shall be passed in manner hereinbefore set forth, ratifying the action and conduct of any public body in

Provisions of Act to apply to private bills introduced or opposed during present session.

No. 37—1885.

introducing and promoting or in opposing any private bill during the present session of Parliament, such resolution shall for all legal intents and purposes be deemed and taken to authorise such introduction and promotion of or such opposition to such private bill, and to render legal all necessary costs, charges, and expenses incurred in respect of such introduction and promotion or opposition, as if this Act had been passed and such resolution had been arrived at under the provisions of this Act, before the said introduction and promotion or opposition had been undertaken by such public body.

11. Nothing in this Act contained shall apply to any Municipality acting under an Act of Incorporation.

12. This Act may be cited as the "Public Bodies' Private Bill Act, 1885."

Act not to apply to municipalities under Act of Incorporation.
Short title.

No. 36—1885.]

[August 11, 1885.]

Act to Authorise the application of certain Unexpended Balances of Sums appropriated for the Construction and Equipment of certain Railways and other works connected therewith to meet deficiencies in the Appropriations for the Construction and Equipment of certain other Railways and works.

[Spent.]

No. 37—1885.]

[August 11, 1885.]

ACT

To relieve certain Agricultural Immigrants from the Payment of Quitrent under the "Agricultural Immigrants Land Act, 1877."

Preamble.

WHEREAS certain persons have come into this Colony from Germany and elsewhere in Europe as agricultural immigrants under agreements made and executed between them and one William Berg, of Cape Town, or his agents, being thereto induced by the promise, and immigrating for the purpose of receiving in this Colony allotments of land under certain conditions: and whereas, in many cases, the said persons having no notice or knowledge of the provisions of the colonial law, arrived in this Colony and received allotments of land from Government as agricultural immigrants, but were wholly ignorant of the provisions of the sixth sub-section of the third section of the "Agricultural Immigrants Land Act, 1877," imposing a perpetual quitrent in respect of such allotments, and were misled into the belief that they would be entitled, after paying yearly for ten years one shilling per acre for the land so allotted to them, to receive a grant thereof in perpetuity: and whereas it is expedient under

the aforesaid circumstances to relieve such immigrants from the payment of quitrent: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

No. 38—1885.

1. Whenever any person shall, before the taking effect of this Act, have immigrated into the Colony from Germany or elsewhere in Europe as an agricultural immigrant under any agreement made and executed between such person and one William Berg, of Cape Town, or his agents, with the purpose and object of obtaining an allotment of land from the Government of this Colony as an agricultural immigrant, and shall have obtained such allotment, and whenever such person, upon application to the Commissioner of Crown Lands and Public Works, shall produce satisfactory proof that before arriving in this Colony he was in ignorance of the provisions of the sixth sub-section of the third section of the "Agricultural Immigrants Land Act, 1877," imposing a perpetual quitrent upon the land allotted to him, it shall be lawful for the Governor, so soon as such person shall have made the tenth annual payment of rent for and in respect of any land which may have been assigned or allotted to him, and shall have paid the survey expenses and other expenses of title, to issue to such person a grant of such land to be held by him in perpetuity free of quitrent, but subject to every other condition now attaching to quitrent grants in this Colony; anything contained in the said Act or in any other statutory enactment to the contrary notwithstanding.

Governor may relieve from quitrent Immigrants having no notice of its being payable.

2. This Act may be cited as "The Agricultural Immigrants Relief Act, 1885."

Short title.

No. 38—1885.]

[August 11, 1885.]

ACT

To Authorise the Raising of Money for certain Public Purposes.

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

Preamble.

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

Governor empowered to raise certain sum for purposes specified in schedule.

2. This Act may be cited as "The Public Works Loan Act, 1885."

Short title.

No. 39—1885.

SCHEDULE.

Schedule.

	£	s.	d.
1. For the purposes of the "Irrigation Act, 1877," and the "Municipalities Irrigation Works Loans Act, 1879" ..	25,000	0	0
2. For the purposes of the "Local Works Loans Act, 1882"	50,000	0	0
3. For Works and Buildings :—			
Harbour Works :			
Table Bay ..	£50,000	0	0
Port Elizabeth ..	21,000	0	0
East London ..	15,000	0	0
	£86,000	0	0
Public Offices at Port Elizabeth ..	16,000	0	0
	102,000	0	0
4. Roads :			
Meiring's Poort	£5,000	0	0
Caledon Kloof	300	0	0
Old Katberg Road	350	0	0
Van Rhy'n's Pass, Calvinia	400	0	0
Clanwilliam, Troe Troe, and Thorn Bay	500	0	0
Garies and Stinkfontein, Namaqualand	500	0	0
Peddie to Great Kei River Mouth ..	2,650	0	0
	9,700	0	0
5. Bridges :			
Breede River Bridge (Robertson) ..	£2,500	0	0
Berg River Bridge (Vleeschbank) ..	2,500	0	0
Orange River Bridges	3,300	0	0
Gilfillan Bridge	200	0	0
	8,500	0	0
Total	195,200	0	0

No. 39—1885.]

[Nov. 16, 1888.]

ACT

For the better prevention of certain Contagious Diseases. ⁽¹⁾

Preamble.

WHEREAS it is desirable to prevent, as far as may be, the spread of certain contagious diseases: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

PRELIMINARY.

Short title.

1. This Act may be cited as "The Contagious Diseases Prevention Act, 1885."

Definition of contagious disease.

2. In this Act the term "contagious disease" shall be taken to mean any venereal disease, including gonorrhœa.

¹ Extended by Proclamation No. 176 of 1892 to all the Native Territories.

EXTENT OF ACT.

No. 39 - 1885.

3 The places, districts, or areas to which Part I. of this Act shall apply, shall be the places, districts, or areas mentioned in the first schedule to this Act, and such other places, districts, or areas as the Governor shall, from time to time, declare by proclamation to be published in the *Gazette*.

Local application of Act by proclamation.

4. The Governor shall have the power to rescind any such proclamation as in the preceding section is mentioned, and the limits of every place, district, or area, whether mentioned in the said schedule or declared by such proclamation as aforesaid, may be extended, curtailed, or otherwise altered, from time to time by like proclamation to be published in like manner.

Power to rescind, &c., such proclamation.

5. Part II of this Act shall apply to the several districts of the Colony.

Application of Part II.

PART I.

MEDICAL INSPECTORS AND HOSPITALS.

6. It shall be lawful for the Governor to appoint some duly qualified medical practitioner or practitioners to be medical inspector or inspectors of contagious diseases for each of the places, districts, or areas within which Part I of this Act shall be in force.

Appointment of medical inspector.

7. The Governor may from time to time provide any buildings or parts of buildings, or set apart any ward or wards of any hospital as and for hospitals for the purposes of Part I of this Act, and every such hospital shall be placed under the control or management of such person or persons as to the Governor may from time to time seem fit.

Provision for hospital accommodation.

8. The medical inspector or inspectors of the place, district, or area within which any hospital as aforesaid shall be situate, shall make regulations for the management and government of such hospital and the conduct of the inmates; provided such regulations be not inconsistent with the provisions of Part I of this Act, and may from time to time alter any such regulations, but all such regulations and alterations thereof shall be subject to the approval of the Governor.

Hospital regulations made by medical inspector.

9. A printed copy of regulations purporting to be regulations of any hospital as aforesaid, or a written copy thereof, provided such written copy be signed by the medical inspector or inspectors of the place, district, or area aforesaid, shall be evidence of the regulations of such hospital and of the due making and approval thereof.

Copy of regulations good evidence.

PERIODICAL MEDICAL EXAMINATIONS.

10. Where an information or statement in writing on oath is laid before any Resident Magistrate having jurisdiction in any place, district, or area wherein Part I of this Act shall be in force,

Process to compel appearance of reputed prostitute to undergo inquiry, upon sworn statement.

No. 39—1885.

to the effect that the party making such information or statement has good cause to believe (and giving his reasons for such belief) that a female therein named is a common prostitute, and either is resident within such place, district or area as aforesaid, or being resident outside such place, district, or area has within fourteen days before the making of such information or statement been within such place, district, or area as aforesaid for the purposes of prostitution, the said Resident Magistrate may, if he thinks fit, issue a notice thereof addressed to such female fixing a time and place for her attendance to answer to what is contained in such information or statement, which notice he shall cause to be served upon her.

Arrest for default of appearance of reputed prostitute after proper notice.

11. If the female on whom such a notice as aforesaid is served neglects or refuses to appear herself or by some person on her behalf at the time and place appointed in the notice or at some other time and place appointed by adjournment, and it is shown on oath to the said Resident Magistrate that the notice aforesaid was served on her a reasonable time before the time appointed for her appearance, or that reasonable notice of such adjournment was given to her as the case may be, she may be arrested by warrant of the said Resident Magistrate in order that she may be brought before him to answer as aforesaid.

Magistrate if satisfied of truth of sworn statement may order periodical medical examination of female.

12. At the time and place mentioned in the said notice, or at some other time and place appointed by adjournment, in case the female shall appear herself, or by some one on her behalf, or as soon as conveniently may be, in case she shall have been arrested upon warrant as aforesaid, the said Resident Magistrate shall investigate the truth of the said information or statement, and on oath being made before him, substantiating to his satisfaction what is contained in the said information or statement, he may, if he thinks fit, order that the said female be subjected to a periodical medical examination by any medical inspector or inspectors appointed under the sixth section hereof, for the purpose of ascertaining, at the time of each such examination, whether she is affected with a contagious disease, and thereupon she shall be subjected to such periodical medical examination, and shall be bound to undergo the same, and the said order shall be a sufficient warrant for such medical inspector or inspectors as aforesaid to conduct such examination accordingly.

Such order to operate as warrant to medical inspector.

Form and service of order.

13. The order aforesaid shall specify the time and place at which the female aforesaid shall attend for the first examination, and a copy thereof shall be served on the female.

Voluntary submission of female to examination.

14. Any female in any place, district, or area to which Part I of this Act applies may voluntarily, by a submission in writing, signed by her in the presence of any Resident Magistrate or any medical inspector for such place, district, or area, and attested by such Resident Magistrate or medical inspector, subject herself to a periodical medical examination as hereby provided, and the said

female shall thereupon become subject to the provisions of Part I of this Act in the same manner as if an order for such examination had been duly made by a Resident Magistrate as aforesaid.

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15. The Resident Magistrate or medical inspector in whose presence the said submission shall be signed shall endorse upon the said submission the time and place at which the female shall attend for the first examination, and a copy of such endorsement shall be served on the female.

Endorsement on written submission of time and place of examination.

Notice to female.

16. The medical inspector or inspectors aforesaid having regard to the circumstances of each case shall at the first examination of each female examined by him or them, and afterwards from time to time as occasion shall require, prescribe the times and places at which she is required to attend again for examination, and he or they shall from time to time give or cause to be given to each such female notice of the times and places aforesaid.

Medical inspector to appoint times and places for subsequent examinations, with notice to female.

17. If any female subjected to periodical medical examination, whether by order of a Resident Magistrate or upon voluntary submission as aforesaid, at any time temporarily absent herself in order to avoid submitting herself to such examination on any occasion to which she ought so to submit herself, or refuses or wilfully neglects to submit herself to such examination on any such occasion, then and in every such case such female shall be guilty of an offence against Part I of this Act, and on conviction before the Resident Magistrate of the district within which such examination should have taken place or before the Resident Magistrate of the district wherein she may be found, be liable to imprisonment with or without hard labour and with or without spare diet in the case of the first offence for any term not exceeding one month, and in case of a second or any subsequent offence for any term not exceeding three months with or without hard labour and with or without spare diet.

Penalty on female not submitting herself to examination.

18. If any such female is convicted of and imprisoned for the offence of absenting herself or of refusing or neglecting to submit herself to examination as aforesaid, the order subjecting her to periodical medical examination shall be in force after and notwithstanding her imprisonment.

Order for examination to continue in force notwithstanding punishment for disobedience.

DETENTION IN HOSPITAL.

19. If, upon any medical examination as aforesaid, the female examined is found to be affected with a contagious disease, she shall thereupon be liable to be detained in a hospital, subject and according to the provisions of Part I. of this Act, and the medical inspector or inspectors by whom such examination shall have been made shall sign a certificate to the effect that she is affected with a contagious disease, naming the hospital in which she is to be placed, and he or they shall cause a duplicate of such certificate to be delivered to the female.

Female found affected with C.D. may be detained in hospital upon medical certificate.

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Arrest for medical treatment of female not proceeding to hospital on such certificate.

20. Any female to whom any such certificate as in the preceding section mentioned relates, may, if she think fit, proceed to the hospital named in that certificate, and place herself there for medical treatment; but if, after the said duplicate certificate is delivered to her she neglects, or refuses forthwith to do so, she may be apprehended by any police constable, and conveyed to that hospital, and placed there for medical treatment, and the certificate of the medical inspector or inspectors as aforesaid shall be sufficient warrant or authority to him for so doing.

Appeal by female to magistrate against certificate ordering detention.

21. If any female found to be affected with a contagious disease as in the nineteenth section mentioned, shall not willingly submit to proceed to hospital as aforesaid, she shall be at liberty before apprehension to appeal to and after apprehension to claim to be taken before the Resident Magistrate of the district wherein she may reside or practise prostitution, who shall inquire into the matter and hear the objection of such female and take the evidence on oath of the medical inspector or inspectors, and of any other medical practitioner who may have examined the female, and on determination of the matter either cancel the order of detention or declare that the same shall have full force and effect.

Female in hospital to be detained till discharged by medical inspector.

22. Where a female certified by any medical inspector or inspectors to be affected with a contagious disease, places herself, or is placed as aforesaid, in a hospital for medical treatment, she shall be detained there for that purpose until discharged by the medical inspector or inspectors of the place, district, or area within which the hospital shall be by writing under his or their hand.

Transfer of female from one hospital to another.

23. The Resident Magistrate of any district wherein any hospital may be, may, if in any case it appears to him expedient, by order signed by him, direct the transfer of any female detained in such hospital for medical treatment from that hospital to another named in the order of transfer.

Limit of period of detention.

24. No female shall be detained under any one certificate for a longer period than six months.

Detained female may claim inquiry by magistrate, who may discharge her.

25. If any female detained in any hospital considers herself entitled to be discharged therefrom, and such discharge is refused, such female shall on her request be conveyed before the Resident Magistrate of the district wherein the hospital may be, who if he is satisfied upon reasonable evidence, that she is free from a contagious disease shall discharge her from such hospital.

Legal custody of female conveyed or transferred to or detained in hospital.

26. Every female conveyed or transferred under this Act to any hospital shall, while being so conveyed or transferred, and also while detained there, be deemed to be legally in the custody of the person conveying or transferring or detaining her, notwithstanding that she may be for that purpose removed out of one into another jurisdiction.

Penalty on female escaping from hospital or not conforming to regulations.

27. If any female who shall have been admitted into or shall be detained in any hospital under Part I. of this Act, shall make

or attempt to make her escape therefrom without being duly discharged, or if any such female shall refuse or neglect to conform to the regulations of such hospital during the period for which she shall be lawfully detained therein, she shall be liable on conviction before the Resident Magistrate of the district wherein such hospital may be, to imprisonment with or without hard labour and with or without spare diet, for any period not exceeding one month, and the execution of such sentence of imprisonment may at the said Resident Magistrate's discretion be suspended until such female shall be lawfully discharged from the said hospital.

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28. If, on any female leaving any hospital, a notice in writing is given to her by the medical inspector or inspectors of the place, district, or area within which the hospital may be, to the effect that she is still affected with a contagious disease, and she is afterwards in any place for the purpose of prostitution while still so affected, she shall be guilty of an offence under Part I. of this Act, and on conviction before the Resident Magistrate of the district wherein she may reside or practise prostitution, shall be liable for each offence to imprisonment, with or without hard labour, and with or without spare diet, for any period not exceeding one month.

Penalty on female leaving hospital un-cured and practising prostitution without certificate of freedom from C.D. by medical inspector.

RELIEF FROM EXAMINATION.

29. If any female, subject to a periodical medical examination under this Act (either on her own submission, or under the order of a Resident Magistrate) and not being under detention in a hospital as hereinbefore provided, shall desire to be relieved from such examination, she may apply in writing in that behalf to the Resident Magistrate of the district wherein she may be then residing, or to the Resident Magistrate of the district wherein she was practising prostitution at the time when she was subjected to such examination as aforesaid; and such Resident Magistrate shall appoint a time and place for the hearing of such application and shall cause to be served on such female notice of such appointment.

Application by female for relief from examination.

30. If on the hearing of the application in the last section mentioned it is shown to the satisfaction of the Resident Magistrate that the applicant has ceased to be a common prostitute, or if the applicant with the approval of the said Resident Magistrate shall enter into a recognizance with or without sureties as to the said Resident Magistrate shall seem meet for her good behaviour during three calendar months thereafter, such Resident Magistrate may order that she be relieved from subjection to periodical examination as aforesaid.

Grounds for relief from examination.

Recognizance.

31. Every such recognizance shall be deemed to be forfeited if at any time during the term for which it shall be entered into the female to whom it relates shall be within the limits of any district, place, or area within which Part I of this Act shall be in force in any public thoroughfare, street, or place for the purpose of

Forfeiture of recognizance.

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prostitution, or otherwise within such limits shall conduct herself as a common prostitute.

Consequences of practising prostitution after forfeiture of recognizance.

32. If upon any such recognizance as aforesaid becoming forfeited as aforesaid, or upon the expiration of the term thereof, the female to whom it relates shall within the limits in the last preceding section mentioned be in any public thoroughfare, street, or place for the purpose of prostitution, or shall otherwise within such limits conduct herself as a common prostitute, she shall be liable to be dealt with under Part I of this Act as if she had not been relieved from examination as aforesaid, and any order relieving her from such examination shall be deemed to be cancelled.

PENALTIES FOR HARBOURING, &c.

Penalties for harbouring diseased common prostitute.

33. If any person being the owner or occupier of any house, room, or place, within the limits of any district, place or area, to which Part I of this Act shall apply, or being in charge thereof, or a manager or assistant in the management or charge thereof, having reasonable cause to believe any female to be a common prostitute and to be affected with a contagious disease, shall induce or suffer her to resort to or be in that house, room or place, for the purpose of prostitution, he shall be guilty of an offence against Part I of this Act, and shall be liable on conviction before the Resident Magistrate of the district, to be imprisoned with or without hard labour for any period not exceeding three months, or to pay a fine not exceeding twenty pounds, or in default of payment to be imprisoned with or without hard labour for a period not exceeding three months unless such fine be sooner paid: Provided, always, that a conviction under this section shall not exempt the offender from any penal or other consequences to which he may be liable for keeping or being concerned in keeping a disorderly house, or a brothel, or for the nuisance thereby occasioned.

PROCEDURE, &c.

Procedure: powers of magistrate.

34. Every Resident Magistrate in entertaining any case or making any investigation under Part I of this Act, shall be at liberty, unless the female otherwise desires, to order that no person have access to or be or remain in the room or place in which he may sit for the purposes of such case or investigation without his consent or permission, but nothing herein contained shall be taken or construed to have the effect of limiting any other power which such Resident Magistrate may have of ordering such room or place to be cleared, or of directing that any person or persons be removed from such room or place.

MISCELLANEOUS, &c.

Record to be kept by medical inspectors.

35. Every medical inspector shall keep a record of the case of every female examined by him under Part I of this Act, and such

record shall at all times be open to the inspection of the Resident Magistrate, and of any other person who may be authorised thereto by the Governor.

36. If it shall appear to any Resident Magistrate, before whom any female shall appear personally, or by some person in her behalf, to answer to what is contained in any information or statement laid before the said Resident Magistrate under Part I of this Act, that the person making such information or statement did so without reasonable or probable cause, the said Resident Magistrate shall have the power to impose on such person a penalty of not exceeding twenty pounds, and in default of payment, to order him to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such penalty be sooner paid.

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Penalty for statement against female without reasonable cause.

37. Nothing in the last section contained shall have the effect of relieving the person making such information or statement from any of the pains or penalties to which the law would otherwise subject him for anything done or committed in and about the making of such information or statement, or of depriving any female of any right of action which she otherwise may have by reason of the making of such information or statement.

Penalties for false statement and rights of action to female reserved.

PART II.

PROVISIONS RELATING TO AFFECTED PERSONS OTHER THAN THOSE REFERRED TO IN

PART I.

38. If any medical inspector under Part I of this Act shall have good ground to believe that any person whether male or female within the place, district, or area, for which he may be medical inspector, is affected by contagious disease to such an extent as to render the spread of such disease probable, or if the district surgeon of any district wherein Part I of this Act shall not be in force, shall have good ground to believe that any person within his district is so affected as aforesaid, it shall be the duty of such medical inspector or district surgeon, in case such person is not under medical treatment by some duly qualified medical practitioner, to report that fact to the Resident Magistrate, who shall thereupon make inquiry into the circumstances, and if upon such inquiry such Resident Magistrate shall deem fit so to do, it shall and may be lawful for him to authorise the said medical inspector or district surgeon to require the person so affected to place himself or herself under medical treatment by the said medical inspector or district surgeon, or some other duly qualified medical practitioner to be selected by such affected person, and to attend for that purpose at the time and place from time to time fixed by the said medical inspector or district surgeon or duly qualified practitioner until

Magistrate after inquiry upon report by medical inspector or district surgeon may authorise placing under medical treatment any person.

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released from such attendance by the said medical inspector or district surgeon or duly qualified practitioner.

Inquiry private.
Results not to be
made public.

39. The inquiry in the last preceding section mentioned shall be held by the said Resident Magistrate privately, and the result of any such inquiry and the contents of any report, certificate, or notice made or given by any medical inspector or district surgeon, shall not be communicated or published by any person unless with the consent of such affected person to any person, save and except the said Resident Magistrate, medical inspector, district surgeon, or affected person, or parents or guardian of such affected person: Provided that notwithstanding anything herein contained the result of such inquiry, and the contents of any report, certificate, or notice, as aforesaid, may be disclosed and proved for the purposes of any legal proceeding in any Court having jurisdiction.

Penalty for publication of results of inquiry.

40. If any person shall contravene the provisions of the last preceding section by disclosing or publishing, without such consent, as therein mentioned, to any person other than those in the last preceding section mentioned, the result of any enquiry or the contents of any report, certificate, or notice, as aforesaid, he shall be liable upon conviction before the Resident Magistrate of the district, to a fine of not exceeding twenty pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding fourteen days unless such fine be sooner paid.

Penalty for not attending as required for medical treatment.

41. If any person duly required by any medical inspector or district surgeon, as in the thirty-eighth section mentioned, to place himself or herself under medical treatment, shall neglect or refuse to attend for that purpose at any time or place fixed by the said medical inspector, or district surgeon, or medical practitioner, such person shall be liable to a penalty of not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding one month, unless such fine be sooner paid.

PART III.

FORMS, NOTICES, AND GENERAL PROVISIONS.

Service of notices, &c.

42. Every notice, order, or other instrument by this Act required to be served on any person shall be served by the delivery thereof to such person for him or her, at his or her last known place of abode, or by delivery thereof to him or her personally.

Forms in Schedule 2 - sufficient.

43. The forms of certificates, orders, and other instruments given in the second schedule to this Act, or forms to the like effect, with such variations and additions as circumstances require, may be used for the purposes therein indicated, and according to the directions therein contained, and instruments in these forms shall (as regards the form thereof) be valid and sufficient.

Signed notices, &c., good evidence, and presumed to be duly signed.

44. In any proceeding under this Act any notice, order, certificate, copy of regulations, or other instrument purporting to be

signed by a Resident Magistrate, inspector or inspectors, or district surgeon shall, on production, be received in evidence, and shall be presumed to have been duly signed by the person, and in the character by whom, and in which it purports to be signed, until the contrary is shown.

No. 39 - 1885.

45. This Act shall not have the effect of legalising prostitution or of exempting any person engaged in or practising the same from such pains and penalties as may by the existing law of the Colony attach thereto.

Prostitution not
legalized. Retention
of colonial law.

SCHEDULES.

Schedule I.

THE FIRST SCHEDULE.

Name of Places, Districts, or Areas.

1. The Cape District, including Cape Town.
2. The District of Simon's Town.
3. The District of Port Elizabeth.
4. The District of King William's Town.
5. The District of East London.

THE SECOND SCHEDULE.

Schedule I.

Forms.

(A.)

Form (A.)

Notice for attendance of Female.

To A.B., of.....

Take notice that an information or statement upon oath, a copy whereof is annexed hereto, has been laid before me, and that in accordance with the provisions of the Contagious Diseases Prevention Act, 1885, the truth thereof will be enquired into before me at, on the day of..... at o'clock in the..... noon.

You are, therefore, to appear, yourself or by some person on your behalf, before me at that place and time, to answer to what is contained in the said information or statement.

It you do not so appear you are liable to be arrested and brought before me in custody.

If you prefer it you may by a submission in writing, signed by you in the presence of a Resident Magistrate or of a Medical Inspector under the said Act for the place, district or area of and attested by him, subject yourself to a periodical examination by a Medical Inspector or Inspectors appointed under the said Act. If you do so before the time above appointed for your appearance, and give notice thereof at my office at, it will not be necessary for you to appear before me.

Dated this... day of.....

(Signed)

Resident Magistrate of.....

ZZZ

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(B.)

Form (B.)

Order subjecting Female to Examination.

In pursuance of the Contagious Diseases Prevention Act, 1885, I
, Resident Magistrate for the district of, do order that
, of be subject to a periodical medical examination
 by the Medical Inspector or Inspectors for the time being appointed
 under that Act, for the place, district, or area of, for the
 purpose of ascertaining at such examination whether she is affected
 with a contagious disease within the meaning of the said Act, and
 that she attend for the first examination at, on the day
 of, at o'clock in the noon.

(Signed),
 Resident Magistrate of

Form (C.)

(C.)

Voluntary Submission to Examination.

The Contagious Diseases Prevention Act, 1885.

I, A. B., of, in pursuance of the above-mentioned Act, by
 this submission, voluntarily subject myself to a periodical medical
 examination by the Medical Inspector or Inspectors for

Dated this day of, 18 . . .

(Signed)

Attested (Resident Magistrate or Medical Inspector under
 X.Y. the said Act for).

Form (D.)

(D.)

Notice by Medical Inspector to Females of Times, &c., of Examination.
 To A. B., of

Take notice, that in pursuance of the Contagious Diseases Prevention
 Act, 1885, you are required to attend for medical examination as
 follows:

. (here state times and places of examination).

Dated this day of, 18 . . .

(Signed) E. F.,
 Medical Inspector for

Form (E.)

(E.)

Certificate of Medical Inspector.

In pursuance of the Contagious Diseases Prevention Act, 1885, I
 hereby certify that I have this day examined A. B., of
 and that she is affected with a Contagious Disease within the meaning
 of Part I of that Act; and the hospital in which she is to be placed
 under Part I of the said Act is the hospital.

Dated this day of, 18 . . .

(Signed) E. F.,
 Medical Inspector for

(F.)

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Order by Resident Magistrate for Transfer.

Form (F.)

By virtue of the power in this behalf vested in me by the Contagious Diseases Prevention Act, 1885, I hereby order that A.B., of now detained under Part I of that Act in the hospital, for medical treatment, be transferred thence to the hospital of

Dated this day, 18...

(Signed) M. N.,
Resident Magistrate of

(G.)

Form (G.)

Notice to Female leaving Hospital who may be still affected.

The Contagious Diseases Prevention Act, 1885.

To A.B.

As you are now leaving this hospital, I hereby, in pursuance of the above-mentioned Act, give you notice that you are still affected with a contagious disease.

Dated this day of

(Signed) G. H.,
Medical Inspector for the district of

NOTE.—The above-mentioned Act provides as follows :

If on any female leaving any hospital a notice in writing is given to her by the Medical Inspector or Inspectors of the place, district, or area within which the hospital may be, to the effect that she is still affected with a contagious disease, and she is afterwards in any place for the purpose of prostitution, while still so affected, she shall be guilty of an offence under Part I of this Act, and on conviction before the Resident Magistrate of the district wherein she may reside or practise prostitution, shall be liable for each offence to imprisonment, with or without hard labour, and with or without spare diet, for any period not exceeding one month.

(H.)

Form (H.)

Application to be relieved from Examination.

To L.M., Esq., Resident Magistrate of

I, A.B., of, being in pursuance of the Contagious Diseases Prevention Act, 1885, subject to a periodical medical examination on my own submission [or under the order of L.M., Esq., as the case may be]. dated the day of, do hereby apply to be relieved therefrom.

Dated this day of, 18...

(Signed) A. B.

No. 40—1885.

(I.)

Form (I.)

Report to Resident Magistrate by Medical Inspector or District Surgeon, under section 38 of the Contagious Diseases Prevention Act, 1885.

To L.M., Esq., Resident Magistrate of _____

I, A. B. [Medical Inspector or District Surgeon of _____, as the case may be], do hereby report that C.D., of _____, is affected by contagious disease under such circumstances as to cause the spread of such disease probable, and that [he or she] is not under medical treatment by any duly qualified medical practitioner. I beg to request that you will have due inquiry made accordingly, and, if you should so think fit, that thereupon authority be given to me to require the said C. D. to place [himself or herself] under medical treatment by some duly qualified person.

Dated this _____ day of _____.

(Signed) A. B.

Form (J.)

(J.)

Notice by Medical Inspector or District Surgeon to affected person requiring such person to place himself or herself under medical treatment under section 38 of the Contagious Diseases Prevention Act, 1885.

To C D., of _____.

Being duly authorised by the Resident Magistrate of _____, I hereby require you to place yourself under medical treatment by me or by some duly qualified medical practitioner to be selected by you. You are required to attend for such treatment at _____ on _____.

Dated this _____ day of _____, 18—.

(Signed) X. Y.

No. 40—1885.]

[August 11, 1885.

ACT

To Amend the Law relating to the Allotment of Agricultural Lands.

Preamble.

WHEREAS it is expedient to amend the law relating to the allotment of agricultural lands: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Section 2 of Act No. 37 of 1882 amended.

1. The second section of the "Agricultural Lands Act, 1882," shall be read as if the words "and not less than ten morgen in extent" therein appearing were omitted therefrom, and the words "and not less than four morgen in extent" inserted in lieu of the words so omitted.

Members of Land Board may be changed.

2. The Governor may remove from the Land Board mentioned in section five of the said Act No. 37 of 1882, any member appointed thereto, and appoint another member in the place of the one so removed.

3. The Governor may from time to time with the consent of Parliament assign waste lands not being arable land as commonage for the holders of allotments under Act 37 of 1882.

4. This Act may be cited as the "Agricultural Lands Amendment Act, 1885."

No. 43—1885
Governor may with consent of Parliament assign waste lands as commonage.
Short title.

No. 41—1885.]

[August 11, 1885.

ACT

To Amend the "Public Health Act, 1883."

WHEREAS it is expedient in certain respects to amend the Act No. 4 of 1883, commonly called the "Public Health Act, 1883": Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The third section of the said Act is hereby repealed.

2. It shall be lawful for the Governor, out of such moneys as may be appropriated by Parliament for the purpose, to advance to any local authority for the purposes of the said Act such sum as he may deem desirable: and one-half of such amount as shall be satisfactorily proved to have been expended by any local authority for the purposes of preventing the spread of or suppressing contagious or infectious disease, or for quarantine purposes, shall be paid out of the Public Treasury.

Section 3 of Act 4 of 1883 repealed.
Governor may make advances to local authority.

Half the amount expended for certain purposes of Act 4 of 1883 to be paid by Treasury.

3. [Repealed by Act 40, 1889.]

4. The rate in the last preceding section mentioned shall be collected by the Inspectors of Native Locations (if any) within the said area, or such other officer as the Governor may appoint.

How to be collected.

No. 42—1885.]

[February 9, 1886.

Act to Define and Regulate the Civil Service of the Colony.

[Repealed by Act 32, 1895.]

No. 43—1885.]

[August 11, 1885.

ACT

To Amend the Law relating to the Courts of Resident Magistrate.

WHEREAS it is expedient to amend the law relating to the Courts of Resident Magistrate: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. As often as any preparatory examination taken against any prisoner for any crime or offence shall have been transmitted to

In cases remitted by the Attorney-General, Magistrates

No. 43—1885.

may sentence to one year's imprisonment with or without hard labour; or 3 months with spare diet and with or without hard labour, or to thirty-six lashes in cases of previous conviction within three years.

the Attorney-General for his consideration, and the Attorney-General shall be of opinion that the evidence taken at such preparatory examination is such as to require that the prisoner shall be put on his trial, and be of opinion also that the exercise of the jurisdiction conferred by this Act will satisfy the end of justice, then and in that case it shall be lawful for the Attorney-General to remit the case for trial to the Court of the Resident Magistrate, (1) and such Court shall thereupon proceed to try the same in manner and form as in the twenty-ninth section of the "Criminal Law Amendment Act, 1861," prescribed; and in case the prisoner shall be convicted, such Court may sentence him to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for any period not exceeding one year, or to imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or by corporal punishment in any number of lashes not exceeding thirty-six, or to both such fine and such imprisonment or to such imprisonment and such corporal punishment: Provided that the punishment of corporal punishment shall not be inflicted except in case of a second or subsequent conviction of some crime or offence within the space of three years.

Forty-third, forty-seventh, forty-eighth and forty-ninth sections of Act 20 of 1856 to apply.

2. The provisions of the forty-third, forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856, intituled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," shall extend and apply to all cases of convictions under this Act.

Solicitor-General and Crown Prosecutor to have same powers as Attorney-General.

3. The powers by this Act conferred upon the Attorney-General may be exercised by the Solicitor-General and the Crown Prosecutor within their respective jurisdictions.

Acts 12 of 1860, & 17 of 1867, not affected.

4. Nothing herein contained shall be taken to affect the provisions of the Acts Nos. 12 of 1860, and 17 of 1867, intituled respectively "An Act for increasing the jurisdiction of the Courts of Resident Magistrate in Criminal Cases, in which the persons accused admit their guilt," and "An Act to amend the Criminal Law in regard to Thefts of Stock." Provided that the Resident Magistrate may punish any prisoner convicted under Act 12 of 1860 by fine not exceeding one hundred pounds or by imprisonment with or without hard labour for any period not exceeding two years, or by corporal punishment not exceeding thirty-six lashes, or by both such fine and such imprisonment or both by such imprisonment and corporal punishment.

Magistrate may impose fine of £100 or imprisonment of 2 years, or 36 lashes.

Jurisdiction extended in civil cases.

5. Notwithstanding anything contained in the first, second, and fourth sub-sections of the eighth section of the Act No. 20 of 1856, entitled "An Act for Amending and Consolidating the Laws relative to the Courts of Resident Magistrates," or in the second section of the Act No. 21 of 1876, entitled "An Act to Amend the Law relating to the Jurisdiction and Powers of Resident

Magistrates," and also notwithstanding the provisions of any rule, order, or regulation of any such Courts, or of any other Act of Parliament contrary to or inconsistent with the provisions of this section, the jurisdiction of every Resident Magistrate is hereby extended

No. 43—1885.

- (a) To all cases founded upon any bill of exchange, promissory note, good-fors, or other written acknowledgment of debt commonly called a liquid document, in which the sum demanded shall not exceed two hundred and fifty pounds sterling.
- (b) To all cases commonly called illiquid for the recovery of the price of any merchandize, goods, or other movable property, when the amount demanded shall not exceed one hundred pounds sterling.

Provided that as often as any action or suit shall be brought upon any liquid document for any sum exceeding one hundred pounds, as aforesaid, the Resident Magistrate shall have jurisdiction to try any plea of set-off or compensation, or any cross case or claim in reconvention not exceeding the amount demanded by the plaintiff in his summons, whether the plaintiff shall or shall not succeed in proving the amount so demanded to be due.

6. All and sundry the provisions of the third section of Act No. 21 of 1876, with regard to cases founded upon certain written acknowledgments of debt shall extend and apply and are hereby extended and applied to all cases, liquid and illiquid, in which the sum, thing, matter, debt, or damage demanded or in dispute shall exceed in amount or value the sum of forty pounds sterling: Provided, however, that in regard to liquid cases which shall be removed into any superior Court under the said section, the return day of the summons shall not be the date of the order of removal, but such convenient day, being a day on which such superior Court shall sit for the hearing of provisional cases, as the Magistrate shall in such order fix and appoint.

Provisions of Section 3 of Act 21 of 1876 to apply save as to return day of summons.

7. Where the judgment of any Court of Resident Magistrate in any civil case shall be appealed from or brought under review by proceedings under Rule 190 of the Rules of the Supreme Court, the Magistrate by whom such judgment was granted shall deliver to the Clerk of the Court, for transmission to the Registrar of the Court for hearing the appeal or review, a statement of the facts which he shall find to have been proved, and his reasons for the judgment pronounced.

In Cases of appeal, or review, Magistrate to forward statement of facts and reasons.

8. From and after the taking effect of this Act, no person in any district where not less than two attorneys are in practice, shall be admitted and enrolled as an agent in the Court of any Resident Magistrate, anything in the thirty-sixth section of the Act No. 20, 1856, notwithstanding, provided that all agents heretofore admitted and enrolled as agents shall continue as such, as if this Act had not been passed. (1)

Enrolled agents.

¹ But see Act 31, 1886.

No. 44—1885.

Repeal of sections
2 and 3 of Ordinance
13 of 1874 of Griqua-
land West.
Short title.

9. The second and third sections of the Ordinance of Griqualand West, numbered 13 of 1874, are hereby repealed.

10. This Act may be cited as “The Magistrates’ Jurisdiction Act, 1885.”

No. 44—1885.]

[August 11, 1885.]

ACT

To Amend the Law regulating the Sale of Intoxicating Liquors. ⁽¹⁾

Preamble

WHEREAS it is expedient in certain respects to amend the provisions of the law regulating the sale of intoxicating liquors: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Meaning of words
“said Act” and parts
repealed.

1. For the purposes of this Act the words “the said Act” shall be taken to mean the “Liquor Licensing Act, 1883”; and so much of the thirty-ninth section of the said Act and of the second schedule thereto as relates to the granting of Sunday privileges, and so much of the provisions of the said Act as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Exemption from
operation of the Act.

2. The second section of the said Act, providing for certain exemptions from the operation of the Act, shall be read and construed as if the following had been inserted and formed a part thereof:

(7) Any person appointed by the President of the Legislative Council and the Speaker of the House of Assembly, as caterer of the refreshment rooms of the Houses of Parliament, who shall sell any spirituous or other liquors, subject to such rules and conditions as may be laid down by the Joint Refreshment Room Committee of the Council and Assembly respectively.

3. [Repealed by Act 25, 1891.]

All club licences
terminate on 30th
September, 1885.

4. All club licences then current shall cease and determine upon the thirtieth day of September, 1885, and in cases of licences issued for a longer period, there shall be refunded to the licensees a proportionate amount of the sums paid for or in respect of such licences; and no club licence shall be issued under the said Act, nor if issued shall be renewed, unless the applicant shall produce a certificate from the Resident Magistrate of the district, which shall be issued subject to any regulations made by the Governor, and shall state that it has been made to appear to his satisfaction that the club in respect of which a licence is sought has been established as a *bonâ fide* club, and is a fit and proper club to receive a club licence: Provided that the granting of such certificate by any

Renewals subject
to certificate by
Magistrate and regu-
lations made by Gov-
ernor.

¹ Amended by Act 25, 1891.

Resident Magistrate shall not be held or considered a bar to any enquiry as to whether any such club is or is not a *bonâ fide* club: Provided, further, that no club licence shall be granted to any diamond mining company or their employés, within the mining areas of Kimberley, De Beer's, Du Toit's Pan, or Bultfontein.

No. 44—1885.

No club licence to Diamond Mining Companies.

5. Any person who, under colour of a club licence, shall sell liquor to any person not being a member of such club; or any licensed person who shall contravene any condition of his licence, or who shall sell liquor to any person to whom he is not authorized by his licence to sell, shall be liable upon conviction to the penalties prescribed by the seventy-fifth section of the said Act.

Penalty for contravention of club licence.

6. From the nineteenth section of the said Act the word "eight" shall be expunged and the word "twenty-one" inserted instead of the said word "eight."

Amendment of Section 19.

7. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting grant to the holder of any retail licence authority to keep open his licensed house during such hours of Christmas Day or Good Friday as such court shall think fit.

Of section 39.

8. The Resident Magistrate and any two members of the Licensing Court may, either upon or without production of the licence, authorise any person whom they shall consider entitled to the benefit of any licence (other than a wholesale licence or club licence) to carry on the business in the licensed premises for the remainder of the term for which the licence was granted in any of the following cases:

Provision for carrying on business in licensed premises for remainder of term of licence, under certain circumstances.

- (1) Whenever any person to whom the licence was granted absconds or abandons the licensed premises.
- (2) If, during the currency of any licence, the holder is ejected from, or ceases to occupy, the licensed premises or his tenancy thereof is determined by effluxion of time, or by notice to quit, or by any other means except insolvency, and he neglects or refuses to transfer the licence to the person claiming to be entitled to the benefit of the licence as owner or lessor of the licensed premises.
- (3) When, in pursuance of any contract or agreement between the parties, the licensed person has agreed to transfer the licence to the person claiming to be entitled, and unjustly refuses or neglects to do so.
- (4) When any licensed person (not being the owner or lessor of the licensed premises) becomes personally disqualified, or has his licence forfeited, and such owner or lessor has not been privy to, nor a consenting party to, the act or default of his tenant, and has the legal right to eject the tenant from such premises, or such tenant agrees to vacate the licensed premises:

Provided that (except in any cases where the licensed person shall have absconded) the licensed person shall have served upon him

No. 44—1885.

notice in writing of the intention to apply for the authority sought, stating the grounds upon which the application is made, and the time and place where it will be considered, at least two days before the time therein fixed.

Transfer of licences.

9. In any case in which the holder of any licence who shall not be the owner of the licensed premises shall make application under the said Act for the removal of his licence from the licensed premises to any other premises or for the transfer or temporary transfer of the licence from such holder to any other person, such application shall not be considered unless proof be given that at least two days' notice in writing has been given to the owner of the premises or lessor of the applicant when the lessor is not the owner, stating the nature of the intended application, and the time and place when it will be considered.

Licence for Regimental Canteen upon certificate of Commanding Officer of certain defence forces.

10. Upon application and upon production of a certificate signed by any field-officer commanding in either the Cape Mounted Riflemen or the Cape Infantry, it shall be lawful for any Resident Magistrate without claiming payment of any sum of money, to grant to the applicant producing such certificate a licence to be called a regimental canteen licence, and thereupon the person applying shall be entitled and authorised at any time or place during the period specified in such certificate to sell in any quantity any intoxicating liquors to any member of the force in which the said field-officer holds command, but to no other person whatsoever; provided that every certificate shall specify and set forth

Details of certificate.

- (1) The name of the applicant;
- (2) That the applicant is a fit and proper person to receive and hold the licence required;
- (3) The period during which the licence is recommended to be granted to the applicant;

Penalty for sale to person not member of force.

and provided, further, that any person holding such regimental canteen licence who shall sell intoxicating liquor to any person not being a member of the said force, shall be liable on conviction to the penalties prescribed in the seventy-fifth section of the said Act as though he were convicted of dealing in or disposing of intoxicating liquors without a licence. Any such regimental canteen licence may at any time be cancelled by the Resident Magistrate on the recommendation of such field-officer as aforesaid.

Manager of licensed business subject to same penalties as holder of licence.

11. Any person who shall at any time be lawfully managing, superintending or conducting the business of the holder of any licence under the said Act or this Act shall be subject and liable to the same duties, obligations and penalties as such holder: provided that nothing herein contained shall be taken to relieve such holder from any duties, obligations or penalties to which he may by law be subject or liable.

Wards in Cape Town

12. For the purposes of the twenty-third section of the said Act the several districts of the Cape Town Municipality, defined in pursuance of the fifth section of the Cape Town Municipality Act,

1882, shall be deemed and taken to be wards of the said municipality.

No. 46—1885.

13. [Repealed by Act 25, 1891, § 27.]

14. Notwithstanding anything contained in this Act, any licensed person who shall have been granted Sunday privileges, and shall have paid the sum prescribed by the said Act in respect thereof, shall be entitled to such privileges during the currency of his licence.

Sunday privileges to be continued during currency of existing licences.

15. This Act shall be read as one with the "Liquor Licensing Act, 1883," and may be cited as the Liquor Licensing Act Amendment Act, 1885."

Title.

No. 45—1885.]

[August 11, 1885.

Act to apply a Sum of Money for the Service for the Year ending the 30th day of June, 1886.

[Spent.]

No. 46—1885.]

[August 14, 1885.

ACT

To Facilitate the Removal of Wrecks obstructing Navigation, and to amend in certain respects the Port Regulations enacted by Act No. 16 of 1857. ⁽¹⁾

WHEREAS it is desirable to amend the law relating to the removal of ships or vessels or the hulls or remains of ships or vessels stranded or abandoned in harbours or tidal waters, and also to amend the law relating to the recovery and disposal of anchors and chains or cables parted with by vessels within harbours or tidal waters: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The Ordinance No. 1 of 1847, intituled an Ordinance for removing vessels stranded in the Ports and Harbours of this Colony, and the Stranded and Sunken Vessels Act No. 21 of 1872, and the thirty-second, thirty-third, thirty-fourth, and thirty-fifth sections of Act No. 16 of 1857, together with the schedule B to the said Act, shall be and the same are hereby repealed.

Laws repealed.

2. In this Act,

The term "harbour" includes harbours and ports properly so-called, whether natural or artificial, roadsteads and anchorages of every description, estuaries, navigable rivers, piers, jetties, and other works, in or at which ships or vessels can obtain shelter or ship and unship goods or passengers;

Meaning of term "harbour."

¹ Extended by Proclamation No. 148 of 1887 to Port St John's.

No. 46--1885

"Tidal water."

"Harbour authority."

The term "tidal water" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbour.

The term "harbour authority" means

- (a) At Port Elizabeth—the Port Elizabeth Harbour Board, and in respect of all other harbours or tidal waters
- (b) The port captain, in case there be such an officer, having authority over the place where any vessel is sunk, stranded, or abandoned;
- (c) In case there be no port captain, all persons or bodies of persons corporate or incorporate entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or protecting any harbour, or of managing, protecting, or regulating the navigation of any tidal water, and
- (d) In case there be no port captain, or person, or body as aforesaid, the Civil Commissioner having authority over the territorial waters washing the division in which he is Civil Commissioner.

Power of harbour authority in respect of vessel sunk, &c., and dangerous to navigation.

3. When any vessel is sunk, stranded or abandoned in any harbour, tidal or water, or in or near any approach thereto, in such manner as in the opinion of the harbour authority to be or likely to become an obstruction or danger to navigation in that harbour or water or in any approach thereto, it shall and may be lawful for such harbour authority to take possession of and raise, remove, or destroy or cause to be taken possession of, raised, removed, or destroyed, the whole or any part of the said vessel and to light or buoy, or cause to be lighted or buoyed any such vessel or part until the raising, removal, or destruction thereof, and to sell, or cause to be sold, in such manner as may be thought fit any vessel or part so raised or removed, and also any other property recovered in the exercise of the powers conferred by this Act, and out of the proceeds to re-imburse such harbour authority for the expenses incurred under this Act including the expenses of sale, and to hold the surplus, if any, of such proceeds in trust for the persons entitled thereto: Provided as follows:

Power of sale.

Notice of sale.

Owner may claim delivery in payment of expenses.

Interested person may give notice of intention to raise, &c., sunk vessel.

- (1) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, a sale shall not be made under this Act, until at least seven days' notice of the intended sale has been given by advertisement in some local newspaper circulating in or near the district.
- (2) At any time before any property is sold under this Act, the owner thereof shall be entitled to have the same delivered to him on making payment of the expenditure incurred by the said harbour authority.

4. At any time after the said harbour authority shall have taken possession of any vessel which as is mentioned in the last preceding

section shall have been sunk, stranded, or abandoned, the owner, master, or agent of, or other person interested in the said vessel, may give notice to such harbour authority, of his intention forthwith to raise and remove, or to complete the raising or removal of the said vessel, and meanwhile to light or buoy her until so completely raised or removed, and thereupon if such owner, master, agent, or other person shall forthwith pay to such harbour authority the amount of expenses incurred by such authority, and give security to such harbour authority in such amount and with such surety or sureties as the said harbour authority shall deem sufficient, conditioned upon the proper lighting, buoying, and raising, or removal of the sunk, stranded, or abandoned vessel within such time as shall be appointed and determined by the harbour authority receiving such security, the powers hereinbefore conferred upon such authority shall cease unless the said owner, master, agent, or other person shall fail to effect the proper lighting, buoying, raising or removal of the said vessel within the time so appointed and determined by such harbour authority, but in the event of such failure the powers conferred by this Act shall revive and the amount of such security shall immediately become payable.

5. The provisions of this Act shall apply to every article or thing, or collection of things being or forming part of the tackle, equipments, stores, or ballast of a vessel in the same manner as if it were included in the term "vessel," and for the purposes of this Act any proceeds of sale arising from a vessel or any property recovered therefrom shall be regarded as a common fund.

6. Whenever the proceeds of such sale of any vessel as is in the third section of this Act provided for shall fail to meet the expenses mentioned in the said section, the Treasurer of this Colony shall make payment of the amount of such deficiency out of the Colonial Treasury upon satisfactory proof that the deficiency arises upon reasonable expenses incurred in and about the lighting, buoying, raising or removal of such vessel, or in and about the sale thereof.

7. Every harbour authority is hereby empowered and required to use his utmost endeavours to recover as speedily as possible all anchors, chains or cables which may have been parted with by merchant vessels riding at anchor in the harbour or tidal water in respect of which such harbour authority has power, and to retain possession of the same until the party rightfully claiming the same pay to him, or give security to his satisfaction, for the immediate payment of the amount of salvage due for the recovery thereof, in conformity with a scale of rates to be from time to time fixed or appointed by the Governor; and no person, except such harbour authority, or the master of any such vessel as aforesaid, or any person duly authorised by either of them, or acting in performance of any contract entered into with any such harbour authority, may attempt to perform such service, under a penalty not exceeding ten pounds for each offence: Provided, always, that the master of any

No. 46—1885.

Security to be given.

Powers of harbour authority stayed pending due and proper raising, &c., of vessel by interested person.

Scope of provisions of Act.

Proceeds of sale a common fund.

Deficiency of proceeds to meet reasonable expenses paid by Colonial Treasury

Powers of harbour authority as to anchors, &c., lost in harbour, &c.

Salvage how calculated.

Penalty on unauthorised person for attempting to recover anchors, &c.

No. 46—1885

Master of vessel may recover anchor, &c., within five days.

vessel which has parted from an anchor or chain or cable may recover the same by his own boats or any other means; and every such master shall be allowed five working days for the recovery thereof, and such harbour authority shall not, before the expiration of such period, proceed to recover any such anchor or chains or cable, except at the request of the master or his agent.

If salvage not paid notice of sale in *Gazette* of articles recovered.

8. If the salvage due in respect of any such anchors or chains or cables be not paid to the harbour authority, by or on behalf of the party claiming or owing the same, within seven days after the recovery thereof, the said harbour authority shall cause a notice to be published in the *Gazette*, notifying the recovery of such article or articles, and stating that if the salvage due on account thereof be not paid within twenty-one days from the date of the publication thereof the same will be sold.

Sale of articles recovered to meet expenses of harbour authority.

9. If the salvage, together with all necessary expenses incurred, be not paid within the time prescribed in such notice, the harbour authority may either cause such article or articles to be sold by public auction to the highest bidder, or by private sale or tender dispose of the same upon such terms as he may deem to be most advantageous and profitable, and the proceeds of every such sale shall be applied in the following order, that is to say, to the payment of customs dues, if any, of charges of sale and other necessary expenses, and of salvage. The surplus, if any, shall be paid into the Colonial Treasury for the use of the proprietors of the articles or their agents, duly authorised; provided such surplus be claimed within one year after the date of sale, after which time any such surplus shall no longer be recoverable from the Colonial Treasury.

Surplus recoverable from Treasury within one year.

Payment of reasonable deficiency after sale by Colonial Treasury, subject to certain restrictions.

10. If the proceeds of any sale effected under the provisions of the last preceding section be not sufficient after payment of the necessary charges and expenses to defray the salvage due in respect thereof, the Treasurer of the Colony shall pay out of the Colonial Treasury to the harbour authority the amount of salvage due, or such portion thereof as such proceeds as aforesaid may not be adequate to cover, and in all cases where proper search has been made by any harbour authority for anchors, chains or cables or other articles or things whatsoever which might obstruct the anchorage ground, the said Treasurer may pay out of the Colonial Treasury such sum as may to him seem reasonable payment for the cost and expense of such search: Provided, however, that no portion shall be claimable from the Colonial Treasury of any charges or expenses incurred in and about recovering or searching for any of the abovementioned articles or things over and above the charges or expenses incident to three days search in any particular case, unless the sanction of the Governor shall first have been obtained to the extension of the said search for such period as he shall deem fit.

No search for more than 3 days without Governor's sanction paid for.

Power to delegate by contract powers under this Act.

11. The exercise of any of the powers by this Act conferred upon harbour authorities in and about the lighting, buoying,

raising, removal and destruction of vessels sunk, stranded or abandoned, and in and about the recovery of and searching for anchors, chains, cables, or other articles or things, may be by any harbour authority lawfully delegated by contract to any person upon such terms as shall seem reasonable, and upon the execution of any such contract the contractor shall be and is hereby authorised to exercise the said powers, and any sum of money paid to or consideration received by such contractor under his contract with such harbour authority shall be deemed for all the purposes of this Act to be an expense incurred in and about the lighting, buoys, raising, removal or destruction of such vessels, or the recovery of such anchors or cables: Provided, however, that no such contractor shall be entitled to claim from the Treasurer of the Colony any sum out of the Colonial Treasury over and above the amount which such harbour authority would be entitled to claim in respect of the matter contracted for by such contractor.

No. 1—1886.

12. Nothing contained in the thirty-sixth section of Act No. 16 of 1857 shall be deemed to apply to any sale or contract effected under the provisions of this Act.

Sale or contract under this Act not limited by Section 36 of Act No. 16 of 1857.

13. The proclaimed limits of any harbour at the date of the passing of this Act shall continue to be the limits of such harbour for the purposes of this Act, but the Governor, by proclamation from time to time, may declare any harbour or tidal water to be, at and from the date of such proclamation, a harbour or tidal water within the meaning of this Act, and may, at and from the date of any proclamation to that effect, alter the proclaimed limits or fix and define the limits of any harbour or tidal water.

Limits of harbours and tidal waters.

14. This Act may be cited for all purposes as the "Wrecks Removal Amendment Act, 1885."

Short title.

No. 1—1886.]

[April 23, 1886.]

ACT

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

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

Preamble.

1. To the fourth section of the Act No. 1 of 1885 there shall be added, at the end thereof, the words following, that is to say: "And the value of such debentures as well as the interest thereon

4th Section of Act 1 of 1885 amended by making debentures therein authorised chargeable to the general revenue.

- No. 4—1886. shall in like manner be chargeable, and are hereby charged to the general revenues of the Colony," and such section shall henceforth be read as if such additional words had originally been included therein.
- Short title. 2. This Act may be cited as the "Kimberley Railway Extension Amendment Act, 1886."

No. 2—1886.]

[May 28, 1886.

Act to Amend the Act No. 32 of 1879, by Providing for a Reduction in the Annual Salaries of the Officers mentioned in the Seventh Section of Act No. 1 of 1872, known as "The Constitution Ordinance Amendment Act, 1872."

[Repealed by Act 28, 1887.]

No. 3—1886.]

[May 28, 1886.

For Altering certain Rates of Postage payable in the Colony of the Cape of Good Hope.

[Repealed by Act 35, 1892.]

No. 4—1886.]

[May 28, 1886.

ACT

To Legalise the Deposit of Moneys in Post Office Savings Banks by certain Societies, Clubs or Funds, and to Repeal the Savings Banks Act, 1875. ⁽¹⁾

Preamble. WHEREAS it is expedient to legalise the deposit of moneys in the Post Office Savings Bank by certain societies, clubs or funds, and to render applicable to such deposits the provisions of "The Post Office Savings Banks Act, 1883": Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

- Deposits by certain societies, clubs, or funds. 1. ⁽²⁾ The trustees, treasurer or other responsible officer or officers of any society, club or fund, approved of by the Colonial Secretary, may deposit the funds of such society, club or fund, without restriction as to the maximum amount, in the Post Office Savings Bank: Provided that a copy of the rules be forwarded to the Postmaster-General with the names and addresses of such trustees, treasurer or other responsible officer or officers.
- Declaration to be signed. 2. One trustee or the treasurer, or one other responsible officer of any such society, club or fund, shall sign, on behalf of such society, club or fund, a declaration as nearly as may be in the terms set forth in the schedule D annexed to the Act No. 6 of 1883.

¹ See Act 5, 1889.

² See Act 5, 1889, § 11.

3. The "Savings Banks Act, 1875," is hereby repealed, and all balances of deposits received under the authority of that Act and transferred to the Post Office Savings Bank shall hereafter be administered by the Postmaster-General under the provisions of "The Post Office Savings Banks Act, 1883."

No. 5—1886.

Repeal of Savings Banks Act, 1875.

4. This Act shall be read as one with "The Post Office Savings Banks Act, 1883," and may be cited for all purposes as "The Post Office Savings Banks Act Amendment Act, 1886."

Effect and short title of Act.

No. 5—1886.]

[June 11, 1886.]

ACT

To constitute the District of Prieska a Fiscal Division.

WHEREAS it is expedient to constitute the district of Prieska a Fiscal Division, and to enable such division to have and possess its own Divisional Council without altering or affecting the Electoral Division of which the said district now forms part: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. So much of the Ordinance for constituting a Parliament in this Colony and commonly called "The Constitution Ordinance," and so much of any other Ordinance or Act as may be repugnant to or inconsistent with this Act, are hereby repealed.

Repeal of repugnant laws.

2. The District of Prieska shall from and after the date of any proclamation to be issued for that purpose by the Governor, become and be a division of the Colony for fiscal purposes.

District of Prieska may be proclaimed fiscal division.

3. The proclamation in the last section mentioned shall define and proclaim the boundaries of the said division, and the boundaries so defined and proclaimed shall become and be the boundaries of the said division.

Boundaries to be defined.

4. Upon the issue of the said proclamation the Divisional Council for the time being of every division to which any portion of the said newly constituted and defined division of Prieska belonged shall stand dissolved, and the provisions of Act No. (1) 4 of 1865, entitled "An Act to consolidate and amend the several Acts relating to Divisional Councils," and of every other Act relating to Divisional Councils, shall apply to the said new divisions defined and bounded as aforesaid, and to the division or divisions whereof portions shall have constituted or partly constituted the said new division of Prieska, which portion shall for all fiscal and other purposes thenceforth form part of the new division of Prieska: And the registered voters for members of Parliament for any of the said divisions respectively who shall be resident within the limits of the new division of Prieska, shall be entitled to vote

Divisional councils or divisions affected by any such proclamation.

¹ Repealed by Act 40, 1889.

No. 6 - 1886.

at any election for members of the Divisional Council of the said new division of Prieska.

Provisions of Act 24 of 1858 to apply to Division of Prieska.

5. The several provisions of the Act No. 24 of 1858, entitled "An Act to regulate the respective rights of certain Divisions in regard to certain Road Rates," shall, *mutatis mutandis*, as soon as the said proclamation shall have been issued, apply to the new division of Prieska, and to the division or divisions to which such newly constituted division belonged before the issue of such proclamation.

No change of electoral divisions.

6. Notwithstanding the creation of such new division for fiscal and other purposes, such new division and every part thereof shall continue, for electoral purposes, to belong to and form part of whatever Electoral Division the said new division or any part thereof theretofore belonged to, precisely as if this Act had not been passed and no such proclamation as aforesaid had been issued.

Short title.

7. This Act may be cited as "The Prieska Fiscal Division Act, 1886."

No. 6—1886.]

[June 11, 1886.]

ACT

To Add to and Amend the Provisions of "The Vineyards Protection Act, (1) 1880."

Preamble.

WHEREAS it is desirable to make further and more effectual provision to prevent the introduction and spread of the insect known as *Phylloxera Vastatrix*, and to amend in certain respects the law relating thereto: Be it therefore enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Owner, &c., of vineyards & gardens to notify to Field-cornet the appearance of disease or decay therein.

1. Every owner, occupier, or person in charge of the culture or care of a vineyard, nursery garden, or any land or place wherein vines may be, shall notify immediately to the field-cornet of any ward wherein such vineyard, nursery, garden, land or place, shall be situate, every case of decay or disease therein other than ordinary and well known cases of vine decay or disease, and every symptom of such decay or disease which may show itself amongst the vines in such vineyard, nursery, garden, land or place.

Course to be pursued by Field-cornet on receiving such notification.

2. On receipt of such notification the said Field-cornet shall call to his assistance any two farmers, being landowners, not having any pecuniary interest in the subject of the inquiry, who are hereby authorised and required, when so called upon, to render such assistance, and thereupon an inquiry shall be held into the nature of the said decay or disease, and if it shall appear to a majority of the said body, consisting of the said field-cornet and farmers. that

there is good cause to suspect that such decay or disease is due to the existence of the said insect known as Phylloxera Vastatrix, and that it is necessary to take immediate steps to destroy any vines, plants, or other things infected thereby, or any vines, plants, or other things, in the neighbourhood of such infection, or to do any other act which may be necessary to prevent the spread of the ravages of such insect, the said Field-cornet shall be at liberty, upon being authorised thereto by the Government, to proceed accordingly, provided he shall first serve a written notice of his intention upon the owner or person in charge of the culture or care of the said decayed or diseased vines, plants, or things.

No. 6—1886.

3. In case the said decay, disease, or symptoms thereof shall not appear to the said Field-cornet or to the majority of the said body to be such as to require urgent and exceptional measures, the said Field-cornet shall forthwith give notice to the Under Colonial Secretary of the nature and extent of the said decay or disease, and the general result of his inquiries for the purpose, if necessary, of further inquiry and of enabling the services of experts to be obtained.

Where no urgency appears report to be made from Field-cornet to Colonial Secretary.

4. If it shall be necessary to destroy any vines, plants, or things whatsoever for the purposes of preventing the spread of the said insect or to declare any area to be so infected that the removal therefrom of any grapes, vines, plants, or agricultural or horticultural products or other matters or things whatsoever should be prohibited, the Governor is hereby authorised as occasion may require, to grant reasonable compensation as to him shall seem fit to any person for any loss sustained by him by reason of such destruction or prohibition, not to exceed the value of the net yield for two years, calculated at an average of the last three crops of the vines eradicated or destroyed to prevent the spread of the said insect, together with such reasonable sum as to the Governor may seem fit to cover any loss sustained by reason of any prohibition against the removal of any farm or other produce or any other matter or thing from the property of such person under any proclamation issued for the prevention of the spread of the said insect: Provided that under no circumstances shall any compensation be granted to any person who may have contravened the provisions of this Act, or of Act No. 27 of 1880, or who may have introduced upon his property grapes, vines, plants or agricultural or horticultural products, or any other matter or thing forbidden to be imported by Act No. 27 of 1880.

In case of destruction of vines, &c., Governor may grant reasonable compensation to owner.

No compensation to persons who have contravened this Act or Act 27 of 1880.

5. The fourth section of Act No. 27 of 1880 is hereby repealed and the following substituted: In case the said Phylloxera Vastatrix shall at any time make, or shall be suspected to have made its appearance in any vineyard in this Colony, it shall be lawful for the Governor to take such steps as he may deem expedient to have the vines upon which such insects shall have appeared, or be supposed to have appeared, rooted up and

Section 4 of such Act repealed and present one substituted.

No. 6—1886.

destroyed, and to use all such other means as he may be advised for the purpose of eradicating such insect, and preventing the spread of disease through its ravages, and for this purpose the Governor is authorised in addition to the above and all other

Fresh powers given
to Governor.

necessary powers:—

- (a) To declare any area to be an area infected by the said insect, such area to comprise, first, vineyard, nurseries, gardens, land, and other places, known to be infected; secondly, vineyards, nurseries, gardens, land, and other places in the neighbourhood of infected vineyards, nurseries, gardens, land, or places; and thirdly, a protecting zone.
- (b) To take measures to disinfect the soil within such area.
- (c) To prohibit all fresh planting of vines for such period as to him may seem fit.
- (d) To give directions for the preventive treatment of the said protecting zone.
- (e) To prohibit the removal from any such area of any grapes, vines, or cuttings, or portions of vines, trees, plants' tubers, roots, bulbs, or any portions thereof respectively, or any soil, leaves, or objects or things likely to spread the said insect.
- (f) To take such measures generally as may be requisite to prevent the further introduction or spread of the said disease.

Penalties for con-
travention of this
Act.

6. Any person failing to give the notification in the first section required or any person obstructing or interfering with any Field-cornet or farmer in the said section mentioned in making any inspection or inquiry, or any person contravening or disobeying any proclamation, order, or direction of the Governor issued, made, or given in pursuance of this Act shall, on conviction, be liable to the penalty provided by the fifth section of Act No. 27 of 1880.

Recoverable in
Magistrate's Court.

7. All penalties under this Act and under Act No. 27 of 1880 shall be recoverable in the Court of the Resident Magistrate of the district.

Penalty for trans-
porting or removing
living Phylloxera.

8. Any person wilfully transporting or removing in a living state the said insect, its eggs, or larvæ, from any place to any other place, except for scientific purposes under a written order of the Under Colonial Secretary, shall be liable, on conviction, to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding three months, unless such fine be sooner paid, or to such imprisonment without the option of a fine.

Burden of proof
on persons receiving
grapes, &c., &c., in
contravention of Act
27 of 1880.

9. If any grapes, vines, or cuttings, or portions of vines, trees, plants, tubers, roots, bulbs, or any portions thereof respectively, or any articles or things whatsoever, shall be imported or introduced into this Colony in contravention of the provisions of the first section of Act No. 27 of 1880, it shall be sufficient *primâ facie*

proof of such importation or introduction by the person to whom they are addressed to give proof of such address, and thereupon the onus shall be upon the addressee to show that he did not order, import, or direct the importation: Provided that in any prosecution to which this section shall be applicable it shall be lawful for the defendant or accused person to give his own evidence in the case upon oath.

No. 9—1886.

10. The provision of the fourth section of this Act shall be in force until the 30th June, 1887, and no longer.

Fourth section in force till 30th June, 1887.

11. This Act may be cited as "The Vineyards Protection Act Amendment Act, 1886."

Short title.

No. 7—1886.]

[July 6, 1886.]

ACT

To Repeal the Guns and Ammunition Trade Ordinance No. 29 of 1874, of Griqualand West.

WHEREAS it is desirable to repeal the Ordinance No. 29 of 1874 of Griqualand West, entitled an "Ordinance to Regulate the Trade in Guns and Ammunition in the Province of Griqualand West, and the conveyance of Guns and Ammunition through the said Province to territories beyond its borders:" Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The Ordinance in the preamble of this Act mentioned is hereby repealed.

Ordinance 29 of 1874 of Griqualand West repealed.

No. 8—1886.]

[July 6, 1886.]

Act to Define "Railway Materials" for the purposes of "The Customs Tariff Amendment Act, 1884."

[Repealed by Act 1, 1889.]

No. 9—1886.]

[July 6, 1886.]

ACT

To Alter and Amend Act 20 of 1882.

WHEREAS the Club existing under Act 20 of 1882, known as the South African Jockey Club, has amalgamated with another Club, also connected with the racing of horses, called the South African Turf Club, and it is desirable that the latter name should be the one by which the Club under the said Act should in future be known: Be it enacted by the Governor of the Colony of the

Preamble.

No. 10—1886.

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

Land granted to South African Jockey Club by Act No. 20 of 1882, to be vested in South African Turf Club.

The provisions of Act No. 20 of 1882 to apply to the South African Turf Club instead of to the South African Jockey Club.

1. The grant of the piece of land made by the Governor to the South African Jockey Club, under the second section of Act 20 of 1882, is hereby vested in the South African Turf Club, for all and several the purposes of said Act.

2. All and singular the provisions of the Act No. 20 of 1882, and the rights, privileges, duties, and liabilities conferred, assigned, and created thereby shall apply to the South African Turf Club as if that had been the club to which the said Act had been declared to apply under the twenty-sixth section thereof, and the South African Turf Club and the committee for the time being of the said club and the chairman thereof, are hereby vested with all the rights and powers and charged with all the duties and liabilities of, and are substituted for, the said South African Jockey Club and the committee and chairman thereof.

No. 10—1886.]

[July 6, 1886.]

ACT

To Declare Her Majesty's Appellate Jurisdiction under the "Kimberley Borough Amendment Act," No. 30 of 1884.

Preamble.

WHEREAS it is desirable to afford to the parties interested in the inquiry mentioned in the sixth section in the "Kimberley Borough Amendment Act, 1884," and to all Her Majesty's subjects, the right of appeal to Her Majesty the Queen in Council: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Appeals to Privy Council.

1. Any limitation of the right of appeal now existing by the law of this Colony, contained in section six of the "Kimberley Borough Amendment Act, 1884," is hereby expunged, and the said section shall be read as if the words "and the decision of such Court shall be final and conclusive," and the further words "and the decision of the High Court thereon shall be final and conclusive," were not contained therein.

Short title.

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

ACT

No. 11—1886.]

[July 6, 1886.]

To Amend in certain respects the "Imvani and Indwe Railway and Coal Mines Act, No. 3 of 1882." (1)

Preamble.

WHEREAS by the Act No. 3 of 1882, being the "Imvani and Indwe Railway and Coal Mines Act," the Governor was authorised to contract and agree with any individual or individuals or joint

¹ See Act 39, 1892.

stock company willing to construct a railway either from the Imvani to the Indwe Coal Fields, or from the said Coal Fields to a point at or near Putter's Kraal, or both such lines, upon certain terms and conditions mentioned in such Act: And whereas it may be expedient that such railway should not be constructed either from Imvani or from a point at or near Putter's Kraal but from some other place or point on the East London and Queen's Town Railway: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. It shall be lawful for the Governor to consent to the substitution of some other point or points on the East London and Queen's Town Railway, between Imvani and Molteno, in lieu of Imvani or Putter's Kraal, as the place or point from, or from near to which the said Indwe Coal Fields Railway line or lines shall be constructed, anything in the said Act No. 3 of 1882 to the contrary notwithstanding: And upon such consent of the Governor being given, all the provisions of such last mentioned Act shall *mutatis mutandis*, apply to the Indwe Coal Fields line or lines to be constructed under the authority of this Act.

Governor may consent to some other points than those of Imvani and Putter's Kraal as starting point of Indwe Coal Fields railway.

2. Whenever the word Indwe appears in the said Act No. 3 of 1882, or in this Act, it shall be taken to mean the Indwe Coal Fields: And for the purposes of both the said Acts such Coal Fields shall not be held to extend to a greater distance than ten miles in any direction from the entrance to the Coal Mine now being worked at Indwe.

Meaning of the word Indwe; area comprised by Indwe Coal Fields.

3. So soon as the line of railway is in a fit condition, and before the said railway is opened for traffic, the directors or proprietors for the time being shall frame terms and conditions, and a tariff of charges for the conveyance of passengers, live stock and goods, and such terms, conditions, and tariff shall be submitted to the Governor for approval, and if approved shall be published in the *Gazette* for general information: Provided always that the said terms and conditions and the rates so chargeable may from time to time be altered by the directors or proprietors with the consent of the Governor; and provided, further, that this shall not apply to any such line which may be constructed under any existing agreement.

Tariff of charges to be approved by Governor, but not to affect existing agreement.

4. This Act may be cited as the "Imvani and Indwe Railway and Coal Mines Act Amendment Act, 1886."

Short title.

2334 WITNESSES' ATTENDANCE IN NEIGHBOURING
STATES.

No. 12—1886.]

[July 6, 1886.

ACT

To Compel the Attendance, as Witnesses, of Persons residing in this Colony before the Courts of Neighbouring States and Colonies. (1)

Preamble.

WHEREAS the testimony of persons residing in this Colony is frequently required in the Courts of neighbouring States and Colonies: And whereas there exists no power to compel the attendance of such persons before the said Courts, in consequence whereof the ends of justice are sometimes defeated: And whereas it is desirable to make the attendance of such persons before such Courts compulsory: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Subpœna issued by court or neighbouring State or Colony and transmitted to any resident magistrate of the colony for service in his district, to be endorsed by resident magistrate and served by his messenger.

1. Whenever a subpœna, purporting to be issued by the proper officer of any competent Court in any neighbouring State or Colony to which this Act shall apply for the purpose of securing the attendance of any person resident in this Colony as a witness before such Court, shall be transmitted by such officer to the Resident Magistrate of the district within which the person whose attendance is so required shall be residing, it shall be the duty of the said Resident Magistrate to endorse on such subpœna his order that the same shall be served on the person therein named; and the subpœna so endorsed shall thereupon be handed to the messenger of the said Magistrate's Court, or such other person as the said Magistrate shall specially appoint for the purpose, whose duty it shall be to serve the same as soon as practicable on the person designated therein: Provided always that the necessary expenses of such service, and the necessary expenses to be incurred by the person subpœnaed in going to and returning from the Court named in such subpœna and to be incurred during his detention at the place where his evidence has to be given, according to such tariff as may from time to time be framed by the Governor, shall be transmitted to the said Resident Magistrate together with the said subpœna, and the portion of such expenses assigned to the person named in the said subpœna shall be paid to him by the officer serving the same.

Expenses of service and expenses of witness to be transmitted with the subpœna.

Penalty for non attendance of the person summoned by such subpœna and how recoverable.

2. Every person who shall have been served with a subpœna as in the previous section mentioned shall be bound to attend on the day and at the place therein named; and in case he shall fail so to do and shall also fail to prove any lawful and valid excuse for such

¹ Extended as regards the Orange Free State by Proclamation, No. 184, of 1887, to all the Native Territories, and as regards Basutoland by Proclamation, No. 186, of 1887, to all the Native Territories, and as to S. A. Republic, from 1st Oct., 1895; applied to Transkei, Tembuland, Emigrant Tembuland, Bomvanaland, Gcalekaland, Griq. East and Port St. John's by Proc. No. 398, 1895, of 30th Sept., 1895.

non-attendance, he shall be liable to a penalty not exceeding one hundred pounds sterling, which shall be recoverable in the Court of the Resident Magistrate of the district in which he shall be residing at the instance of the Attorney-General of the Colony, or the Solicitor-General and Crown Prosecutor for Griqualand West within their respective jurisdictions.

No. 13—1886.

3. The return of the person authorised to serve such subpoena, as in the first section of this Act provided, showing that such service has been duly made, and a certificate under the hand and seal of the presiding Judge or Magistrate of the Court from which the said subpoena was issued, that the person so served did not attend when called thereon and did not establish any valid or legal excuse for his default, shall be deemed sufficient proof of such person's non-attendance for the purpose of enforcing the penalty in the last preceding section mentioned.

How non-attendance of subpoenaed person to be proved.

4. No person resident in any neighbouring State or Colony to which this Act shall apply who may be summoned as a witness before any Court of this Colony and whose attendance before such Court shall be enforced by any Legislative enactment of such State or Colony shall be liable, while so attending, to be arrested upon any civil or criminal process for any debt formerly due or any offence formerly committed by him in this Colony.

No person compulsorily attending as a witness in this colony shall be liable to arrest for any debt contracted or offence committed here.

5. This Act shall take effect so far as concerns any such State or Colony as soon as the Governor shall by proclamation in the *Gazette*, declare and make known that such State or Colony has made due provision to compel the attendance as witnesses before the Courts of this Colony of persons resident in such State or Colony.

Act to take effect when reciprocal legislation passed.

6. This Act may be cited as the "Neighbouring States and Colonies Witnesses Compulsory Attendance Act, 1886."

Short title.

No. 13—1886.]

[June 18, 1886.]

ACT

To Amend in certain respects the Criminal Law and the Law of Evidence.

WHEREAS it is expedient to amend in some respects the criminal law and the law of evidence: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. "The Police Offences Act, 1882," shall be read and construed as if the word "person or" in the first sub-section of the seventh section thereof were omitted.

Section 7, Act 27 of 1882, amended.

2. Any driver or other person having the charge of any carriage or vehicle injuring any person by negligence shall upon conviction

Penalty for injuring any person by negligent driving.

No. 13—1886.

be liable to a fine not exceeding one hundred pounds sterling, or, in default of payment, to imprisonment, with or without hard labour, and with or without spare diet, for any period not exceeding two years, or to both such fine and such imprisonment.

Meaning of "imprisonment" in Section 9 Act 27 of 1882.

3. The word "imprisonment," where the same occurs for the last time in the ninth section of "The Police Offences Act, 1882," shall be taken to mean imprisonment with or without hard labour, and with or without spare diet.

Section 3 of Act 32 of 1883 amended.

4. The "Ostrich Feathers and Skins Theft Repression Act, 1883," shall be read as if all the words in the third section which follow the words "penalty not exceeding" were omitted and "one hundred pounds or to imprisonment with or without hard labour for any period not exceeding twelve months, or to both such fine and imprisonment" were inserted; and as if all the words in the fourth section which follow the words "first section of this Act mentioned" were omitted.

Resident Magistrates to have jurisdiction under Acts 32 of 1883 and 13 of 1885.

5. The Resident Magistrate of the district in which any offence against the provisions of "The Ostrich Feathers and Skins Theft Repression Act, 1883," or of "The Ostrich Feathers and Skins Theft Further Repression Act, 1885," is committed, shall have jurisdiction to impose the penalty provided in respect of such offence.

Accused person and the wife or husband competent witnesses in criminal cases.

6 (1) In any proceeding against any person for any crime or offence, such person and the wife or husband, as the case may be, of such person may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Such witness cannot refuse to answer question on ground that it may criminate himself.

7 (1) No witness who shall be examined or cross-examined in any proceeding under the last preceding section shall be excused from answering any question relevant to the issue in such proceeding on the ground that the answer thereto may criminate or tend to criminate himself.

If prisoner at preparatory examination admits previous conviction, his admission to be reduced to writing.

8. (1) As often as it shall appear at any preparatory examination that the prisoner has been previously convicted of some crime or offence, the presiding Magistrate shall inform the prisoner of the particulars of such alleged previous conviction, and shall call upon him to admit or deny that he was so previously convicted; and if the prisoner shall admit that he was so previously convicted, his admission shall be reduced to writing and subscribed by him and also by the Magistrate; and any such written admission purporting to be so made and subscribed shall be received in evidence as proof of such previous conviction before any court or tribunal upon its mere production, unless it shall be proved that such admission was not in fact duly made, or that the signatures or marks thereto are not in fact the signatures or marks of the persons whose signatures or marks they purport to be.

Such written admission to be received in evidence as proof of such previous conviction.

9. [Repealed by Act 23, 1888.]

¹ Extended by Proclamation No. 253 of 1890 to all the Native Territories.

10. (1) If it shall appear from information on oath that any person against whom any criminal proceeding has been instituted is in possession of any books of account or documents which are necessarily required in evidence in such proceeding, it shall be lawful for any Judge of the Supreme Court or the Magistrate presiding at such proceeding to issue an order, directing the officer to whom such order is addressed, to take possession of such books or documents, and to hand them over to such person as may be named in such order; and thereupon such officer may lawfully execute such order, and any person who shall resist or hinder, or shall aid, incite, or encourage any other person to resist or hinder such officer in executing the same shall, upon conviction, be liable to imprisonment with or without hard labour for any period not exceeding twelve months.

No. 14—1886.
Judge of the Supreme Court or Magistrate may order seizure of books or documents in possession of accused person in criminal proceeding.

11. This Act may be cited as "The Administration of Justice Act, 1886."

Short title.

No. 14—1886.]

[July 6, 1886.

ACT

To Authorise the London Missionary Society to pass Transfer in Freehold to the Occupants of certain Lands in Port Elizabeth.

WHEREAS by two freehold grants, both bearing date the 17th August, 1859, certain two pieces of land, situated in Port Elizabeth, measuring respectively, after certain deductions, 1 morgen 31 square roods and 128·7 square feet, and 311 square roods and 132·18 square feet, were granted to the resident missionary at Port Elizabeth, in connection with the London Missionary Society, for the time being, and to his successors in his said capacity in trust for the said society: and whereas the said two pieces of ground have been used as a location for natives of various races under the religious instruction of the said society: and whereas it is desirable to give to the several occupiers of buildings or building sites on the said pieces of land transfer in freehold of the portions of the said land heretofore respectively occupied by them free of transfer dues: and whereas the trustees of the London Missionary Society, in pursuance of a resolution of the board of directors of the said society, have granted a power of attorney, under date the 11th June, 1885, authorising and appointing the Reverend Thomas Samuel Merrington, the Rev. Nicolas Goezaar, and John Mackay, Esquire, all of Port Elizabeth, and each of them with power of substitution, to act on behalf of the said society in the Colony of the Cape of Good Hope, for the purpose of carrying out the provisions of this Act: Be it therefore enacted by the Governor

Preamble.

¹ Extended by Proclamation No. 253 of 1890 to all the Native Territories.

No. 14—1886.

Agents of the London Missionary Society authorised to sub-divide land and to allot to such occupiers such portions of land as they are entitled to occupy.

Disputes to be settled by arbitration.

Society's Agents to give occupiers transfer of lots.

Governor may remit duty.

Land transferred as provided in section 2 not to be alienated for ten years without Governor's consent.

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

1. It shall be lawful for the said Reverend Thomas Samuel Merrington, Reverend Nicolas Goezaar, and John Mackay, Esquire, or such persons as shall from time to time be appointed by the board of directors of the said London Missionary Society by a resolution in writing, signed by the chairman and secretary of the said board, or for any two of them, to cause the said two pieces of land and any other pieces of land adjoining the same, acquired or to be acquired by the London Missionary Society from the Municipal Council of Port Elizabeth in exchange for portions of the said land, or otherwise, to be surveyed by a duly qualified land surveyor and divided into lots in such manner as to allot to the respective occupiers thereof such portions of land as they are entitled to occupy under and by virtue of the customs in force in the location existing on the said pieces of land, leaving spaces for streets and thoroughfares as may be required or agreed on by the Municipal Council of Port Elizabeth; and in case there shall be any dispute as to whether any person is entitled as aforesaid to any allotment of the said land, or as to the extent of land which ought to be allotted to any occupier, such dispute shall be referred to the arbitrator and award of two arbitrators, one to be appointed by the representatives of the London Missionary Society, and one by the occupier or alleged occupier, and such arbitrators shall, before entering upon the reference, appoint an umpire, to act in case of difference of opinion between them, and the decision of such arbitrators or umpire, as the case may be, shall be final and binding on both parties, and the costs of such reference shall be borne and paid for as shall be directed in such award.

2. The person or persons appointed as aforesaid to represent the said London Missionary Society or any two of them shall, with all convenient speed, transfer to the respective occupiers of buildings or building sites in the said location such portions of land as shall have been respectively allotted to them, and the effect of such transfer shall be to vest in the respective transferees as full right and title to the portions of land respectively transferred to them as was vested in the said London Missionary Society by the said freehold grants of 17th August, 1859, or by any other deed of transfer or title deed.

3. It shall be lawful for the Governor to remit to the persons to whom any portion of the said pieces of land shall be transferred under and by virtue of the provisions of this Act all duties otherwise due and payable to Her Majesty's colonial revenue in respect of any such transfer as aforesaid.

4. In all deeds of transfer passed under the provisions of this Act, there shall be inserted a condition to the effect that the land so transferred shall not for a period of ten years from and after the taking effect of this Act be alienated or transferred to any

person unless the consent of the Governor shall have been first had and obtained: provided that nothing in this section contained shall be deemed to prevent the acquisition of any of such pieces of land by the municipal corporation of Port Elizabeth for town improvement or street purposes, and transfer thereof to the said corporation accordingly.

No. 15—1886

5. Nothing in this Act contained shall be deemed or construed to take away, alter, or affect any private rights or privileges which may at the time of the promulgation of this Act be lawfully vested in any individual occupiers of buildings or building sites on any part of the said pieces of land.

Private rights of individual occupiers not to be affected by this Act.

6. This Act may be cited for all purposes as "The London Missionary Society's Port Elizabeth Lands Act, 1886."

Short title.

No. 15—1886.]

[July 6, 1886.

ACT

To Authorise the Municipal Council of Port Elizabeth to sell certain Land reclaimed from the Baaken's River.

WHEREAS on the 10th June, 1864, a grant was made by his Excellency Sir Philip Wodehouse, the then Governor of the Colony of the Cape of Good Hope, in freehold, unto the Mayor, councillors and householders of Port Elizabeth, of an area of 8 morgen 99 square roods and 113 square feet, situate in Ward No. 1 in the town of Port Elizabeth, being portion of the Baaken's River, with the unappropriated land on the south side thereof, on condition that portion of the land thereby granted should be converted into gardens for the use of the public, by diverting the course of the said river and reclaiming the land, and that portion thereof to the value of £700 (seven hundred pounds) sterling, should be disposed of by the grantees towards defraying the expense of laying out the said gardens and for no other purpose or purposes whatsoever, it being understood that without the sanction of the Governor first had and obtained, no land beyond the said value should be disposed of: And whereas the grantees disposed of a portion of the said land to the value of £466 in terms of the said grant, which said sum has been expended on the reclamation of the said Baaken's River land, and thereafter on the 4th November, 1880, applied to His Excellency the Governor for permission to make a public park or gardens in a more suitable part of Ward No. 1 than on the land reclaimed from the Baaken's River, the same having been found by the inhabitants of that part of the town to be totally unsuitable, especially as to situation, and also for permission to dispose of such further portion of the land contained in the said grant, as might be necessary to provide funds for the above purpose, beyond the sum stipulated in the said grant, to which

Preamble.

No. 15—1886.

application His Excellency the Administrator, with the advice of the Executive Council, was pleased on the 28th December, 1880, to give his consent.

And whereas the said grantees, afterwards disposed of a further portion of the said land, to the nett value of £1,911 3s. 10d., which they intended to apply towards payment of the purchase price of a piece of ground, situate in the village of Walmer, purchased by them for the purpose of making a public park and gardens, but were on the 21st August, 1883, interdicted, at the instance of the ratepayers and residents of Ward No. 1, by an order of the Eastern Districts Court, “from spending on the Walmer ground, purchased by the grantees, any of the moneys specially set apart for the purpose of providing a park in Ward No. 1.” Whereupon the said moneys, arising from the second sale of land, were placed as a fixed deposit in the Standard Bank of South Africa (Limited), where the same still remains, with interest accumulated thereon, amounting to the sum of £2,160 1s.

And whereas it is expedient and desirable that the grantees should be empowered to dispose of the remainder of the reclaimed land, with the exception of that portion now used for storage and stable purposes, or land in lieu thereof, and to apply the proceeds arising from such sale, as well as the proceeds of the previous second sale, now on fixed deposit in the said Standard Bank, for the purpose of purchasing a piece of land elsewhere in Ward No. 1 for a public park or garden.

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

1. The said Municipal Council of Port Elizabeth shall be empowered, and are hereby authorised, to sell such portions of the remainder of the land reclaimed from the Baaken’s River (save and except that portion now used for storage and stable purposes, or land in lieu thereof, provided the same shall not exceed 200 yards in length by 50 yards in breadth) as are included in the freehold grant of the 10th June, 1864, referred to and recited in the preamble of this Bill, and as the said Municipal Council may from time to time deem expedient for that purpose.

2. The proceeds arising from such sale, as well as the proceeds arising from the previous second sale, hereinbefore referred to amounting with interest to £2,160 1s., and now on fixed deposit, in the Standard Bank of South Africa (Limited), shall be appropriated, in the first instance, towards defraying the costs of reclamation of the said land, and the costs and charges of this Bill, and incident thereto, and secondly, to the purchase of land in the said Ward No. 1 suitable for the purpose of a public park or gardens, and the enclosing and planting thereof.

3. This Act may be cited for all purposes as the “Port Elizabeth South End Park Improvement Act, 1886.”

Council authorised to sell land reclaimed from Baaken’s River

Disposal of proceeds of sale.

Short title.

No. 16—1886]

[June 18, 1886.

ACT

To Authorise the Conversion into Cape of Good Hope Consolidated Stock, for the redemption of which no Sinking Fund shall be required, of securities for the redemption of which a Sinking Fund is now authorised. (1)

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

Preamble.

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

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

No. 17—1886.]

[June 26, 1886.

ACT

To amend the Law relating to Appeals and the Duties of the Sheriff, and to make more convenient provision regarding Legal Process in certain cases.

WHEREAS it is expedient to amend the law relating to appeals and to the duties of the Sheriff, and to make more convenient provision regarding legal process in certain cases: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the passing of this Act the Court of Appeal shall cease to exist, and all and singular the powers, duties and authorities conferred upon the said Court of Appeal by Act No. 5 of 1879, Act No. 40 of 1882, or any other Act of Parliament, shall be vested in the Supreme Court of the Colony.

Supreme Court to be Court of Appeal.

2. Every appeal to the Supreme Court against any judgment of the Eastern Districts Court, High Court of Griqualand, or any

Quorum of Judges.

¹ See Act 24, 1889, § 2.

No. 17—1886.

Circuit Court, shall be heard before not less than three judges, one of whom shall be the Chief Justice of the Colony, and two of them shall be Puisne Judges specially assigned to the Supreme Court: Provided that it shall be lawful for the Judge President of the Eastern Districts Court or any other judge assigned to that court, and for the Judge President of the High Court of Griqualand, or any other judge assigned to that court, to take part in the determination of any cause, civil or criminal, which shall be brought in appeal before the Supreme Court.

Puisne Judges assigned to Supreme Court to remain so.

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

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

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

Appeals in criminal cases—how to be heard.

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

What security Sheriff may demand before seizing disputed property.

6. The Sheriff of the Colony or his deputy shall not be bound to accept the indemnity offered to him by any plaintiff under and by virtue of the last proviso of the eighth section of Ordinance No. 37 of 1828, unless he shall be reasonably satisfied as to the sufficiency of such indemnity, failing which he shall be entitled, before seizing the property in the said proviso mentioned, to require sufficient security from the plaintiff or his attorney.

How movables seized by Sheriff are to be sold.

7. The tenth section of Ordinance No. 37 of 1828 is hereby repealed, and in lieu thereof it is enacted that where any movable property shall be taken by the said Sheriff or his deputy, in execution of any process of the Supreme Court, Eastern Districts Court, High Court of Griqualand or any Circuit Court, such property shall be sold by public auction by or in the presence of the Sheriff or his deputy, after the advertisement thereof shall have been twice made in some local newspaper or in the *Government Gazette*, and after the expiration of fourteen days from the time of seizure thereof.

Action against Sheriff to be brought within six months.

8. No action shall be brought against the Sheriff or any Deputy Sheriff for anything done or omitted to be done in the execution of his office unless commenced within six calendar months after the act committed or omitted to be done.

9. The Sheriff of the Colony, the Deputy Sheriff for Albany, or the Deputy Sheriff for Kimberley, shall, forthwith, upon receiving any moneys as and for the proceeds of any immovable property sold in execution of the judgment of any competent court, lodge such moneys with the Civil Commissioner of the Cape, Albany, or Kimberley, as the case may be. Whenever such moneys lodged as aforesaid shall be required for distribution, the Sheriff or his Deputy aforesaid shall pay the same to those entitled thereto by a written order addressed to such Civil Commissioner, requesting him to pay the sum therein mentioned to the person or persons thus entitled, or his or their order, and such Civil Commissioner shall thereupon make such payment accordingly.
10. The 328th rule of court as amended by the 377th rule of court shall be applicable to the High Court of Griqualand, the word Kimberley being substituted for Cape Town.
11. Unless by order of any judge to whom application shall be made by any petitioner for the surrender of his estate, execution against his property shall not be stayed under and by virtue of the second section of Act No. 38 of 1884, for a longer period than fourteen days from the date of publication of the notice in the said section mentioned.
12. The process mentioned in the tenth section of schedule B of Act No 20 of 1856 may, in case neither the defendant nor any one of his household can be found after diligent search, be served by leaving the same at his usual or last known dwelling-house or place of business.
13. The judges of the Supreme Court may (by any rules or orders to be made in like manner as by law provided for the making of general rules or orders of the Supreme Court), make rules or orders respecting the manner and form of proceeding in civil and criminal cases before the courts of the Resident Magistrates; and any rules or orders so made shall be in addition to, or in place of the rules, orders, and regulations contained in schedule B to the "Resident Magistrates' Court Act, 1856," or in any other Act relating to the said courts.
14. (1) The following shall be added as a proviso to the second section of Act No. 21 of 1884:—"Provided, however, that if it shall appear to the officer issuing any such process as aforesaid, either from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the English language to understand the purport of such process, or is not sufficiently acquainted with the Dutch language to understand the purport of such process if it be drawn in the Dutch language, then it shall not be necessary to issue such process in the Dutch language as well as the English language."
15. This Act may be cited as the "Appeal Court and Sheriff's Duties Act, 1886."

No. 17—1886.

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

How moneys to be distributed.

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

Execution stayed against petitioner for surrender for only 14 days.

Service of process under Act 20 of 1856.

Judges of Supreme Court may make rules and orders for Courts of Resident Magistrates.

Provision as to issuing process in Dutch or English.

Short title.

¹ See Act 15, 1888, § 1.

No. 18—1886.]

[July 6, 1886.

ACT

To Amend Act No. 19 of 1883 and Act No. 22 of 1885.⁽¹⁾

Preamble.

WHEREAS it is expedient to amend Act No. 19 of 1883, and the second section of the "Precious Stones and Minerals Mining Act Amendment Act, 1885": Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Right of claimholder to piece of ground as residence.

1. To every registered claim in any alluvial digging which may have been already proclaimed, or which may hereafter be established, there shall be attached the right to use and occupy without extra payment, a piece of ground within the proclaimed area of such digging for the purpose of a residence for the holder of such claim. The said piece of ground shall be marked out for each claimholder by the inspector of the digging, and shall not be more than fifty feet square in extent.

Provisions for claimholder in alluvial diggings desiring to sink a shaft.

2. Any person who has taken out a claim in any alluvial digging may give notice to the inspector of the digging that he intends to sink a shaft in the said claim to a depth of more than fifteen feet; and, if his said claim be situated at a distance of more than two hundred yards from all the other claims in the said digging which are actually being worked, he shall immediately upon the giving of such notice be entitled to mark out for himself ten claims adjoining his said claim; and thereafter, so long as he shall continue to sink the said shaft to the satisfaction of the inspector, no other person shall have the right to dig or search for precious stones or minerals in any of the ten claims so marked out as aforesaid. Any person who shall in contravention of this section dig or search for precious stones or minerals in any claim so marked out as aforesaid, shall be liable upon conviction to a penalty of fifty pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months.

Finds below fifteen feet to be reported to Inspector.

3. If any such person as aforesaid shall find any precious stones or minerals in his claim at a depth of more than fifteen feet, it shall be his duty within a period of three days after finding the same to make a report thereof to the inspector of the digging, and any such person who shall fail to make such report as aforesaid shall be liable upon conviction thereof to a penalty not exceeding fifty pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months; and he shall further forfeit all right or claim to the ten claims which he may have marked out as aforesaid.

On proof thereof finder entitled to registration of claims.

4. So soon as any person shall prove to the satisfaction of the inspector that he has found any precious stones or minerals in his claim at a depth of more than fifteen feet, he shall be entitled to

¹ See Acts 10, 1888, and 12, 1889.

receive certificates of registration of the ten claims so marked out by him as aforesaid, upon payment of the fees provided for by the twenty-first section of Act 19 of 1883.

No. 18 -1886.

5. Any person save as in the two preceding sections mentioned marking out a claim in any alluvial digging who shall fail to take out a certificate of registration of the said claim within a period of six days, shall be deemed to have abandoned the same, and the inspector of the digging shall thereupon declare the same to be abandoned.

On failure to get registration claim to be considered as abandoned.

6. All disputes between claimholders in any alluvial digging as to the ownership of any claim, or as to the boundaries of their respective claims, shall be dealt with and decided by the inspector of the digging and to assessors to be nominated by the said inspector: and for this purpose the inspector and assessors aforesaid shall and may examine witnesses on oath and take down their evidence in writing, and shall do all things which they may deem necessary in order to arrive at a proper decision in the case: and the inspector shall have authority to summon all defendants and witnesses to appear before him, and in default of their appearing he may issue warrants for their being brought before him, and for non-attendance he may fine them any sum not exceeding five pounds sterling.

How disputes between claimholders to be settled.

7. The service of any summons on any defendant or witness in any case to be heard and decided as aforesaid, shall be performed by any person appointed for that purpose by the inspector, and the said person shall also have authority to execute the warrant mentioned in the last preceding section.

Service of summons on defendant or witness.

8. All offences created by this Act and all fines and penalties which may be imposed under the provisions of this Act may be prosecuted for and imposed by any Resident Magistrate of any district in which the offence was committed.

Magistrate of district to have jurisdiction as to offences, fines, &c.

9. The thirty-third section of the aforesaid Act No. 19 of 1883, relating to compensation for surface damage, shall be read and construed as if the words within parenthesis in the said section, viz.: 'unless when a lease has been granted as aforesaid, such owner be himself the lessee or joint lessee' were expunged therefrom and formed no part of said section.

Section 33 of Act 19 of 1883 amended.

10. The second section of Act No. 22 of 1885 shall be read as if the words after the word 'expunged' had not been inserted therein.

Section 2 of Act 22 of 1885 amended.

11. In regard to the Kimberley Mining Board debt due at the time of the passing of this Act, the Court shall levy such rate from time to time as it may in its discretion think proper to fully satisfy such debt with interest at the rate of six per cent. per annum, calculated from the time of the filing of the claims with the Master, and all costs properly incurred in respect thereof, within a period not exceeding four years from the date of the promulgation of this Act, and no set-off shall be allowed to rate-

Provision for payment of Mining Board Debt.

No. 19—1886.

payers in respect of debts due to them by the said mining board exceeding three-fourths of the amount of rates levied.

Short title.

12. This Act may be cited as the "Precious Stones and Minerals Act Further Amendment Act, 1886."

No. 19—1886.]

[June 25, 1886.]

ACT

To Amend the Law relating to the Duty on Distilled Spirits and to the Manufacture and Sale thereof, especially the provisions of the "Excise Duty Act, 1884," and the "Excise Spirits Act, 1884." (1)

Preamble.

WHEREAS it is expedient to amend the law relating to the duty on spirits, and especially certain provisions of the "Excise Spirit Duty Act," No. (2) 15 of 1884, and of the "Excise Spirits Act," No. 18 of 1884, and to relieve from payment of any duty all persons who may distil or manufacture spirits from wine: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Definition of terms.

1. For the purposes of this Act the words "wine" (3) and "wine-farmers," shall have the meaning attached thereto in the second section of the "Excise Spirits Act, 1884."

Excise not payable upon spirits distilled from wine.

2. From and after the first day of July, 1886, no excise duty shall be payable upon spirits distilled from wine, anything in the "Excise Spirits Act, 1884," the "Excise Spirit Duty Act, 1884," or any other law, to the contrary, contained notwithstanding.

Excise Spirits Act, 1884, not applicable to wine-farmers or distillers of spirits from wine.

3. All the provisions of the "Excise Spirits Act, 1884," and the second sub-section of the third section of the "Excise Spirit Duty Act, 1884," in so far as the said first mentioned Act and the said sub-section may be applicable to wine-farmers, or to distillers distilling spirits from wine only, are hereby repealed.

Refund for duty paid brandy in stock.

4. There shall be paid or allowed to every holder of duty paid brandy distilled from wine, for all such brandy as aforesaid in his possession at the time of the taking effect of this Act, as his stock, duly taken account of by the proper officers, and for which duty shall have been paid or charged, the sum of one shilling per gallon for every gallon of spirits held by him in excess of one hundred gallons.

Short title.

5. This Act may be cited as the "Excise Law Amendment Act, 1886."

¹ See Act 20, 1890.

² Repealed by Act 9, 1887

³ See Act 20, 1890, § 2.

No. 20—1886.]

[July 6, 1886.

No. 21—1886.

ACT

To Amend the "Mossel Bay Wharfage Act, 1860."

WHEREAS it is desirable to amend in some respects the "Mossel Bay Wharfage Act, No. 7 of 1860," so as to exempt certain goods from being charged with wharfage dues at that port: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding anything contained in the Act in the preamble mentioned, it shall not be lawful for the Mossel Bay Harbour Board, after the taking effect of this Act, to levy or cause to be levied any wharfage dues or rates upon the following articles, that is to say:

Certain goods exempted from wharfage dues.

- (1) All articles of Colonial produce shipped to any place within the Colony;
- (2) Bullion and coin shipped from the port of Mossel Bay to any place whatever.

2. This Act may be cited as the "Mossel Bay Wharfage Act Amendment Act, 1886."

Short title.

No. 21—1886.]

[July 6, 1886.

ACT

To Authorise the Municipality of the City of Graham's Town to Borrow the Sum of £6,000 sterling for the Repayment of Certain Advances made by the Standard Bank of South Africa.

WHEREAS the Council of the Municipality of Graham's Town duly elected under the provisions of the Act No. 23 of 1869, and of Act No. 12 of 1878, ⁽¹⁾ and acting under the provisions of the said Acts, did from time to time borrow and take up from the Standard Bank of South Africa divers sums of money amounting to the sum of six thousand pounds sterling, which sum was so borrowed and taken up and applied, to the search for and storage of water during the late severe drought, and for other important public works and for municipal purposes in the interest generally of the inhabitants of the said municipality:

Preamble.

And whereas it has become necessary that the said sum or loan of £6,000 now due to the said bank should be repaid, and that in order to obtain funds for the repayment of the said sum, the council elected or hereafter to be elected under the provisions of the aforesaid Acts should be authorised and empowered, subject further to the provisions of the 48th section of the Act No. 23 of 1869, to raise by mortgage of any land or property belonging to

¹ See also Act 14, 1894.

No. 21—1886.

the corporation or vested therein under the provisions of the aforesaid Acts, or by debentures on the security charged upon such land or property or by charge on the security of the rates of the said municipality, a sum not exceeding £6,000 sterling :

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

Council authorised to borrow £6,000, and to secure loan by mortgage or debentures.

1. It shall be lawful for the council of the municipality of Graham's Town, now or hereafter duly elected under the provisions of the Act No. 23 of 1869, and the Act No. 12 of 1878, and the said council is hereby empowered in one or more sums from time to time to borrow or take up at interest not exceeding six per cent. from any person or persons, company or corporation, such sum, not exceeding in all the sum of six thousand pounds sterling, as shall be necessary for repaying, the amount advanced as aforesaid by the Standard Bank of South Africa, Limited; and for the purpose of securing the principal and interest of the sum so borrowed to mortgage to the person or persons, company or corporate body lending the same, so much as may by the said council be deemed sufficient of the land or property vested in the corporation of the said municipality, to issue debentures charged on land or property vested in the corporation of the said municipality, and to mortgage or charge by debentures the rates of the said municipality :

Lender not liable for application of money borrowed: Section 48 of Act 23 of 1869 to apply, *mutatis mutandis*, to mortgage or debentures.

Provided that the person or persons, company or corporate body, lending the said sum shall not be bound to see to the application by the council of the sum so lent, nor shall the mortgage or debentures granted by the said council for securing the principal and interest of such sum be impeached or questioned upon the ground of any irregularity which may be alleged to have been committed in regard to the borrowing from the bank aforesaid the sum or any part thereof so advanced as aforesaid, and to repay which the council is hereby empowered to borrow money, and further that the provisions of the 48th section of the Act No. 23 of 1869 shall, *mutatis mutandis*, apply to any mortgage or debenture passed or issued by the said council under the provisions of this Act.

Loan to be a debt under Public Bodies Debts Act, 1867, and to be a loan within meaning of Local Works Loans Act, 1882.

2. Any loan obtained by the said council for the purposes of this Act shall be deemed to constitute a just debt and liability of the said council within the meaning of the Public Bodies Debts Act, 1867, and any such loan obtained from the Governor of this Colony shall be deemed to be a loan within the meaning of the Local Works Loans Act, 1882.

Provision for costs, &c.

3. All necessary costs, charges and expenses incurred in obtaining the passing of this Act shall be paid out of the ordinary revenue of the said council.

Short title.

4. This Act may be cited as "The Graham's Town Municipality Loan Act, 1886."

No. 22—1886.]

[June 25, 1886.

No. 24—1886.

Act for applying a Sum not exceeding Fifteen Thousand and Six Pounds Nineteen Shillings and Three Pence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.
[Spent.]

No. 23—1886.]

[June 29, 1886.

Act to provide for the Establishment of a Civil Service Pension Fund.
[Repealed by Act 32, 1895.]

No. 24—1886.]

[July 9, 1886.

ACT

To Provide for a Penal Code for the Transkeian Territories.⁽¹⁾

WHEREAS it is desirable to provide a Penal Code for the Transkeian Territories as the same are hereinafter in this Act defined: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

TITLE I.

CHAPTER I.

PRELIMINARY.

Short Title and Operation of Code.

1. This Act shall be called "The Native Territories Penal Code," and shall take effect on and from the first day of January, 1887, throughout the whole of the territories known as The Transkei (including Gealekaland), Griqualand East, Tembuland (including Emigrant Tembuland, and Bomvanaland), and the port and territory of St. John's River, which are hereby styled the "Transkeian Territories." The said port and territory of Saint John's River shall for the purposes of this Code form part of the Chief Magistracy of Tembuland.

Short title and operation of Code.

Offenders liable under the Code.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be found guilty within the said territories on or after the said first day of January, 1887, and every person who shall be charged or chargeable on or after that day with any offence committed before such day shall be liable to

Offenders liable under the Code.

¹ See § 15 Act 4, 1892. Extended by Proclamation No. 112 of 1886 to all the Native Territories; and by Proclamation No. 340 of 1894 to East and West Pondoland.

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be tried and punished by the Courts hereinafter established in the same manner as if this Act had not been passed.

Criminals from Extra-Colonial Native Territories.

Criminal Fugitives
from Extra-Colonial
Native Territories.

3. Every person shall be subject to trial and punishment under this Code for every act or omission of which he shall be guilty on or after the said first day of January, 1887, within the territory of any Native chief, and which act or omission is punishable within the Colony of the Cape of Good Hope or its dependencies, by virtue of any treaty or engagement heretofore entered into, or which may hereafter be made, between such Native chief and the Governor of the Colony of the Cape of Good Hope.

Offence committed when and where Offender has Property in possession or control.

Offence committed
when and where
offender has property
in possession or
control.

4. Every offence consisting in unlawful taking or obtaining or appropriating property, or in knowingly receiving property so taken, obtained, or appropriated, or in forging any document, or in using any forged document, is committed as long as, and at every place where, the offender has the property or document so unlawfully dealt with in his possession or under his control, whether the original offence was committed within the territories to which the Code applies, or without.

Interpretation of Terms.

Interpretation of
terms.

5. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:

- (a) The pronoun "he" and its derivatives are used of any person, whether male or female. Words importing the singular include the plural, and words importing the plural include the singular number. The word "man" denotes a male human being of any age. The word "woman" denotes a female human being of any age. The word "person" includes any person or association or body of persons, whether incorporated or not. The word "public" includes any class of the public or any community. The word "Government" denotes the person or persons authorised by law to administer executive government in any part of the said territory. The word "Court" denotes a judge who is empowered by law to act judicially alone, or a body of judges empowered by law to act judicially as a body when such judge or body of judges is acting judicially. The word "Judge" denotes every person who is empowered by law to give, in any legal proceeding, criminal or civil, a definitive judgment, or a judgment which if not appealed against would be definitive, or a judgment which, if

confirmed by some other authority, would be definitive; or who is one of a body of persons empowered by the law to give such a judgment.

- (b) The word "public servant" denotes a person falling under any one of the following descriptions, namely:—
- (1) Every servant of the Queen.
 - (2) Every commissioned officer of the military or naval force of the Queen.
 - (3) Every judge.
 - (4) Every officer of a Court of Justice whose duty it is to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or take charge or dispose of any property or to execute any judicial process, or to administer any oath, or interpret or preserve order in the Court.
 - (5) Every juryman or assessor assisting a Court of Justice.
 - (6) Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.
 - (7) Every officer of Government whose duty it is as such officer to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience.
 - (8) Every officer in the service or pay of the Government, or remunerated by fees or commission for performance of any public duty.
- (c) The words "movable property" include corporeal property of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.
- (d) In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done, extend also to illegal omissions. The word "act" denotes as well a series of acts as a single act. The word "omission" denotes as well a series of omissions as a single omission; and an offence may be committed partly by an act and partly by an illegal omission.
- (e) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone. Whenever an act which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act, with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.
- (f) Whenever an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence, by doing any one of those acts, either

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- singly or jointly with any other person, commits that offence. When several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.
- (g) The word "offence" denotes anything made punishable by this Code. The word "illegal" is applicable to anything which is an offence, or which is prohibited by law, or which furnishes grounds for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit. The word "injury" denotes any harm whatever illegally caused to any person in mind, reputation, or property.
- (h) The words "life" and "death" denote the life or death of a human being unless the contrary appears from the context. The word "animal" denotes any living creature other than a human being. The words "year and month" denote a calendar year and month. The word "section" denotes a portion of a chapter of this Code distinguished by prefixed numerals.
- (i) "Oath" and all expressions relating to "the taking of oaths" include all such affirmations and declarations as may by law be substituted for an oath, and the making of such affirmations and declarations.
- (j) Nothing is said to be done or believed "in good faith" which is done or believed without due care and attention.
- (k) The word "kraal" denotes any hut, house, or enclosure occupied by any single family, or member of a family, or any aboriginal tribe, or any collection of huts, houses, or enclosures, occupied by several families of any aboriginal tribes, with a recognised head known as *umninimzi*.
- (l) The word "spoor" denotes any mark or impression on, or disturbance of, the surface of any ground, or any mark or impression on or disturbance of any grass, herbage, or wood on such ground, or any matter or substance left or found upon such ground, grass, herbage, or wood, indicating that any person or persons or any cattle have passed along in any particular direction.
- (m) The word "cattle" shall comprise horses, mules, asses, horned cattle, sheep, goats, or ostriches.

CHAPTER II.

PUNISHMENTS.

Punishments.

6. The following punishments may be inflicted under this Act:
- Death.
- Imprisonment with or without hard labour, and with or without spare diet.

Flogging and whipping.
 Detention in a reformatory institution.
 Fine.
 Putting under recognizances.

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Punishment of Death.

7. The punishment of death shall be awarded for murder, and shall in all cases, where the circumstances will admit of it, be carried into effect within the gaols and in the manner prescribed by Act No. 3 of 1869: provided, however, that the omission to comply with any provision of the said Act shall not make the execution of the judgment of death illegal, in any case where such execution would otherwise be or have been legal. The punishment of death shall be inflicted by hanging the offender by the neck until he is dead: Provided always that no sentence of death shall be carried into effect without the warrant of the Governor authorising the same.

Punishment of death.

Commutation of Punishment of Death.

8. In any case in which sentence of death shall have been passed, the Governor for the time being may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of punishment of death.

Imprisonment.

9. The punishment of imprisonment consists in the detention of the offender in prison, and in his subjection to the discipline appointed for prisoners, during the period expressed in the sentence. Imprisonment shall be with or without hard labour or with or without spare diet. If it is with hard labour, the sentence shall so direct. No prisoner shall be sentenced to or suffer solitary confinement for any part of the term of his imprisonment, except the same may be unavoidable or necessary for the purpose of carrying out any sentence of spare diet. No female shall be sentenced to hard labour on any road, street, or public place. No offender sentenced to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed; and in regard to the infliction of spare diet, the Courts in their sentences shall observe and conform to such regulations and restrictions as shall from time to time be deemed necessary, to prevent injurious consequences, and be by the Governor prescribed for the guidance of such Courts; and shall in their sentences fix the particular days or times during which the offender shall be subject to spare diet.

Imprisonment.

No person shall be put to hard labour during any period he may undergo spare diet.

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When any person shall be sentenced to imprisonment, it shall be lawful for the Governor to order, from time to time, the removal of such person during the period prescribed for his imprisonment, from any gaol in which he is confined to any other gaol or place of imprisonment within the territories to which this Code applies or within the Colony of the Cape of Good Hope.

Flogging and Whipping.

Flogging and whipping.
B.L.C.

10. Flogging shall consist of the infliction on a male person, who shall have attained the age of sixteen years, of a number of strokes, not exceeding at any one time fifty, with an instrument specified by the Court, and in default of such specification, with such instrument as the Governor shall direct.

Whipping shall consist of the infliction on a male person, who shall not have attained the age of sixteen years, of a number of strokes or cuts, not exceeding at one time twenty-five, with a cane or rod, which last correction shall be administered by such person in such private place as the Court shall appoint, and in case the father or reputed father shall in person express a desire to correct such offender himself in the manner adjudged by the Court, it shall be lawful for the Court to permit him to do so in the presence of any suitable person selected by the Court to witness the infliction of such correction. Should the age of any such offender be unknown it shall be lawful for the Court before which he shall be tried to judge of the offender's age by his appearance, or according to such other materials for forming a judgment upon the subject as shall exist; and no error which shall be *bonâ fide* made by any Court in judging of the age of any such offender shall vitiate or affect the sentence by which such offender shall be sentenced to receive, and shall have received, any such correction as aforesaid.

In each case, whether of whipping or flogging, the Court shall in its sentence specify the number of strokes to be inflicted. No flogging or whipping shall take place after the expiration of six months from the passing of the sentence. The period of imprisonment is to be calculated from the date on which such sentence is passed: Provided, however, that the period during which the sentence may be suspended, pending appeal, is not to be reckoned in calculating the term of imprisonment if the appeal be rejected.

No female shall be liable to be flogged or whipped.

Offenders under 16 years may be whipped in lieu of imprisonment.

Offenders under 16 years may be whipped in lieu of imprisonment.

11. Any male, whose age shall not exceed sixteen years, convicted of any offence punishable with imprisonment in the first instance, may, in lieu of such imprisonment, receive a whipping; and wherever an offence in this Code is punishable with flogging, any male whose age shall not exceed sixteen years may be sentenced to a whipping in addition to any term of imprisonment, with or without hard labour, but shall not be flogged.

12. [Repealed by Act 4, 1892 § 15.]

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13. Where no sum is expressed to which a fine may extend, the amount of fine to which an offender is liable is unlimited, but shall not be excessive.

Fines.

14. Where the Court has power to fine without imprisonment, the Court may, if it thinks fit, direct that the person sentenced to fine be imprisoned, with or without hard labour, until the fine be paid: Provided that the Court may, at its discretion, suspend such imprisonment in such terms as it thinks fit, or may limit the period of such imprisonment: Provided also that in no such case shall anyone be imprisoned for non-payment of a fine for more than one year.

15. Where the Court has power to fine and imprison, the term for which the Court may direct the offender to be imprisoned in default of payment of a fine shall not in any case exceed the maximum term of imprisonment fixed for the offence; and where such fine is given in addition to any term of imprisonment which the Court may have the power to impose, the term of imprisonment in default of payment of the fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence; and in such case this last term of imprisonment shall take effect from and after the termination of the imprisonment which may have been awarded in addition to fine.

Portion of Fines may be paid to Persons assisting in bringing Offenders to justice.

16. The Courts empowered to pass sentence on any persons for any offence under this Code may order and direct that a portion of any fine imposed by the Court shall be paid to the person or persons on whose information the conviction of any offender may have been obtained, or who materially assisted in bringing such offender to justice.

Portion of fines may be paid to persons assisting in bringing offenders to justice.

Fines to be levied in restitution of, or as compensation for, Property stolen or injured.

17. Any Court empowered to pass sentence under the provisions of this Code on any person for any offence may, in passing such sentence, include therein, under the punishment of fine, a sufficient amount to cover reasonable compensation for loss, costs, damages, or injury caused by the offence for which the offender shall have been convicted; such fine, if not paid, to be levied on the movable property of the said offender, under and by virtue of a warrant under the hand of the Judge or Magistrate imposing such fine, together with the costs of levy; and out of such fine aforesaid, when paid or levied, it shall be competent for the Judge or Magistrate to direct payment to be made to the person injured for such reasonable compensation as aforesaid; and any balance

Fines to be levied in restitution of, or as compensation for property stolen or injured.

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shall be paid into the Public Treasury : Provided that any Magistrate may suspend the levying of any fine imposed as above until the record of the proceedings in the case shall have been reviewed by the Chief Magistrate of the territory who shall be empowered to reduce or disallow the same, as shall seem to him to be most in accordance with real and substantial justice.

Fines recoverable in Money, Stock, Grain, or other Produce.

Fines recoverable in money, stock, or grain.

18. All fines which may be imposed under this Code may be imposed, paid or recovered in money, or in cattle, or in grain, or other produce of the soil, at the discretion of Judge or Magistrate who shall determine the number of cattle or quantity of grain or other produce of the soil to be paid in lieu of money.

Discharge without Verdict.

Discharge without verdict.

19. In any case in which the Court considers that the offence deserves no more than a nominal punishment, the Court may in its discretion direct the discharge of the accused, and such discharge shall have all the effects of an acquittal.

Placing under Recognizances.

Placing under recognizances.

20. Every one who under any provision of this Code is convicted of any offence, for which he is liable to be sentenced to imprisonment, may in addition to any term of imprisonment or instead of any punishment hereby authorised, be required to enter into his own recognizances or to find sureties or both for such amount and for such time as the Court by which he is tried considers reasonable, that he shall keep the peace and be of good behaviour. Every one required to find sureties as aforesaid shall be liable, if the Court thinks fit, to be imprisoned till he find such sureties : Provided the Court may in its discretion suspend such last mentioned imprisonment on such terms as it thinks fit, or may limit the period of such imprisonment : Provided also that no one shall be imprisoned for not finding sureties for more than one year, exclusive of any other period for which he may be imprisoned by the sentence of the Court.

Sentences may be cumulative.

Sentences may be cumulative.

21. When an offender is convicted of more offences than one before the same Court, at the same sitting, or when any offender undergoing punishment for one offence is convicted of another, the sentences passed upon him for his several offences shall take effect one after the other, or after the expiration of the punishment which he is undergoing at the time of his last conviction.

Limit of Punishment of offence made up of several offences.

Limit of punishment of offence made up of several offences

22. When anything which is an offence is made up of parts, any of which part is itself an offence, defendant shall not be punishable with a punishment for more than one of such offences, unless it be so expressly provided.

Punishment of Person guilty of several offences.

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23. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided; if the same punishment is not provided for all.

Punishment of person guilty of several offences.

CHAPTER III.

JUSTIFICATION AND EXCUSE FOR ACTS WHICH WOULD OTHERWISE BE OFFENCES.

Common Law Principles.

24. All rules and principles of the law in force in the Cape Colony which render any circumstance a justification or excuse for any act or a defence to any charge, shall be in force and be applicable to any defence to a charge, under this Code, except in so far as they are thereby altered or are inconsistent therewith. The matters hereby provided for are declared and enacted to be justifications and excuses for all charges to which they apply.

Common Law principles.

Children exempted.

25. No one whose age does not exceed seven years shall be convicted of any offence.

Children exempted.

No one whose age exceeds seven and does not exceed fourteen years, shall be convicted of any offence, unless it appear that at the time he committed the offence he had sufficient intelligence to know the nature and consequences of his conduct, or to appreciate that it was wrong.

Insanity.

26. If it be proved that a person who has committed an offence was, at the time he committed it, insane, so as not to be responsible for that offence, he shall not therefore be simply acquitted, but he shall be found not guilty on the ground of insanity, and in such case the Court before which such trial shall take place shall order such person to be kept in strict custody in such gaol, lunatic asylum, or other place of confinement either in the said territories or in the Cape Colony, and in such manner as to the Court shall seem fit, until the pleasure of the Governor shall be known, and the Governor may thereupon give such order for the safe custody of such person in such place, in such manner, and for such time as to the Governor shall seem fit.

Insanity.

To establish a defence on that ground it must be proved that the offender was at the time he committed the act labouring under natural imbecility or disease of or affecting the mind to such an extent as to render him incapable of appreciating the

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nature and quality of the act or that the act was wrong. A person labouring under specific delusions but in other respects sane, shall not be found guilty on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which if it existed, would justify or excuse this act: Provided that insanity before or after the time he committed the act, and insane delusions though only partial, may be evidence that the offender was at the time that he committed the act in such a condition of mind as to entitle him to be found not guilty on the ground of insanity.

Everyone committing an offence shall be presumed to be sane until the contrary is proved.

Intoxication.

Intoxication.

27. Nothing is an offence which is done by a person who, at the time of doing it is by reason of intoxication incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

28. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will: Provided, however, that if the existence of a specific intention is essential to the commission of a crime the fact that an offender was drunk when he did the act which if coupled with that intention would constitute such crime shall be taken into account by the Judge or Magistrate in deciding whether he had that intention.

Compulsion.

Compulsion.

29. Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of an offence, shall be an excuse for the commission of any offence other than high treason, murder, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson: Provided that the person under compulsion believes that such threat will be executed: Provided also that he was not a party to any association or conspiracy, the being party to which rendered him subject to such compulsion. No presumption shall be made that a married woman committing an offence in the presence of her husband does so under compulsion.

Ignorance of Law.

Ignorance of Law.

30. The fact that an offender is ignorant of the law is not an excuse for any offence committed by him; but nothing is an

offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law, believes himself to be justified by law in doing it.

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Act of Judicial Officer.

31. Nothing is an offence which is done by a Judge, or any other judicial officer, when acting judicially in the exercise of any power which is or which in good faith he believes to be given him by law.

Act of Judge.

Execution of Lawful Sentence.

32. Every officer of any Court authorised to execute a lawful sentence, and every gaoler, and every person lawfully assisting such officer or gaoler, is justified in executing such sentence.

Execution of lawful sentence.

Execution of lawful Process and Warrants.

33. Every officer of any Court duly authorised to execute any lawful process of such Court, whether of a civil or criminal nature, and every one duly authorised to execute a lawful warrant issued by any Court or Justice of the Peace, or other person having jurisdiction to issue such warrants, and every person lawfully assisting them respectively, is justified in executing such process or warrant respectively, and every gaoler who is required under such process or warrant respectively to receive and detain any person, is justified in receiving and detaining him.

Execution of lawful process and warrants.

Execution of erroneous Sentence or Process.

34. If a sentence is passed or process issued by a Court having jurisdiction under any circumstances to issue such warrant, the sentence passed or process or warrant issued shall be sufficient to justify the officer or person authorised to execute such warrant, and every gaoler and person lawfully assisting, although the Court passing the sentence or issuing the process had not in the particular case authority to do so, or although the Court or the person in the particular case had no jurisdiction to issue or exceeded its or his jurisdiction in issuing the warrant, or was, at the time when such sentence was passed or process or warrant issued, out of the district for which such person was entitled to act.

Execution of erroneous sentence or process.

Effect of Sentence or Process without Jurisdiction.

35. Every officer, gaoler, or person executing any process, sentence, or warrant, and every person lawfully assisting such officer, gaoler, or person, shall be protected from criminal responsibility, if he acts in good faith under the belief that the sentence or process was that of a Court having, or that the warrant was that of a Court, Justice of the Peace, or other person having authority to issue warrants, and if it be proved that the person passing the sentence, or issuing the process acted as such a Court, under colour of having some appointment or commission lawfully authorising

Effect of sentence or process without jurisdiction.

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him to act as such Court, or that the person issuing the warrant acted as a Justice of the Peace or other person having such authority, although in fact such appointment did not exist or had expired, or although in fact the Court or the person passing the sentence or issuing the process was not the Court or the person authorised by the commission to act, or the person issuing the warrant was not duly authorised so to act.

Arresting the wrong Person.

Arresting the wrong person.

36. Every one duly authorised to execute a warrant to arrest, who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent, and subject to the same provisions, as if the person arrested had been the person named in the warrant. Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person shall be protected to the same extent, and subject to the same provisions, as if the arrested person had been the person named in the warrant.

Effect of irregular Warrant or Process.

Effect of irregular warrant or process.

37. Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it, if he in good faith and without culpable ignorance or negligence believed that the warrant or process was good in law, shall be protected from criminal responsibility to the same extent, and subject to the same provisions, as if the warrant was good in law, and ignorance of the law shall in this case be an excuse: Provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Arrest by Peace Officer in case of major offence.

Arrest by peace officer in case of major offence.

38. Every peace officer who on reasonable and probable grounds believes that one of the offences as to which it is provided in this Code that the offender may be arrested without warrant has been committed, whether it has been committed or not, and who on reasonable and probable grounds believes that any person has committed that offence, is justified in arresting such person without warrant whether such person is guilty or not.

Persons assisting Peace Officer arresting in case of major offence.

Persons assisting peace officer arresting in case of major offence.

39. Every one called upon to assist a peace officer in the arrest of a person suspected of having committed any such offence as last aforesaid, is justified in arresting if he knows that the person

calling on him to assist him is a peace officer and does not know that there is no reasonable ground for the suspicion.

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Arrest of person found committing major offence.

40. Every one is justified in arresting without warrant any person whom he finds committing any offence as to which it is provided by this Code that the offender may be arrested when found committing.

Arrest of person found committing major offence.

Arrest after commission of major offence.

41. If any offence as to which it is provided in this Code that the offender may be arrested without warrant has been committed, any one who on reasonable and probable grounds believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not.

Arrest after commission of major offence.

Arrest of Persons believed to be committing major offence.

42. Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes he finds committing any offence as to which it is provided by this Code that offenders may be arrested without warrant.

Arrest of persons believed to be committing major offence.

Arrest by Peace Officer of Person found committing any offence.

43. Every peace officer is justified in arresting without warrant any person whom he finds committing any offence against this Code.

Arrest by peace officer of person found committing any offence.

Arrest of Person found committing any offence at night.

44. Every one is justified in arresting without warrant any person whom he finds committing in the night time any offence against this Code.

Arrest of person found committing or about to commit any offence at night.

45. Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any kraal, enclosure, cattle yard, premises, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

Arrest of persons lying or loitering in any kraal, &c.

Arrest during flight.

46. Every one is protected from criminal responsibility for arresting without warrant any person whom he on reasonable and probable grounds believes to have committed an offence against this Code and to be escaping from and to be pursued by those whom on reasonable and probable grounds he believes to have lawful authority to arrest that person for such offence.

Arrest during flight.

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What force may be used in executing Process or in Arrest.

What force may be used in executing process or in arrest.

47. Every one is justified or protected from criminal responsibility in executing any sentence, warrant or process, or in making an arrest, and every one lawfully assisting him is justified and protected from criminal responsibility as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner.

Duty of Persons arresting.

Duty of persons arresting.

48. It is the duty of every one executing any process or warrant to have it with him and to produce it if required.

It is the duty of every one arresting another, whether with or without warrant, to give notice where practicable of the process or warrant under which he acts, or of the cause of the arrest.

A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant or his assistants, or the person arresting of protection from criminal responsibility, but shall be relevant to the enquiry whether the process or warrant might not have been executed or the arrest effected by reasonable means in a less violent manner.

Peace Officer preventing Escape from Arrest for major offence.

Peace officer preventing escape from arrest for major offence.

49. Every peace officer proceeding lawfully to arrest with or without warrant any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, and every one lawfully assisting in such arrest is justified, if the person to be arrested takes flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight unless such escape can be prevented by reasonable means in a less violent manner.

Private Person preventing Escape from Arrest from major offence.

Private person preventing escape from arrest for major offence.

50. Every private person proceeding lawfully to arrest without warrant any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner.

Preventing Escape from Arrest in other cases.

Preventing escape from arrest in other cases.

51. Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest in using such force as may be necessary to prevent his escape by

flight, unless such escape can be prevented by reasonable means in a less violent manner.

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Preventing Escape or Rescue after Arrest for major offences.

52. Every one who has lawfully arrested any person for any offence as to which it is provided in this Code that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested, as he believes on reasonable grounds to be necessary for that purpose.

Preventing escape or rescue after arrest for major offences.

Preventing Escape or Rescue after Arrest in other cases.

53. Every one who has lawfully arrested any person for any cause other than one of the offences as to which it is provided in this Code that the offender may be arrested without warrant, is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes on reasonable grounds to be necessary for that purpose.

Preventing escape or rescue after arrest in other cases.

Homicide of Persons flying and resisting to be justifiable.

54. If any officer of the law or private person authorised and required to arrest, or assist in arresting, any person who has committed, or who is on reasonable grounds suspected to have committed, any murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which a dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goats, or any other crime of equal degree of guilt with any of the crimes aforesaid, or desertion or attempted desertion from a gaol or convict station, shall attempt to make such arrest, and the person so attempted to be arrested shall fly or resist, and cannot be apprehended and prevented from escaping by other means than by such officer or private person killing the person so flying or resisting, such homicide shall be deemed in law to be justifiable homicide.

Homicide of persons flying and resisting to be justifiable.

Suppression of Breach of the Peace.

55. Everyone who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal of such breach of the peace, and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace.

Suppression of breach of the peace.

56. Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any

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one whom he finds committing such breach of the peace, or whom he on reasonable and probable grounds believes to be about to join in or renew such breach of the peace.

57. Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace, by one who has, or whom such peace officer upon reasonable and probable grounds believes to have, witnessed such breach of the peace.

Suppression of Riot by Magistrates, &c.

Suppression of riot by magistrates, &c.

58. Every Justice of the Peace is justified in using and ordering to be used, and every peace officer is justified in using, such force as he in good faith and on reasonable and probable grounds believes to be necessary to suppress a riot, as is not disproportioned to the danger which he on reasonable and probable grounds believes to be apprehended from the continuance of the riot.

Suppression of Riot by Persons acting under lawful orders.

Suppression of riot by persons acting under lawful orders.

59. Every one, whether subject to military or police law or not, acting in good faith in obedience to orders given by a Justice of the Peace for the suppression of a riot, is justified in obeying the orders so given, unless such orders are manifestly unlawful; and he is protected from criminal responsibility in using such force as he on reasonable and probable grounds believes to be necessary for carrying into effect such orders.

It shall be a question of law whether any particular order is manifestly unlawful or not.

Protection of Persons subject to Military Law.

Protection of persons subject to military law.

60. Every one who is bound by military or police law to obey the lawful command of his superior officer, is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

It shall be a question of law whether such order is manifestly unlawful or not.

Prevention of major offences.

Prevention of major offences.

61. Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of any offence for which if committed the offender might be arrested without warrant, and the commission of which would be likely to cause immediate and serious injury to the person or property of any one; or in order to prevent any act being done which he upon reasonable grounds believes would, if committed, amount to any of such offences.

Self-defence against unprovoked Assault.

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62. Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

Self-defence against unprovoked assault.

Self-defence against provoked Assault.

63. Every one who has without provocation assaulted another, or has provoked an assault from that other, may nevertheless justify force, subsequent to such assault, if he uses such force under reasonable apprehension of death, or grievous bodily harm from the violence of the party first assaulted or provoked, and in the belief on reasonable grounds that it is necessary for his own preservation from death or grievous bodily harm: Provided that he did not commence the assault with intent to do grievous bodily harm, and did not endeavour, at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm: Provided, also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.

Self-defence against provoked assault.

Provocation within the meaning of this and the last preceding section may be given by blows, or words.

Defence of Movable Property against Trespasser.

64. Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified in resisting the taking of such property or thing by any trespasser, or in retaking it from such trespasser, if in either case he does not do grievous bodily harm to such trespasser: and if, after any one having peaceable possession as aforesaid has laid hands upon any such property or thing, such trespasser persists in attempting to keep it, or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation.

Defence of movable property against trespasser.

Defence of Movable Property by one having claim of right.

65. Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the possession of such property or thing, if he does not do grievous bodily harm to such person; and if the person so entitled by law to the possession thereof attempts to take it from or otherwise assaults the possessor, or any one acting under his authority, such assault shall be deemed to be without justification or provocation.

Defence of movable property by one having claim of right.

Defence of Movable Property by Person not having claim of right.

66. Every one who is in peaceable possession of any movable property or thing, but neither claims right thereto nor acts under

Defence of movable property by person not having claim of right.

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the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing; and if the person so entitled attempts to retake any such thing, and the possessor resists and the person entitled thereto thereupon assaults the possessor, such assault shall be deemed to have been provoked, although the possessor may not have assaulted the person entitled by law to the possession.

Defence of House or Kraal.

Defence of house
or kraal.

67. Every one who is in peaceable possession of a dwelling-house, or other building or kraal, and every one lawfully assisting him, or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house, building or kraal either by night or day, by any person with the intent to commit any indictable offence therein.

Defence of Dwelling-house or Kraal at night.

Defence of dwell-
ing-house or kraal
at night.

68. Every one who is in peaceable possession of a dwelling-house, or other building or kraal, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of that dwelling-house, building or kraal by night by any person, if he believes on reasonable and probable grounds that such breaking and entering is attempted with the intent to commit any indictable offence therein.

Defence of Immovable Property.

Defence of im-
movable property.

69. Every one who is in peaceable possession of any house, or other building, kraal, or land, or other immovable properties, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he does not do grievous bodily harm to such trespasser; and if such trespasser resists such attempt to prevent his entry or to remove him, such trespasser shall be deemed to commit an assault without justification or provocation.

Assertion of right to House or Land.

Assertion of right
to house or land.

70. Every one is justified in peaceably entering in the day time to take possession of any house, or other building, kraal, or land, to the possession of which he or some other person under whose authority he acts is lawfully entitled.

71. If any person, not having or acting under the authority of one having peaceful possession of any such house, building, kraal, or land, with a claim of right assaults any one peaceably entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

72. If any person having peaceable possession of such house, building, kraal, or land, with a claim of right or any person acting by his authority, assaults any one entering as aforesaid for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering.

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Surgical Operations.

73. Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, with such person's consent, if in a fit state to give such consent, or, in the case of a minor, with the consent of the parents or guardians of such minor: Provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

Surgical operations.

Act done in good faith for the benefit of a Person without consent.

74. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

Act done in good faith for the benefit of a person without consent.

Excess.

75. Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

Excess.

Consent to Death.

76. No one has a right to consent to the infliction of death upon himself, or of any injury likely to cause death, unless it be an injury in the nature of a surgical operation upon himself; and if such consent is given, it shall have no effect upon the criminal responsibility of any person by whom such death may be caused.

Consent to death.

CHAPTER IV.

OF PARTIES TO THE COMMISSION OF OFFENCES.

Parties to Offences.

77. Every one is a party to and guilty of an offence who
- (a) Actually commits the offence, or does or omits any act, the doing or omission of which forms part of the offence, or
 - (b) Aids or abets any person in the actual commission of the offence, or in any such act or omission as aforesaid; or

Parties to offences.

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- (c) Directly or indirectly counsels or procures any person to commit the offence, or to do or omit any such act as aforesaid.

78. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been, known to be a probable consequence of the prosecution of such common purpose.

Offence committed other than the Offence intended.

Offence committed other than the offence intended.

79. Every one who counsels or persuades another to be a party to an offence of which that other is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

80. Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring.

Accessory after the fact defined.

Accessory after the fact defined.

81. An accessory after the fact to an offence is one who receives, comforts, or assists any one who has been a party to such offence, in order to enable him to escape, knowing him to have been a party thereto: Provided that no married woman whose husband has been a party to an offence, shall become an accessory after the fact by receiving, comforting, or assisting her husband, or by receiving, comforting, or assisting, in his presence and by his authority, any other person who has been a party to such offence, in order to enable her husband or such other person to escape.

Attempts to commit Offences.

Attempts to commit offences.

82. An attempt to commit an offence is an act done or omitted with intent to commit that offence, forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted either by the voluntary determination of the offender not to commit the offence or by some other cause.

83. Every one who, believing that a certain state of facts exists, does or attempts an act the doing or omitting of which would, if that state of facts existed, be an attempt to commit an offence, attempts to commit that offence, although its commission in the manner proposed was by reason of the non-existence of that state of facts at the time of the act or omission impossible.

84. The question whether an act done or omitted with intent to commit an offence, is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

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CHAPTER V.

OFFENCES AGAINST THE PUBLIC ORDER.

High Treason, or waging or attempting to wage War against the Queen.

85. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, may be punished with death, or with imprisonment for a term which may extend to his natural life, with or without hard labour, and with or without fine, and with or without flogging or whipping, or with any two or more of such punishments.

High treason, or waging or attempting to wage war against the Queen.

Conspiracy against the Queen or Government of the Territories.

86. Whoever within or without the said Transkeian territories conspires to commit any of the offences punishable by the last section, or to deprive the Queen of her sovereignty in the said territories, or any of Her Majesty's dominions, or conspires to overawe by means of criminal force, the Queen in her government of the said territories or dominions, shall be punished with imprisonment with or without hard labour for a term which may extend to fifteen years, to which fine may be added, or with fine only, or with flogging or whipping, or with any two or more of such punishments.

Conspiracy against the Queen or Government of the Territories.

Collecting Arms with the intention of waging War.

87. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punishable as in the last section is provided.

Collecting arms with the intention of waging war.

Concealing with intent to facilitate a design to wage War.

88. Whoever by any act or by any illegal omission conceals the existence of a design to wage war against the Queen, knowing that it may be likely that he may by such concealment facilitate the waging of such war, shall be punishable as in the eighty-sixth section of this Code is provided.

Concealing with intent to facilitate a design to wage war.

Waging War against Allies.

89. Any British subject who wages war against the Government of any power in South Africa in alliance or at peace with the Queen, or attempts to wage such war or abets the waging of such war, shall be also punishable as in the said eighty-sixth section is provided.

Waging war against allies.

Abetting Mutiny and Desertion or attempting to seduce a Soldier or Policeman from his duty.

90. Whoever by instigation, conspiracy, or aid, abets the committing of mutiny, or desertion by any person in the military or police

Abetting mutiny and desertion or attempting to seduce a

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soldier or policeman
from his duty.

service of the Queen, or attempts to seduce any such person from his allegiance or duty, shall be punished with imprisonment with or without hard labour for a term which may extend to seven years, to which fine may be added, or with fine only.

CHAPTER VI.

OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful Assemblies.

Unlawful assembly.

91. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons comprising that assembly is:

- (1) To overawe, by criminal force, or show of criminal force, any officer of the Government or any public servant in the exercise of the lawful power of such public servant, or
- (2) To resist the execution of any law, or any legal process.

Being member of unlawful Assembly.

Being member of unlawful assembly.

92. Whoever being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

Punishment.

93. Every member of an unlawful assembly shall be liable to be imprisoned, with or without hard labour, for a term which may extend to one year, to which a fine may be added.

Fighting in a public place an Affray.

Fighting in a public place an affray.

94. When two or more persons by fighting at any gathering at any kraal or after such gathering away from any kraal or in a public place, disturb the public peace, they are said to commit an affray, and shall be punished with a fine not exceeding five pounds, or in default of payment with imprisonment, with or without hard labour for a term which may extend to three months.

Dispersing an Assembly after an Affray has begun.

Dispersing assembly after an affray has begun.

95. When any five or more persons are assembled together, from whose conduct a breach of the peace may be reasonably apprehended, or when any affray has actually begun, any Justice of the Peace or other peace officer may command such persons to disperse, and on failure so to do they shall each be liable to a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a term which may extend to three months.

Obstructing or assaulting Magistrates.

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96. If after such command as is mentioned in the last preceding section, five or more persons fail to disperse, the Justice of the Peace or other peace officer may use force to compel them so to do, and whoever by force wilfully and knowingly opposes, obstructs, hinders or hurts any such Justice of the Peace or other peace officer or persons authorised by him to compel such dispersion, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine, or both.

Obstructing or assaulting magistrates

Indemnity of Persons authorised to disperse Assembly.

97. If any person, assembled as in the last two preceding sections mentioned, is killed or hurt in the apprehension of such persons, or in the endeavour to apprehend or disperse them by reason of their resistance, every person ordering them to be apprehended or dispersed and every person executing such orders shall be indemnified against all proceedings of every kind in respect thereof.

Indemnity of persons authorised to disperse assembly.

Liability of Members of unlawful Assembly.

98. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing that offence is a member of that assembly is guilty of that offence.

Liability of members of unlawful assembly.

Punishment for drunken, riotous and indecent conduct.

99. Any person drunk in any street, road, lane, or public place, or in or near any shop, store, hotel or canteen, and any person guilty of any riotous or indecent behaviour in any such place as aforesaid, or in any police office or police station-house, shall be punished with a fine not exceeding two pounds, and in default of payment, with imprisonment, with or without hard labour, and with or without spare diet for any period not exceeding fourteen days; and in case of a second or subsequent conviction, shall be punished with a fine not exceeding five pounds, or in default of payment with imprisonment with or without hard labour and with or without spare diet for any period not exceeding thirty days, unless the fine in any case be sooner paid.

Punishment for drunken, riotous and indecent conduct.

For threats, abusive language, &c.

100. Any person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, in any street, road, public place, or licensed public-house, shall be punished with a fine not exceeding three pounds, or with imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding thirty days, unless such penalty be

For threats, abusive language, &c.

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sooner paid, and such person may further be required to find sureties to keep the peace for such period not exceeding three months, as the Court before which such person is tried may deem necessary.

For accepting from Seamen and others Ships' Stores, &c.

For accepting from
seamen and others
ships' stores, Act.

101. Every person who shall, in any port knowingly purchase or take in exchange from any seamen or other person, not being the owner or master of any vessel, anything belonging to such vessel lying in such port, or any part of the cargo of any such vessel, or any stores or articles belonging to the same, shall be punished with a fine not exceeding ten pounds, or with imprisonment with or without hard labour for any term not exceeding three months, but nothing herein contained shall prevent the trial of such person for any other crime of which but for the passing of this Code he would have been guilty.

For Seamen and others removing Ships' Boats.

For seaman and
others removing
ships' boats.

102. If any seaman belonging to any vessel lying in any port, or if any other person shall take away or remove from any such vessel any boat attached or belonging to the same without having obtained permission so to do from the master or some officer of the said vessel, such seaman or other person shall (although such taking or removal may not have been with intent to steal), be punished with a fine not exceeding ten pounds, or with imprisonment with or without hard labour for any term not exceeding three months.

TITLE III.

CHAPTER VII.

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

Judicial Corruption.

Judicial Corruption.

103. Whoever, holding any judicial office, corruptly accepts, or obtains, or agrees to accept, or attempts to obtain for himself or any other person any money or valuable consideration, office, place, or employment whatever, on account of anything already done or omitted, or to be afterwards done or omitted by him in his judicial capacity, or corruptly gives to any person holding any judicial office, or to any other person, any money or valuable consideration, office, or place of employment, whatever, on account of such act or omission as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

Corruption of Public Officers.

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Corruption of Public Officers.

104. Whoever, being a Justice of the Peace, or public officer appointed in any capacity for the prosecution or detection or punishment of offenders, or whoever, being an interpreter in any Court of Justice, corruptly accepts, or maintains, or agrees to accept, or attempts to obtain for himself or any other person, any money, valuable consideration, office, or place whatever, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any offence, or to protect from detection or punishment any person having committed, or intending to commit any such offence, or corruptly gives or offers to any such officer as aforesaid, with any such intent as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both.

Threatening any Person in order to induce him to refrain from applying for legal protection.

105. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any Magistrate or other public officer or servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with a fine not exceeding ten pounds, and in default of payment thereof, with imprisonment with or without hard labour for a term which may extend to three months.

Threatening any person in order to induce him to refrain from applying for legal protection.

Perjury and Subornation of Perjury.

106. Perjury is an assertion as to a matter of fact, opinion, belief or knowledge made by a witness in a judicial proceeding as part of his evidence, either upon oath, or in any form allowed by law to be substituted for an oath, whether such evidence is given in open Court or by affidavit or otherwise, such assertion being known to such a witness to be false.

Perjury and subornation of perjury.

Every person is a witness within the meaning of this section who actually gives his evidence upon oath, or in such form as aforesaid, whether he was competent to be a witness or not. Subornation of perjury is counselling any person to commit any perjury which is actually committed.

107. Whoever is guilty of perjury, or subornation of perjury, shall be punished with imprisonment for a term which may extend to seven years, or fine, or flogging or whipping, or any two of such punishments; and if an innocent person be convicted and executed in consequence of any false evidence, the person who gives or counsels such evidence shall be punished with imprisonment, with or without hard labour, for a term which may extend to the term of his natural life, or with such term of imprisonment and flogging or whipping.

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False Statement on Oath.

False statement on oath.

108. Whoever being required or authorised by law to make a statement, either on oath or in any form permitted to be substituted for an oath, thereupon makes a statement which would amount to perjury if made in a judicial proceeding, shall be deemed to be guilty of perjury, and punished accordingly.

False Declaration.

False declaration.

109. Whoever makes a statement as to any matter of fact, opinion, or belief, which would amount to perjury if made on oath upon any occasion on which he is permitted by law to make any statement or declaration in lieu of an oath before any officer authorised by law to permit it to be made before him, shall be punished in the same manner as if he had committed the crime of perjury.

Fabricating Evidence.

Fabricating evidence.

110. Whoever, with intent to mislead any Court of Justice or person holding any such judicial proceeding as aforesaid, fabricates or contrives evidence by any means other than perjury and subornation of perjury, shall be punished with imprisonment, with or without hard labour, for a term not exceeding seven years, or with fine, or both.

Conspiring to bring False Accusations.

Conspiring to bring false accusations.

111. Whoever conspires with any person to prosecute any one for any offence, knowing such other person to be innocent thereof, shall be liable upon conviction to be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or with fine, or any two or more of such punishments: Provided, however, that where such innocent accused is convicted and executed, such conspirator may be punished with death, or imprisonment with or without hard labour, for a period which may extend to the term of his natural life.

Conspiring to defeat Justice.

Conspiring to defeat justice.

112. Whoever conspires with any person to obstruct, prevent, or defeat the course of justice, or who wilfully attempts in any way, not otherwise criminal, to obstruct, prevent, pervert, or defeat the course of justice or the administration of the law, shall be punished as in the last section provided.

Bribery or Corruption of Witnesses, Jurors, Assessors, or Interpreters.

Bribery or corruption of witnesses, jurors, assessors, or interpreters.

113. Every one shall be liable to the punishment provided in section 104 of this Code who (a) dissuades or attempts to dissuade any person by threats, bribes, or other corrupt means, from giving evidence in any cause or matter, civil or criminal; or (b) influences

or attempts to influence by threats or bribes or other corrupt means any jurymen, assessor, or interpreter in his conduct as such, whether such jurymen, assessor, or interpreter, has been sworn or not; (c) or accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as jurymen, assessor, or interpreter.

CHAPTER VIII.

ESCAPES AND RESCUES.

114. Whoever by force or violence breaks any gaol or prison with intent to set at liberty himself or any other person lawfully confined therein on any criminal charge, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years. Escapes and rescues.

115. Whoever, being convicted of any offence, escapes from gaol or prison, or from any lawful custody in which he may be under such conviction, or attempts or conspires to make his escape from such custody, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or flogging or whipping.

116. Whoever, being in lawful custody on any criminal charge, escapes from such custody, shall be liable to imprisonment, with or without hard labour, for a term which may extend to one year, or fine or both.

117. Whoever rescues any prisoner, or assists any prisoner in escaping or attempting to escape from lawful custody, whether in gaol or in prison or not, or being a gaoler or other officer having the lawful custody of such prisoner, voluntarily and intentionally permits him to escape, or aids him in escaping or attempting to escape, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or fine, or both.

118. Whoever, by failing to perform any legal duty, permits a person in his lawful custody on a criminal charge to escape therefrom, shall be punished with imprisonment for a term which may extend to six months, or fine, or both.

119. It shall be lawful for the Governor to make such rules and regulations for the several gaols and prisons of the territories to which this Code applies, and for the discipline therein, as shall to him seem expedient, and thereby to impose any punishment for the breach of such regulation, under a penalty of imprisonment, with or without hard labour, or with or without spare diet, or flogging, or whipping: Provided that in no case shall any unconvicted person be sentenced to flogging or whipping.

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TITLE IV.

CHAPTER IX.

OFFENCES AGAINST RELIGION, MORALITY,
DECENCY, AND THE PUBLIC HEALTH.*Disturbing a Religious Assembly.*

Disturbing a religious assembly.

120. Whoever wilfully and without lawful justification or excuse, the proof whereof shall be on him, disquiets or disturbs any meeting, assembly, or congregation of persons lawfully assembled for religious worship, and whoever in any way disturbs, molests, or misuses any preacher, teacher, or person lawfully officiating at such meeting, assembly, or congregation, or any persons there assembled, shall be punished with a fine not exceeding ten pounds sterling, and in default of payment with imprisonment, with or without hard labour, for a term which may extend to three months, unless such fine be sooner paid.

Unnatural Offences.

Unnatural offences.

121. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with flogging, or whipping, or fine, or with any two or more of the said punishments. This offence is complete upon penetration.

122. Whoever attempts to have carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or flogging, or whipping, or fine, or to any two or more of such punishments.

Incest.

Incest.

123. Incest is the carnal connection of persons related by consanguinity within the third degree.

Incest shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with flogging, or fine, or any two or more of these punishments combined.

Indecent Acts.

Indecent acts.

124. Whoever commits any nuisance in any street or public place, or in view of any dwelling-house whereby public decency may be offended, shall be punished with a fine not exceeding two pounds, and in default of payment thereof with imprisonment with or without hard labour for a term which may extend to one month, unless such fine be sooner paid.

Insufficient Clothing in Town and other Public Places.

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125. Whoever indecently exposes his person or appears in any street or public thoroughfare without such articles of clothing as decency requires shall be punished with a fine not exceeding two pounds, and in default of payment with imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Insufficient clothing in towns and other public places.

Burial, Disinterment, or Indignity to Human Remains.

126. Whoever neglects to perform any legal duty, either imposed upon him by law, or undertaken by him, with reference to the burial of any dead human body or human remains, or without lawful authority disinters a dead body, or improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not, shall be liable to a fine of twenty pounds, or in default of payment, to imprisonment with or without hard labour for a term which may extend to six months, unless such fine be sooner paid.

Burial, disinterment, or indignity to human remains.

Common Nuisances.

127. Whoever is guilty of an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, or health of the public, or which occasions injury to the person of any individual, may be convicted and punished with a fine not exceeding twenty pounds, and in default of payment thereof with imprisonment, with or without hard labour, for a term which may extend to six months, unless such fine be sooner paid.

Common nuisances.

General Police Provisions.

128. Any person guilty of any of the following acts or offences shall, upon conviction in respect of each act or offence, be punished with a fine not exceeding five pounds, or in default of payment be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine be sooner paid:

General Police provisions.

- (1) Any driver of any vehicle injuring any person or property by negligence or driving on the wrong side of the road.
- (2) Any driver of any vehicle being away from his horse or cattle so as to be unable to have the full control of them.
- (3) Driving any vehicle or riding any animal, and when meeting any other vehicle or animal being ridden not keeping on the left or near side of the road or street, or when passing any other vehicle or animal going in the same direction, not going or passing or not allowing any person desirous so to do to pass when practicable on the right or off side of such other vehicle or animal being ridden.
- (4) Leaving upon any street, public road or thoroughfare, any stone, timber, bricks, or other thing, calculated to

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damage or endanger any animal or vehicle ridden or driven thereon.

- (5) Any driver or guard of a public vehicle for the conveyance of passengers wilfully delaying on the road, using any abusive or insulting language to any passenger, or by reason of intoxication, negligence, or other misconduct, endangering the safety or property of any passenger or other person, or demanding or exacting more than the proper fare due from any passenger.
- (6) Leaving upon any public road or thoroughfare any vehicle, plough or harrow without any horse or animal harnessed thereto, unless in consequence of some accident having occurred.
- (7) Having any timber, iron, or boards laid across any vehicle going along any public road so that either end projects more than two feet beyond the wheels or sides of such vehicle.
- (8) Slaughtering or skinning any beast upon any public road or thoroughfare, or leaving any dead beast on any such road or thoroughfare.
- (9) Setting or urging or permitting any dog or other animal to attack or worry any person, horse or other animal, or by ill-usage or negligence in driving any cattle causing any damage or hurt to be done by such cattle.
- (10) Wilfully breaking any pane of glass in any building.
- (11) Wilfully breaking or extinguishing or injuring any lamp, or damaging any lamp-post.
- (12) Wilfully trespassing in any place, and neglecting or refusing to leave such place after being warned to do so by the owner or occupier, or any person authorised by or on behalf of the owner or occupier.
- (13) Playing or betting in any street or other open and public place, at or with any table or instrument of gaming or pretended game of chance.

129. Any person guilty of any of the following acts or offences shall upon conviction in respect of each act or offence be punished with a fine not exceeding twenty pounds, or in default of payment be imprisoned with or without hard labour, for a period not exceeding six months, unless such fine be sooner paid, or either to such penalty or such imprisonment, that is to say :

- (1) Any person having in his custody or possession without lawful excuse (the proof of which excuse shall be on such person) any pick-lock, key, crow, or other implement of housebreaking.
- (2) Any person found by night, having his face blackened or wearing felt or other slippers, or being dressed or otherwise disguised with a criminal intent.
- (3) Any person found by night, without lawful excuse (the proof of which excuse shall be on such person) in or upon,

- or loitering in the neighbourhood of any dwelling-house, warehouse, coach-house, stable, cellar, or out-house, or in or loitering in the neighbourhood of any enclosed yard, garden, or area, or in any kraal, or in or on board any ship or other vessel when lying or being in any port, harbour, or place in these territories.
- (4) Any person found by night armed with any gun, pistol, sword, bludgeon, or other offensive weapon or instrument with a criminal intent, and who being thereto required shall not assign a valid and satisfactory reason for being so armed.
- (5) Any person who shall resist, or incite, or aid, or encourage any person to resist, and any person who shall hinder or disturb any constable, policeman, or officer of any local authority in the execution of his duty.

TITLE V.

CHAPTER X.

OFFENCES AGAINST THE PERSON.

Duties tending to the Preservation of Life.

Duty to provide Necessaries.

130. Whoever has charge of any other person, unable either by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform it, if death is caused thereby; or if the life of such person is endangered, or his health permanently injured, whether such charge is imposed upon him by law, or if undertaken by him under any contract, or by reason of any unlawful act.

Duties tending to the preservation of life.

Duty to provide necessaries.

Duty of Persons doing dangerous acts.

131. Every one who undertakes, except in cases of necessity, to administer surgical or medical treatment, or to do any other lawful act, the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill, care, and caution in doing any such act, and is criminally responsible for omitting to discharge that duty, if death is caused thereby.

Duty of persons doing dangerous acts.

Duty of Persons in charge of dangerous things.

132. Every one who has in his charge, or under his control, anything whatever, whether animate or inanimate, or who erects, makes, or maintains anything whatever which, in the absence, of

Duty of persons in charge of dangerous things.

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precaution or care, may endanger human life, is under a legal duty to take reasonable precautions against, and use reasonable care to avoid, such danger, and is criminally responsible for the consequences of omitting without lawful excuse to take such precautions or to use such care.

Duty to avoid omissions dangerous to Life.

Duty to avoid omissions dangerous to life.

133. Every one who undertakes to do any act, the omission to do which is or may be dangerous to life, is under a legal duty to do that act, and is criminally responsible for the consequences of omitting, without lawful excuse, to discharge that duty.

Homicide defined.

Homicide defined.

134. Homicide is the killing of a human being by another directly or indirectly by any means whatsoever.

A child becomes a human being within the meaning of this Code, when it has completely proceeded in a living state from the body of its mother, whether in a case of suspended respiration, it has breathed or not, and whether it has an independent circulation or not, and whether the navel string is severed or not; and the killing of such a child is homicide when it dies after birth in consequence of injuries received before, during, or after birth.

Culpable Homicide.

Culpable homicide

135. Homicide is culpable when it consists in the killing of any person either by an unlawful act or by a culpable omission to perform or observe any legal duty, or by both combined, or by causing a person by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

Homicide which is not culpable is not an offence.

Death must be within a year.

Death must be within a year.

136. No one is criminally responsible for the killing of another unless the death take place within a year of the cause of death. The period of a year shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened first.

Acceleration of Death.

Acceleration of death.

137. Every one who by an act or omission of a legal duty causes the death of another shall be deemed to kill that person, although the effect of the bodily injury caused to such other

person be merely to accelerate his death, while labouring under some disorder or disease arising from some other cause.

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Causing Death which might have been prevented.

138. Every one who by an act or omission of a legal duty causes the death of another shall be deemed to kill that person, although death from that cause might have been prevented by resorting to proper means.

Causing death which might have been prevented.

139. Every one who causes a bodily injury to any person from which death results shall be deemed to kill that person, although the immediate cause of such death be treatment applied in good faith for the purpose of cure, even if such treatment was improper: Provided that if the injury was not in itself of a dangerous character, and the improper treatment was the cause of death, that shall be a defence to a charge of murder or culpable homicide.

Murder, &c.

140. Culpable homicide becomes murder in the following cases:

Murder, &c.

- (a) If the offender means to cause the death of the person killed.
- (b) If the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and if the offender, whether he does or does not mean to cause death, is reckless whether death ensues or not.
- (c) If the offender means to cause death or such bodily injury as aforesaid to one person, so that if that person be killed the offender would be guilty of murder, and by accident or mistake the offender kills another person, though he does not mean to hurt the person killed.
- (d) If the offender for any unlawful object does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one.

Provocation.

141. Homicide which would otherwise be murder may be reduced to culpable homicide if the person who causes death does so in the heat of passion occasioned by sudden provocation.

Provocation.

Any wrongful act or insult of such a nature as to be sufficient to deprive any ordinary person of the power of self-control may be provocation, if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

Whether any particular wrongful act or insult, whatever may be its nature, amounts to provocation, and whether the person provoked was actually deprived of the power of self-control by

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the provocation which he received, shall be questions of fact: Provided that no one shall be deemed to give provocation to another only by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person: Provided also that an arrest shall not necessarily reduce the offence from murder to culpable homicide because the arrest was illegal, but if the illegality was known to the offender, it may be evidence of provocation.

Punishment for Murder, &c.

Punishment for murder, &c.

142. Every one who commits murder shall, upon conviction thereof, be sentenced to death.

143. Every one who attempts to commit murder shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, fine, or flogging or whipping, or with any two or more of such punishments.

144. Whoever

(a) Conspires or agrees with any person to murder or to cause or procure the murder of any other person, whether the person intended to be murdered is a subject of Her Majesty or not, or is within Her Majesty's dominions or not: or

(b) Counsels or attempts to procure any person to murder any other person, although such person is not murdered in consequence of such counselling or attempted procurement, whether the person whose murder is counselled or attempted to be procured is a subject of Her Majesty or not, or is within Her Majesty's dominions or not:

shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with fine, or flogging or whipping, or any two or more of such punishments.

Accessory after the fact to Murder.

Accessory after the fact to murder.

145. Whoever is an accessory after the fact to murder shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

Punishment of Culpable Homicide.

Punishment of culpable homicide.

146. Every one who commits culpable homicide shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with fine, or with flogging or whipping, or any two or more of such punishments.

Aiding and abetting Suicide.

Aiding and abetting suicide

147. Whoever counsels or procures any person to commit suicide, actually committed in consequence of such counselling or

procurement, or whoever aids or abets any person in the commission of suicide, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with fine, or both: Provided, however, that for abetment of suicide of a minor or insane or intoxicated person the term of such imprisonment may extend to his natural life.

Attempting Suicide.

148. Every one who attempts to commit suicide shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine or both.

Attempting suicide.

Concealment of Child-birth.

149. Whoever disposes of the dead body of any child in any manner, with intent to conceal the fact of its birth, whether the child died before, during, or after birth, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with fine, or both.

Concealment of child-birth.

Bodily injuries and acts causing danger to the Person.

150. Whoever with intent to maim, disfigure, disable or do grievous bodily harm to any one, or, to resist or prevent the lawful apprehension or detention of any one, unlawfully wounds or does actual grievous bodily harm to any person, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or with fine, or with flogging or whipping, or any two or more of such punishments.

Bodily injuries and acts causing danger to the person.

The following kinds of hurt only are designated "grievous" bodily harm, viz.: 1, Emasculation; 2, permanent privation of the sight of an eye; 3, permanent privation of the hearing of an ear; 4, privation of any member or joint; 5, destruction or impairing of the powers of any member or joint; 6 permanent disfiguration of the head or face; 7, fracture or dislocation of a bone; 8, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Administering Poison so as to endanger Life.

151. Whoever knowingly and with intent to injure, aggrieve, or annoy any person administers, or causes to be administered to, or be taken by such person, any poison, or other noxious or destructive thing, whereby the life of any person is endangered or grievous bodily harm is caused to any person, shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with fine, or with flogging or whipping, or any two or more of such punishments.

Administering poison so as to endanger life.

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Administering Poison with intent.

Administering poison with intent.

152. Whoever knowingly and with intent to injure, aggrieve, or annoy any person, administers to, or causes to be administered to, or be taken by such person, any poison or other destructive or noxious thing, although no injury may be caused thereby, shall be punished with imprisonment with or without hard labour for a term which may extend to one year or with flogging or whipping, or any two or more of such punishments.

Forcing or aiding, or procuring the enforcement of Circumcision or Intonjane.

Forcing or aiding, or procuring the enforcement of circumcision or intonjane.

153. Whoever by force or threats compels any person to submit against his or her will to the act of circumcision, or to take part in the ceremony named *intonjane*, or whoever by force or threats compels any person, male or female, against his or her will, to submit to any other like act or ceremony, shall be punished with fine, and in default of payment, with imprisonment, with or without hard labour, for a term which may extend to one year.

Circumcision without consent.

Circumcision without consent.

154. Any person aiding or procuring the circumcision of any youth without the consent of his parent or the person having the lawful custody of such youth, shall be guilty of an assault, and shall be punished as in the last preceding section mentioned.

Assault defined.

Assault defined.

155. An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has or causes the other to believe upon reasonable grounds that he has the present ability to effect his purpose.

Indecent Assault.

Indecent assault.

156. Whoever indecently assaults any female shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine or with flogging, or whipping, or any two or more of such punishments.

Assaults on Peace Officers, and to resist Apprehension.

Assaults on peace officers, and to resist apprehension.

157. Whoever

- (a) Assaults any person with intent to commit an offence, or to resist or prevent the lawful apprehension or detention of himself, or of any other person for any offence, or to rescue any person from lawful custody;
- (b) Assaults, resists, or wilfully obstructs any peace officer in the execution of his duty, or any person acting in aid of such officer; or

(c) Assaults, resists, or unlawfully obstructs any person in the lawful execution of any process against any lands or goods, or with intent to rescue any goods, taken under such process, or taken under any lawful distress ; shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine, or both.

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Common Assaults.

158. Whoever commits a common assault shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine or both.

Common assaults.

Rape.

159. Rape is the act of a man having carnal knowledge without the consent of a woman who is not his wife : Provided that nothing shall be deemed to be consent which is either extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by falsely and fraudulently misrepresenting the nature and quality of the act. This offence shall be complete upon penetration.

Rape.

A boy under fourteen years of age shall be conclusively presumed to be incapable of having carnal knowledge of a woman within the meaning of this section.

Whoever commits rape shall be punished with imprisonment, with or without hard labour, for a term which may extend to twenty years, or with flogging or whipping or with fine or any two or more of such punishments.

Attempt to Rape.

160. Whoever attempts to commit a rape shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or with flogging, or fine, or whipping, or any two or more of such punishments.

Attempt to rape.

Carnally knowing Children.

161. Whoever carnally knows any girl under the age of twelve years, whether he believes her to be of or above that age or not, and whether she consents or not, shall be imprisoned, with or without hard labour, for a term which may extend to twenty years, or with or without flogging or whipping or fine, or any two or more of such punishments.

Carnally knowing children.

162. Whoever attempts carnally to know any girl under the age of twelve years, whether he believes her to be of such age or not, shall be punished with imprisonment with or without hard labour, for a term which may extend to two years, or with fine, or with flogging or whipping, or any two or more of the said punishments.

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Age of Children.

Age of children.

163. It shall be lawful for the Court or Jury by whom the accused is tried to judge from the appearance of the girl in question in such prosecution, and also, if the Court thinks fit from the opinions duly given in evidence of persons skilled in ascertaining the age of such girls, and from any other evidence that may be adduced on the subject, whether the girl was under the age of twelve years at the time the offence was committed or not.

Causing Death of Child by Miscarriage.

Causing of miscarriage.

164. Whoever causes the death of any living child, which has not proceeded in a living state from the body of its mother, in such a manner that he would have been guilty of murder if such child had been fully born, shall be punished with imprisonment with or without hard labour for a term which may extend to seven years or with fine or both: Provided that no one shall be guilty of an offence under this section who by means employed in good faith for the preservation of the life of the mother of the child, causes the death of any such child before or during or after its birth.

Procuring Miscarriage.

Procuring miscarriage.

165. Whoever, with the intent to procure miscarriage of any woman, whether she be or be not with child, unlawfully administers to, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be punished with imprisonment with or without hard labour, for a term which may extend to five years, or fine or both: Provided that such woman herself shall not be indictable under this section.

Woman Procuring her own Miscarriage.

Woman procuring her own miscarriage.

166. Whoever unlawfully administers or permits to be administered to herself, any poison or other noxious thing, or unlawfully uses or permits to be used on herself any instrument with intent to procure her own miscarriage, shall be punished with imprisonment with or without hard labour, for a term which may extend to two years, or fine, or both.

Supplying means of procuring Abortion.

Supplying means of procuring abortion.

167. Whoever unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child, shall be punished with imprisonment, with or without hard labour, for a period which may extend to one year, or fine or both.

Bigamy.

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Bigamy.

168. Whoever, having a husband or wife living, marries in any case in which such marriage is and shall be void by reason of its taking place during the lifetime of such husband or wife, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with fine or both: Provided, however, that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, or to any person who contracts a marriage during the life of such husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time: Provided that the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same is within his or her knowledge: Provided, further, that this section shall not extend to any person whose previous marriage with a husband or wife living was entered into according to Native custom, whether the same was registered or not.

Stealing or abducting Children under fourteen years of age.

169. Whoever with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of fourteen, unlawfully leads or takes away or decoys or entices away or detains any such child, or receives or harbours any such child, knowing it to have been dealt with as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both: Provided that nothing herein shall extend to any one who gets or takes possession of any child, claiming in good faith a right to the possession of the child.

Stealing or abducting children under fourteen years of age.

Abandoning or exposing Children.

170. Whoever unlawfully exposes or abandons any child under the age of seven years, or who, being lawfully bound to take charge of any such child, knowingly and without lawful excuse leaves it abandoned or exposed, whereby its life is endangered or its health is permanently injured, shall be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or with fine, or both.

Abandoning or exposing children.

CHAPTER XI.

PRETENDED WITCHCRAFT.

Imputations of Witchcraft.

Imputations of witchcraft, of 171. Whoever imputes to any other the use of non-natural means in causing any disease in any person or animal, or in causing any injury to any person or property, that is to say, whoever names or indicates another to be a wizard or witch (*umtakati*) shall be punished with a fine not exceeding forty shillings sterling, or in default of payment with imprisonment, with or without hard labour, for fourteen days unless such fine be sooner paid.

172. Whoever having named or indicated any person as wizard or witch, shall be proved to be by habit and repute a witch-doctor or witch-finder (*isanusi*) shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or with fine, or flogging, or any two or more of such punishments.

Employing a Witch-doctor.

Employing a witch-doctor. 173. Whoever employs or solicits any witch-doctor or witch-finder (*isanusi*) to name or indicate any person as wizard or witch (*umtaktai*) shall be punished with a fine not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a term which may extend to two months unless such fine be sooner paid.

Witch-doctors supplying Advice or Witchcraft Materials with intent to injure.

Witch-doctors supplying advice or witchcraft materials with intent to injure. 174. Any person professing to a knowledge of so-called witchcraft, or the use of charms, who shall advise any person applying to him how to bewitch or injure persons, property, or cattle, or who shall supply any person with the pretended means of witchcraft, shall be punished with imprisonment, with or without hard labour, for a term not exceeding twelve months, or with fine.

Persons using Witch Medicine with intent to injure.

Persons using witch medicine with intent to injure. 175. Whoever, on the advice of a witch-doctor, or of his pretended knowledge of so-called witchcraft, shall, with intent to injure, use, or cause to be put into operation, such means or processes as he believes are calculated to injure any person or property, shall be punished by imprisonment, with or without hard labour, for a period not exceeding twelve months, or with fine.

TITLE VI.

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CHAPTER XII.

THEFTS AND SIMILAR OFFENCES.

Inanimate things, fixed or movable, capable of being stolen.

176. Every inanimate thing whatever, which is the property of any person, and which either is or may be made movable, shall be capable of being stolen, as soon as it becomes movable, although it be made movable in order to steal it.

Inanimate things, fixed or movable capable of being stolen.

Animals capable of being stolen.

177. All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen.

Animals capable of being stolen.

178. All wild living creatures, wild by nature, shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement, or are being actually pursued after escaping therefrom, but no longer. Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen when living; nor shall the taking of their dead bodies by or by orders of the person who killed them before they are reduced into actual possession by the owner or occupier of the land on which they die, be deemed theft. Everything produced by, or forming part of, any living creature capable of being stolen, shall be capable of being stolen: Provided always that nothing in this section contained shall in any way affect or interfere with the provisions of Act 9 of 1869, "For the better protection of Bees," which last-mentioned Act shall be and remain in force as law throughout these territories; and provided, further, that Act 12 of 1870, "For the better preservation of Wild Ostriches," as amended by Act 15 of 1875, or "The Wild Ostriches Act of 1875," shall also have the effect of law within these territories: Provided, further, that the Act 24 of 1875, or "The Domesticated Ostriches Act of 1875," shall have the effect of law within the said territories.

Acts 9 of 1869, 12 of 1870, 15 of 1875, 24 of 1875, to be in force in these territories.

Definition of Theft.

179. Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person anything or the use of anything capable of being stolen, with intent to deprive the owner thereof or to deprive any person having any special property or interest therein of such property or interest. It is immaterial whether the thing converted was taken by the thief for the purpose of the conversion or whether it was at the time of the conversion in the lawful possession of the thief: Provided that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same to any horse

Definition of theft.

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or other animal belonging to or in the possession of his master, the servant so offending shall not by reason thereof be deemed guilty of theft.

180. Theft is complete when the offender takes or moves anything capable of being stolen, or causes it to move or to be moved, for the purpose of fraudulently converting it, although such conversion be not completed.

181. Theft is committed when the offender cuts, rips, or otherwise begins to cause to be movable anything part of or growing out of or attached to any real property with intent to steal it.

Theft of Animals.

Theft of animals. 182. Every one commits theft who kills any living creature capable of being stolen with intent to steal the carcase, skin, plumage, or any part of such creature.

Theft by Agent.

Theft by agent. 183. Every one commits theft who, having received any money, valuable security, or other thing whatsoever, on terms requiring him to account for or pay the same or the proceeds thereof to any other person, though not requiring him to deliver over in specie the identical money, valuable security, or other thing received, fraudulently converts to his own use or fraudulently omits to account for the same, or to account, for or pay any part of the proceeds which he was required to account for or pay as aforesaid: Provided that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of any part of such proceeds in such account shall be deemed a sufficient accounting for the part of the proceeds so entered.

Theft by Person holding Power of Attorney.

Theft by person holding power of attorney.

184. Every one commits theft who, being entrusted either solely or jointly with any other person, with any power of attorney, for the sale, mortgage, pledge, or other disposition of any property, movable or immovable, whether capable of being stolen or not, fraudulently sells, mortgages, pledges, or otherwise disposes of the same or any part thereof; or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was entrusted with such power of attorney.

Theft by misappropriating proceeds held under direction.

Theft by misappropriating proceeds held under direction.

185. Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security,

or any power of attorney for the sale of any stock or shares whatever, with the direction that such money, or any part thereof, or the proceeds or any part of the proceeds of such security or such stock or shares shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person, such proceeds or part thereof: Provided that where the person receiving such money, security, or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply, unless such direction is in writing.

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Theft by Co-owner.

186. Theft may be committed by the owner of anything capable of being stolen, against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by one of several joint owners, tenants in common, or partners of or in any such thing, against the other person interested therein, or by the directors, public officers, or members of a public company or body corporate against such public company or body corporate.

Theft by co-owner.

Husband and Wife.

187. No husband shall be convicted of stealing, during cohabitation, the property of his wife; and no wife shall be convicted of stealing, during cohabitation, the property of her husband; but whilst they are living apart from each other, either shall be guilty of theft if he or she fraudulently takes or converts anything which is by law the property of the other in a manner which in any other person would amount to theft.

Husband and wife.

188. Every one commits theft who, whilst a husband and wife are living together, knowingly (a) assists either of them in dealing fraudulently with anything which is the property of the other, in a manner which would amount to theft if they were not married; or (b) receives from either of them anything the property of the other, obtained from that other by such fraudulent dealings as aforesaid.

Obliterating Documents Fraudulently.

189. Every one who destroys, cancels, conceals, or obliterates any document for any fraudulent purpose, shall be punished as if he had stolen that document.

Obliterating documents fraudulently.

Theft outside of the Territories.

190. Every one who having obtained any property by any act which if done in these territories would have amounted to theft, brings such property into these territories, shall be guilty of theft.

Theft outside of the territories.

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Theft by False Pretences.

Theft by false pretences.

191. A false pretence is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

192. Every one shall be guilty of theft by false pretences, and shall be liable, upon conviction thereof, to the penalties provided for the crime of theft, who by any false pretence obtains with intent to defraud, either directly or through the medium of any contract obtained by such false pretence, anything capable or the use of anything capable of being stolen, or who with intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of valuable security, or to impress or affix any name or seal on any paper or parchment, in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

193. Every one who by any false pretence causes or procures anything capable of being stolen to be delivered to any other person than himself with intent to defraud, obtains, that thing by a false pretence within the meaning of this section, and shall be punishable with the penalties provided for the crime of theft.

Theft of Ostrich Feathers, Hides, Skins, Wool, Mohair, &c.

Theft of Ostrich Feathers, Hides, Skins, Wool, Mohair, &c.

194. All and singular the provisions of the Acts No. 32 of 1883, No. 19 of 1884, and No. 13 of 1885 shall be in force in the Transkeian Territories.

Wrongful possession of and Illicit Dealing in Diamonds.

Wrongful possession of and illicit dealing in diamonds.

195. All and singular the provisions of every law which shall, at the time of the taking effect of this Code, be in force in any part of this Colony other than Griqualand West, in regard to the wrongful possession of and illicit dealing in diamonds and other precious stones, shall be in force in the Transkeian Territories.

Obtaining Value or Credit by Fraud.

Obtaining value or credit by fraud.

196. Whoever obtains any money or things, or who in incurring any debt or liability, obtains credit by means of any fraud, though not amounting to a false pretence as hereinbefore defined, may be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Punishments for certain Thefts.

Punishments for certain thefts.

197. Whoever steals any testamentary instrument, post letter bag, post letter, postal packet, or anything from such post letter bag, post letter, or postal packet, or who being a clerk or servant, or being employed in the capacity or for the purpose of a clerk or

servant, steals anything belonging to or in the possession of his master or employer, or being employed in the public service of Her Majesty, or in the service of any public department, or public body, or being employed as a constable, steals anything in his possession by virtue of his employment, shall be punished with imprisonment, with or without hard labour, for a period which may extend to a term of seven years, or fine, or both; and, in case of subsequent conviction, with imprisonment, with or without hard labour, which may extend to a term of ten years, or fine, or both.

Punishments for Cattle Thefts.

198. Whoever steals anything from the person of another, or from any dwelling-house, or steals any horse, ass, mule, sheep, horned cattle, goat, or domesticated ostrich, or the feathers thereof, or who wilfully kills any such animal, with intent to steal the carcase, or any part thereof may, upon conviction, be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both; and in case of subsequent conviction, with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or fine, or any two of such punishments.

Punishments for cattle thefts.

Punishment for Thefts otherwise not provided for.

199. Whoever steals anything for the stealing of which no punishment is hereinbefore provided, shall be punished with imprisonment with or without hard labour, for a term which may extend to three years, or fine or both, and in case of a subsequent conviction with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, with flogging or whipping, or any two or more of such punishments.

Punishment for thefts otherwise not provided for.

Responsibility for value of Stolen property under Spoor Law.

200. When the spoor of any stolen animals is traced to any kraal or locality responsibility in respect of the value of such stolen animals shall be determined as is hereinafter provided; that is to say:

Responsibility for value of stolen property under Spoor Law.

(A) When such spoor originates and terminates within the limits of a magisterial district or tribal area, then—

1. The head of any kraal (*umninimzi*) shall be responsible for the value and damages of any stolen animals the spoor of which is traced to such kraal, when corroborative evidence is forthcoming to the satisfaction of the Resident Magistrate that the theft in question was committed by some person belonging to such kraal.
2. The owner of any stolen animals the spoor of which has become lost or obliterated, has a right of search for any traces of such animal in any hut, kraal, enclosure or

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- lands in that neighbourhood ; and any person refusing to permit such search is responsible for the value of the animal stolen, with damages.
3. When the owner of any stolen animals is on the spoor of such animal, it shall be lawful for such owner to demand from the persons living in the neighbourhood all reasonable assistance in following up such spoor, and whoever neglects or refuses to give such assistance, and by such neglect or refusal causes the loss or obliteration of such spoor, or whoever by wilful obstruction or malice causes the loss or obliteration of such spoor, is liable for the value of the animal stolen, with damages.
- (B) When the spoor originates in one magisterial district or tribal area and passes into and terminates in another magisterial district or tribal area, then—
1. When such spoor is traced to any kraal or kraals, the owners (*abaninimizi*) shall be held responsible for the value of the animal stolen, and upon the order of the Resident Magistrate of the district, shall forthwith pay such value into Court for the benefit of the owner.
 2. When such spoor cannot be traced to any specific kraal or kraals, but is lost, or becomes obliterated on any lands, then the responsibility for the value of such stolen animal shall devolve upon the heads (*abaninimizi*) of the kraals adjacent to and surrounding the spot where such spoor has been lost or obliterated ; and for the purpose of compensating the owner of such stolen animal, it shall be lawful for the Resident Magistrate so to fix such responsibility by an assessment not exceeding two head of cattle (or their money value), to be by such Magistrate levied on each kraal, to make up the whole value, or as near as possible the whole value, of the stolen animal or animals.
 3. Whenever a spoor is traced to, or within, the confines of any locality occupied by any kraal or kraals, or to or within any area occupied by any community or section of a tribe, if the persons occupying such kraal or kraals or locality, or constituting such community or such section of a tribe, without lawful excuse, neglect or refuse to receive to take over and follow up such spoor, they are responsible for the value of the stolen animal whose spoor shall have been so traced, and are to be compelled to make good such value to the owner in like manner as is provided for with reference to "lost spoor" cases in the preceding sub-section.

Creating False Spoor.

201. Whoever fraudulently and with intent to injure another shall create any spoor, shall be punished with fine not exceeding

Creating false
spoor.

fifty pounds sterling, and in default of payment with imprisonment with or without hard labour for a term which may extend to twelve months.

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Mode of procedure in Spoor Cases.

202. It shall be lawful for the Resident Magistrate of any district, whenever any claim is made against any person or persons in respect of the spoor traced to any kraal or locality, upon request of the owner of the animal or animals stolen, or of any person authorised by such owner, to inquire summarily and without pleading, but in the presence of the heads of the kraals upon whom responsibility is sought to be attached, into the circumstances of the case, and the value of the animal or animals alleged to have been stolen, together with the damage which the owner or owners shall have sustained by the loss, or by the cost of search or other endeavour to recover the same, and may give judgment in favour of such owner as hereinbefore provided.

Mode of procedure
in spoor cases.

CHAPTER XIII.

FRAUD AND BREACH OF TRUST.

Fraudulent Accounting by Directors.

203. Whoever being a director, manager, public officer, or member of any body corporate or public company, with intent to defraud, destroys, alters, mutilates any book, paper, writing, or valuable security belonging to the body corporate or public company, or makes or concurs in making any false entry, or omits or concurs in omitting to enter any material particular in any book of account or other document, or being a director, public officer, or manager of any body corporate or public company, as such receives or possesses himself of any of the property of such body corporate or public company, and with intent to defraud omits to make, or to cause and direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be liable, upon conviction, to imprisonment with or without hard labour, for a term which may extend to five years, or fine, or both.

Fraudulent A c-
counting by Direc-
tors.

False Statements by Directors.

204. Whoever being a promoter, director, public officer, or manager of any body corporate or public company, either existing or intended to be formed, makes, circulates, or publishes any prospectus, statement, or account which he knows to be false in any material particular, with intent to induce persons, whether ascertained or not, to become shareholders, or partners, or with

False Statements
by Directors.

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intent to deceive or defraud the members, shareholders, or creditors, or any of them, whether ascertained or not, of such body corporate or public company, or with intent to induce any person to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be liable to the punishment in the preceding section provided.

Falsifying Accounts by Clerks and Servants.

Falsifying accounts by clerks and servants.

205. Whoever being an officer, clerk, or servant, or employed or acting in such capacity, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, document, or account, which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or with intent to defraud makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, paper, writing, valuable security, or account as aforesaid, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or with or without hard labour, or fine or both.

Public Officers making False Statements and Returns.

Public Officers making false statements and returns.

206. Whoever, being an officer, collector, or receiver entrusted with the receipt, custody, or management of any part of the public revenues, knowingly makes or renders any false statement or return of any money collected by him or entrusted to his care, or of any balance of money in his hand, or under his control, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or fine or both.

Conspiracy to Defraud.

Conspiracy to defraud.

207. Whoever conspires with any other person by deceit or falsehood, or other fraudulent means, to defraud the public, or to affect the public market, price of shares, merchandise, or anything else publicly sold, or who conspires by deceit and falsehood or other fraudulent means, to defraud any person, ascertained or unascertained, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence, as herein-before defined, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or to fine, or to both; and whoever after a previous conviction for any offence involving dishonesty, commits an offence under this section, may be sentenced to a term of imprisonment, with or without hard labour, which may extend to five years, or fine, or both.

Unlawful Gaming and Betting.

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208. Whoever wins or endeavours to win from any other person to himself or to any other any money or valuable thing by any fraud or unlawful device or ill practice in playing at or with cards, dice, tables, or other games, or in bearing a part in the stakes, wages, or adventures, or in betting on the size or hands of the players, or in wagering on the event of any sport, pastime, or exercise, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or fine or both. The offence is complete although the thing won has not been paid or delivered.

Unlawful gaming and betting.

Criminal Breach of Trust.

209. Whoever being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, shall be guilty of a criminal breach of trust and upon conviction shall be punished with imprisonment for a term which may extend to three years, or with fine, or both.

Criminal breach of trust.

Fraudulent Disposition of Property.

210. Whoever dishonestly or fraudently removes, converts, or delivers to any person, or causes to be transferred to any person without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent the distribution of that property according to law, or among his creditors or the creditors of any other person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Fraudulent disposition of property.

CHAPTER XIV.**ROBBERY AND EXTORTION.***Definition of Robbery, and its Punishment.*

211. Robbery is theft accompanied with actual violence or threats of violence to any person or property, intentionally used to extort the property stolen, or to prevent or overcome resistance to its being stolen, and shall be punished with imprisonment with or without hard labour for a term which may extend to seven years, or flogging or whipping, or any two of these punishments.

Definition of Robbery and its punishment.

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212. Everyone who assaults any person with intent to rob him shall be punished as in the last section provided.

213. Whoever with menaces demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it, shall be punished with imprisonment, with or without hard labour for a term, which may extend to two years or with fine or both.

214. Whoever with intent to extort or gain anything from any person : (a) accuses or threatens to accuse either that person or any other person, whether the person accused or threatened with accusation is guilty or not, of any offence punishable by law ; or (b) threatens that any person shall be so accused by any other person ; (c) or without lawful excuse sends, delivers, utters, or directly or indirectly causes to be received by any person any document containing any such accusation or threat as aforesaid, knowing the contents thereof ; (d) or by any of the means aforesaid, compels or attempts to compel any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, shall be punished with imprisonment with or without hard labour, for a term that may extend to two years, or with fine, or with both such punishments.

Housebreaking.

Housebreaking.

215. Whoever breaks and enters a building with intent to commit any offence therein, or breaks out of such building either after committing such offence therein, or after having entered it to commit an offence, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

Receiving Property stolen or dishonestly obtained.

Receiving property stolen or dishonestly obtained.

216. Whoever receives anything obtained by any offence punishable under any law in force for the time being, knowing that thing to have been stolen or dishonestly obtained, or who receives in these territories anything obtained elsewhere than in these territories by any act which if done in these territories would have been an offence punishable under this or any other law in force for the time being, knowing such things to have been stolen or dishonestly obtained, shall be punished for a first offence with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both ; and after a previous conviction of any offence involving dishonesty, shall be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both.

When receiving is complete.

When receiving is complete.

217. The act of receiving anything stolen or unlawfully obtained is complete as soon as the offender has, either exclusively

or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

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Corruptly taking Reward.

218. Whoever corruptly takes reward, or bargains for any reward, directly or indirectly, on consideration that he will help any person to recover anything obtained by any offence punishable under this or any other law in force, shall, unless he shall have used all due diligence to cause the offender to be brought to trial for the same, be punished with imprisonment, with or without hard labour, for a term which may extend to three years, or fine, or both.

Corruptly taking reward.

CHAPTER XV.

FORGERY AND PERSONATION.

Definition of Document.

219. A document is any substance on which is expressed and described by means of letters, figures, or marks, any matter which is intended to be or may be used in a Court of Justice, or otherwise, as evidence of such matter.

Definition of document.

False Document defined.

220. A false document means.

- (a) A document, the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof; or which, though made by or by the authority of the person who purports to make it, is falsely dated as to time or place of making, where either is material; or
- (b) A document which is made in the name of an existing person, either by that person or by his authority, with a fraudulent intent that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.

False document defined.

It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

Forgery defined.

221. Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine whether within Her Majesty's dominions or not. Making a false document includes altering a genuine document in any material part, and adding to it any false date, attestation, or other thing which is material, or making any

Forgery defined.

No. 24—1886. material alteration in it either by erasure, obliteration, removal, or otherwise.

Forgery when complete.

Forgery when complete.

222. A forgery is complete as soon as the document is made, with such knowledge and intent as aforesaid, though the offender may not have intended that any particular person should use or act upon it as genuine, or be induced by the belief that it is genuine to do or refrain from doing anything. Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

Punishment for Forgery.

Punishment for forgery.

223. Whoever is convicted of the crime of forgery shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, or fine, or both.

Sending False Telegram.

Sending false telegram.

224. Whoever shall without lawful authority or excuse (the proof whereof shall be upon the person accused) cause or procure any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with the intent that such telegram should be acted on as being sent by that person's authority, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or fine, or both.

Procuring Execution of Document by False Evidence.

Procuring execution of document by false evidence.

225. Whoever, with intention to defraud, procures the execution of any document by any person by falsely pretending that the contents thereof are different from what they really are, shall be punished with imprisonment, with or without hard labour, for a term which may extend to two years, or fine, or both.

Using Forged Documents.

Using forged documents.

226. Whoever, knowing a document to be forged, fraudulently uses or acts upon it or causes or attempts to cause any person to use or act upon it as if it were genuine, shall, upon conviction, be liable to the same punishment as if he had forged that document. It is immaterial whether the document was forged in these territories or elsewhere.

Personation.

Personation.

227. Whoever falsely and deceitfully personates any one, with intent fraudulently to obtain any benefit to himself or any other person, shall be imprisoned, with or without hard labour, for a term which may extend to two years, or fine, or both.

CHAPTER XVI.

No. 24—1886.

COINING.

228. Coin is metal used for the time being as money, and stamped and issued by authority of some State or Sovereign Power in order to be so used. Coin stamped and issued by authority of the Queen or any Government in the Queen's dominions, is the Queen's coin.

Coining.

229. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

230. Whoever

- (a) Makes or begins to make any counterfeit gold, silver, or copper coin ; or
- (b) Gilds or silvers any counterfeit coin ; or
- (c) Gilds, silvers, files, or alters any silver or copper coin, with intent to make it resemble or pass for gold or silver coin ; or imports, receives, or has in his possession, any counterfeit gold, silver or copper coin, knowing such coin to be counterfeit, and with intent to utter it, or whoever utters any counterfeit coin, knowing it to be counterfeit, or has in his possession any stamps, dies or other instruments generally used for the purpose of counterfeiting coin.
- (d) With intent to defraud, utters pieces of gold, silver, or copper as Queen's coins, which are coins not Queen's coin, or any medal or piece of metal, or mixed metal being of less value than the Queen's coin, as and for which it is uttered,

shall be punished with imprisonment, with or without hard labour, for a term which may extend to ten years, or fine, or both.

CHAPTER XVII.

OFFENCES RELATING TO WEIGHTS AND MEASURES.

Standard Weights and Measures.

231. The standard weights and measures required by law to be used in the Colony of the Cape of Good Hope, as provided for by Act No. 11 of 1858, shall be the standard weights and measures to be used in the territories to which this Code applies, and all the provisions of that Act as well as of Act No. 15 of 1876 shall be of force and effect in the said territories.

Standard weights and measures.

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Fraudulent use of False Instruments for Weighing.

Fraudulent use of false instruments for weighing.

232. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year or with fine, or both.

Fraudulent use of False Weight or Measure.

Fraudulent use of false weight or measure.

233. Whoever fraudulently uses any false weight, or measures of length or capacity or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year or with fine, or both.

Being in possession of False Weights or Measures.

Being in possession of false weights or measures.

234. Whoever is in possession of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment, with or without hard labour, for a term which may extend to one year, or with fine, or both.

CHAPTER XVIII.

MISCHIEF AND ARSON.

Mischief.

Mischief.

235. Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happened or not, shall be deemed to cause it wilfully for the purposes of this part of this Code. Nothing shall be an offence under any provision contained in this part, unless it is done without legal justification or excuse, and without colour of right: Provided that where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, if done with an intention to defraud.

Arson and Attempted Arson.

Arson, and attempted arson.

236. Whoever wilfully sets fire to any building whatever, or to any erection or structure whatever fixed to the soil, whether such building, erection or structure is completed or not, or to any stock of vegetable produce, or of mineral or vegetable fuel, or to any mine, or to any ship or vessel, or to any crop, whether standing or cut down, shall be guilty of arson, and may be punished with imprisonment, with or without hard labour, for a term which may extend to fourteen years, or with or without flogging or whipping, or fine, or any two or more of such punishments.

237. Whoever wilfully attempts to set fire to anything mentioned in the last preceding section, shall be punished with imprisonment, with or without hard labour, for a term which may extend to seven years, and with or without fine, or both.

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Damage by Explosive Substances.

238. Whoever wilfully places or throws any gunpowder or other explosive substance in, into, upon, under, against, or near any building, ship, road, or public place, or thoroughfare, so as to endanger person or property, shall be punished as provided for the crime of arson.

Damage by explosive substances.

Damage to Public Works.

239. Whoever wilfully breaks down, cuts down, or otherwise damages or destroys any public works, shall be punished with imprisonment, with or without hard labour, for a period which may extend to three years, or fine, or both.

Damage to public works.

Unlawful Killing of Animals, &c.

240. Whoever unlawfully and wilfully kills, poisons, or wounds, any horse, ass, mule, horned cattle, sheep, ostrich, goat, or other domesticated animal, shall be punished with fine, and in default of payment, with imprisonment, with or without hard labour, for a period which may extend to one year.

Unlawfully killing of animals, &c.

Damage to Telegraph.

241. Whoever wilfully injures or removes anything whatever forming part of or used in or about any electric or magnetic telegraph, or in the working thereof, or prevents or obstructs in any manner whatever the sending, conveyance, or delivery by any such telegraph of any message or communication, shall be punished with imprisonment, with or without hard labour, for a period which may extend to three years, or fine, or both.

Damage to Telegraph.

Damage to Tolls.

242. Whoever unlawfully and wilfully throws down, levels, or otherwise destroys, in whole or in part, any toll-gate, or any toll-bar or chain, or fence belonging thereto, set up to prevent passengers from passing by without paying toll, directed by law, shall be punished with fine, and in default of payment with imprisonment, with or without hard labour, for a term which may extend to six months.

Damage to tolls.

Other Damage.

243. Whoever wilfully commits upon any property whatever, any wilful damage, or injury, not otherwise provided for, shall be punished with fine, and in default of payment with imprisonment with or without hard labour, for a term which may extend to three months.

Other damage.

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TITLE VI.

CHAPTER XIX.

THREATS, CONSPIRACY, ATTEMPTS, ACCESSORIES, &c.

Threats, Con-
spiracy, Attempts,
Accessories, &c.

244. Whoever with intent to intimidate or annoy any person breaks or injures any building or portion thereof, or by the discharge of firearms or otherwise alarms or attempts to alarm any person in any dwelling, shall be punished with imprisonment, with or without hard labour, for a term which may extend to six months, or with fine or both.

Conspiring to pre-
vent levying of or
collection of taxes.

245. Whoever conspires with any other person by force or intimidation to prevent the levying or collection of any taxes, authorised by law, shall be liable to imprisonment, with or without hard labour, for a term which may extend to one year, or fine, or both.

Inciting or at-
tempting to commit
offences.

246. Whoever attempts in any case, not hereinbefore by this Code provided, to commit any offence, or who incites or attempts to incite any one to commit an offence punishable by this Code, shall be liable to imprisonment for a term not exceeding one-half of the longest term, to which a person committing the offence attempted to be committed, or incited to, may be sentenced under this Code: Provided that the power to fine or in default of payment to imprison, shall exist in all such cases.

Punishment for
accessories.

247. Whoever, in any case where no express provision is made for the punishment of an accessory, is an accessory after the fact, to any offence punishable under this Code, he shall be liable to imprisonment for a term not exceeding half of the longest term for which the offence to which he is accessory is punishable under this Code: Provided that the power to fine, or in default of payment to imprison, shall exist in all such cases.

TITLE VII.

CHAPTER XX.

JURISDICTION AND PROCEDURE.

*Courts of Resident Magistrates.*Courts of Resident
Magistrates.

248. The Courts of Resident Magistrates already established in the Transkeian Territories shall be until otherwise provided Courts of Resident Magistrates, and it shall be lawful for the Governor, by any proclamation to be by him from time to time issued for that purpose, to erect, constitute, and establish Courts of Resident Magistrates within the Transkeian Territories, to be held for and within such districts respectively as the said Governor shall think fit to create, which Courts shall be holden before such persons as shall respectively be appointed to be Resident Magistrates of such districts.

Trial by Resident Magistrates.

No. 24—1886.

249. Whenever in any of the cases in which jurisdiction is hereby given to any Court of Resident Magistrate, the Magistrate shall consider that any person charged with any crime or offence, whether he has pleaded guilty to the same or not, ought to receive a more serious punishment than such Magistrate is competent to adjudge, he may, at his discretion, commit the accused person for trial before any Court having jurisdiction to impose such greater punishment, or the Special Court hereafter provided for and established.

Resident Magistrate may commit accused person for trial.

Jurisdiction and Special Court.

250. The Courts of Resident Magistrate shall have jurisdiction in all cases wherein a person may be accused of any crime or offence, except crimes or offences punishable under the following chapters and sections of this Code, viz.:

Jurisdiction.

- (a) Title II, Chap. V, Offences against the Public Order, sections eight-five to ninety inclusive.
- (b) Title III, Chap. VII, Offences against the Administration of Justice, sections one hundred and three and one hundred and four.
- (c) Title V, Chap. X, Murder:

Provided, however, that no Resident Magistrate shall, in any case, have jurisdiction or authority to pass and pronounce upon any offender under this Code, any sentence greater or heavier than imprisonment, with or without hard labour, for any period not exceeding one year, or imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or corporal punishment in any number of lashes not exceeding twenty-five: Provided, also, that no offender sentenced under this Code to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed: Provided, further, that in regard to the infliction of spare diet under this Code the Courts of Resident Magistrates shall in their sentences observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences and be by the Governor prescribed for the guidance of such Court, and such Courts shall in their sentences fix, in accordance with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet.

No. 24—1886.

Trial by Special Court.

Trial by Special Court.

251. Unless and until provision shall be made for the establishment in the said territories of a superior Court of Record the offences excepted in the last section and any offences under this Code the trial of which shall be remitted thereto, shall be tried by a Special Court consisting of the Chief Magistrate and two Resident Magistrates, having jurisdiction within his Chief Magistracy, who shall from time to time as occasion shall require be thereto summoned by such Chief Magistrate, and the judgment and sentence of the majority of such Chief Magistrate and Resident Magistrates shall be the judgment and sentence of such Court.

Sittings of the Special Court.

252. Such Special Court shall, from time to time as often as may be necessary, be summoned by the Chief Magistrate to assemble and sit for the trial of offences under this Code, and every order convening any sitting of the said Court shall specify the time and place of such sitting and the names of the Resident Magistrates who shall be thereto summoned: Provided, however, that the Chief Magistrate may, after the making thereof, alter or vary such order in respect of the time or place at which such Court shall assemble and sit, or in respect of the Resident Magistrates who shall be summoned to sit as members of such Court.

Adjournments.

253. The Special Court, when assembled, may adjourn from time to time as to it may seem fit.

Form of procedure to be same as in Resident Magistrate's Courts.

254. Until otherwise ordered by any rules to be made in pursuance of the provisions of this Code, the form and manner of procedure in the Special Court shall be according to the laws and rules for the time being regulating the practice and procedure in the Courts of Resident Magistrates in the Colony of the Cape of Good Hope.

Issuing of process.

255. The process of the said Court for compelling the appearance of any person accused to answer the charge, and of any persons as witnesses, may be signed and issued by any Magistrate by whom the accused had been remanded or committed, or by the clerk of any such Magistrate, or by the clerk of the Chief Magistrate or of the Special Court.

Preliminary Examination to be held by Magistrate.

256. All charges for offences cognizable by the Special Court shall, in the first instance, be brought before a Resident Magistrate having jurisdiction in the district wherein the offence has been committed, and such Magistrate shall

(1) If the case be within his jurisdiction, either try and dispose of the same to the extent of his jurisdiction, or after preliminary examination remit it for trial to the Special Court;

(2) If the case be not within his jurisdiction, after preliminary examination, remit it for trial to the Special Court.

Governor may from time to time frame Rules regulating procedure in Courts of Resident Magistrates.

257. The Governor may from time to time establish general rules and orders for regulating the practice and form of procedure in cases pending before the Special Court, in addition to or instead

of the laws regulating the practice and procedure in the Courts of Resident Magistrates in the Colony of the Cape of Good Hope. No. 24-1886.

Removal of Trial or Stay of Proceedings.

258. Whenever any proceedings under this Code shall have been commenced in the Court of any Resident Magistrate, or shall have been remitted to the Special Court in manner provided in this Code, and it shall appear to the Attorney-General of the Cape of Good Hope, that substantial justice may be better attained by staying proceedings or removing the case for trial to the Supreme Court, the Eastern Districts Court, or any Circuit Court, it shall be lawful for him to order such stay of proceedings or such removal or both. Removal of trial or stay of proceedings

Review of Sentence by Chief Magistrate.

259. When, and as often as any Court of Resident Magistrate shall sentence any person upon conviction to be imprisoned for any period exceeding one month, or to pay any fine exceeding five pounds sterling, or to receive any number of lashes or cuts exceeding twelve, such sentence shall be subject to the review of the Chief Magistrate of that territory, in like manner as provided by section 47 of Act 20 of 1856: Provided that every record of the proceedings in such case shall be forwarded to the said Chief Magistrate, instead of to the Registrar of the Supreme Court. Review of sentence by Chief Magistrate

Pleadings and Proceedings.

260. The Courts aforesaid shall be respectively Courts of Record, and the pleadings and proceedings of the said Courts in criminal cases shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared in open Court and not otherwise: and the several pleadings and proceedings of the said Courts shall be in the English language, which shall be interpreted into such language as is best understood by prisoners not understanding English; and the witnesses for and against any accused person or persons shall deliver their evidence, *viva voce*, in the presence of the prisoner, and in open Court. Pleadings and proceedings.

Juries.

261. Nothing contained in this Code shall have the effect of depriving the Governor of the power at any time to direct that within any district of the said territories, the law of the Colony of the Cape of Good Hope, relating to the qualification, summoning, and functions of persons serving upon petit juries shall be in force. Juries.

Native Assessors.

262. In any case in which any Resident Magistrate shall deem it desirable, he shall be at liberty to call to his assistance any such number of assessors not exceeding five, who shall be chosen by Native Assessors

No. 24-1886.

him from the principal Chiefs, Councillors, Headmen, and others, whose names shall be placed upon a list to be framed by him for that purpose, after the taking effect of this Act, and thereafter annually, to aid him in the hearing of any trial with a view to the advantages derivable from their observations, and particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed, and if any of the assessors or the Magistrate shall desire it, the opinion of the assessors shall be recorded in writing, and form part of the proceedings to be forwarded for review; but the finding of the Court shall be vested exclusively in the Magistrate. In like manner the Special Court hereinbefore provided for shall be at liberty to call to its assistance a like number of assessors to be taken from any list framed as aforesaid within the territory within which the Chief Magistrate residing in such Court shall have jurisdiction.

Evidence and Examination of Accused.

Evidence and examination of accused.

263. In any proceeding under this Code the accused person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Enrolment of Legal Practitioners.

Enrolment of legal practitioners.

264. No person shall be enrolled to practise in any Court of the said territories unless such person shall be an advocate or attorney, duly admitted as such by some competent Colonial Court.

Other Matters of Procedure and Process.

Other matters of procedure and process.

265. In all other matters of procedure and process in respect of crimes and offences brought before the Courts of Resident Magistrate for trial, until otherwise ordered, the powers of Resident Magistrates, and the rules, orders, and regulations of Courts of Resident Magistrate, respectively, in the said territories shall, *mutatis mutandis*, and as far as the circumstances of the country will admit, be the same as those from time to time in existence as to the Resident Magistrates and courts of Resident Magistrate in the Colony of the Cape of Good Hope, under the provisions of the Ordinance No. 40 of 1828, and Act 20 of 1856, with amendments thereof.

Authority of Officers of the Law.

Authority of officers of the law.

266. Every justice of the peace, field-cornet, police constable, or other officer of the law within the said territories, is empowered to exercise all and singular the powers and authorities by law conferred upon such persons within the Colony of the Cape of Good Hope.

Power to make Rules.

No. 25—1886.

267. Subject to the provisions of this Code, the Governor may at any time make such rules as shall be deemed expedient and proper with respect to the qualifications, appointment, form of summoning, challenging, and service of assessors; and generally for the amendment and better regulation of any matters relating to the practice, procedure, and process in the trial of crimes and offences in the several courts established and provided for by this Code.

Power to make-rules.

Appeals.

268. In every case in which judgment has been given and sentence passed under the provisions of this Code it shall be lawful for the convicted person or persons to appeal therefrom to the Supreme Court, the Eastern Districts Court, or any Circuit Court having jurisdiction.

Appeals.

Crimes and Offences not specially provided for in this Code.

269. In case any person shall be accused of the commission within the said territories of any act which if committed in this Colony would constitute a crime or offence, but not hereinbefore in this Code provided for as a crime or offence, such person may be tried, and if convicted, sentenced for the same by the aforesaid Resident Magistrate or the said special court, as the case may be, as if such crime or offence had been committed in this Colony, and the laws and punishments applicable to such case shall be those which shall, for the time being, be in force in this Colony.

Crimes and offences not specially provided for in this Code.

Repeal of repugnant or inconsistent Laws.

270. So much of any Ordinance, Act, law or proclamation having the force of law as may be repugnant to or inconsistent with this Code is hereby repealed.

Repeal of repugnant or inconsistent laws.

No. 25—1886.]

[July 6, 1886.

ACT

To Authorise the Raising of Money for Certain Public Purposes.

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

Preamble.

1. It shall be lawful for the Governor from time to time, as occasion may require, to raise and take up a sum of money not exceeding one hundred and ninety-three thousand one hundred

Governor empowered to raise £193,100 for purposes specified in Schedule

2410

LIBEL.

No. 29—1886.

pounds, to be applied to the several purposes mentioned in the Schedule to this Act annexed.

Short title.

2. This Act may be cited as “The Public Works Loan Act, 1886.”

SCHEDULE.

Schedule.

Kimberley Railway	£22,000
Orange River Road Bridges, Costs of Arbitration, and Claim	13,100
Kei Bridge and Kokstad Road	5,000
St. John's Trunk Road	10,000
Port Alfred and Kei Mouth Road	6,000
East London Harbour	3,500
Expenses of Raising Launch “Lizzie”	1,500
Table Bay Harbour	50,000
Purchase of Farm “Groote Constantia”	7,000
Subsidy—Worcester and Roodewal Railway	75,000
	<hr/>
	£193,100

No. 26—1886.]

[June 25, 1886.

Act for applying a further Sum not exceeding Fifty-five Thousand Eight Hundred and Thirty-five Pounds sterling for the Service of the Year ending the 30th June, 1886.

[Spent.]

No. 27—1886.]

[June 25, 1886.

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1887.

[Spent.]

No. 28—1886.]

[July 6, 1886.

Act to more effectually Prevent the Spread of Scab Disease in Sheep and Goats.

[Repealed by Act 20, 1894.]

No. 29—1886.]

[July 6, 1886.

ACT

To Amend the “Libel Act, 1882.”⁽¹⁾

Preamble

WHEREAS it is expedient to amend the Act No. 46 of 1882, commonly called the “Libel Act, 1882:” Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. Whenever any defendant charged under the provisions of Act No. 46 of 1882 with publishing a defamatory libel shall be acquitted upon the grounds of defence raised in any special plea of justification filed in the manner provided in the third and fourth sections of the said Act, it shall and may be lawful for the Judge or Magistrate presiding at his trial, if he shall think fit, to order and direct that the costs incurred by the defendant in and about the pleading and proof of such special plea shall be paid by the person at whose instance the prosecution was commenced, and all such costs shall be by the taxing officer of the Court before which the defendant is tried taxed and allowed at such sum as the said officer shall deem to be reasonably necessary and sufficient to meet the costs of pleading and proving such special plea.

No 31—1886.

Prosecutor to pay costs if special plea filed by Defendant is successful.

Costs, how taxed.

2. Notwithstanding anything to the contrary contained in the ninth section of the said Act or in any statute having the force of law in this Colony, no case based upon a charge of defamatory libel shall be remitted for trial to any Court of Resident Magistrate within a period of fourteen days after the record of the preparatory examination duly taken shall have been sent to the Attorney-General, Solicitor-General, or Crown Prosecutor for Griqualand West, respectively; and at any time before or during the said period it shall be lawful for the defendant in the case, by writing signed by the defendant or his lawful agent or attorney, to demand that the case against him shall be submitted for trial by jury to a Court of Justice superior to the Courts of Resident Magistrate, and after such receipt of any such demand no such case shall be remitted for trial to any Court of Resident Magistrate: Provided that if upon such trial by jury the defendant who has made such demand shall be convicted it shall and may be lawful for the judge before whom the trial shall have taken place to order, if he shall think fit that the costs of such trial as taxed by the proper officer of the Court shall be paid by the defendant.

No case to be remitted to R. M. till defendant has had opportunity to demand trial before a superior court.

3. This Act may be cited as the " Libel Act Amendment Act, 1886." Short title.

No. 30—1886.]

[July 6, 1886.]

Act to alter and amend the Fifty-ninth Section of the " Pounds and Trespasses Ordinance " No. 16 of 1847.

[Repealed by Act 15, 1892.]

No. 31—1886.]

[July 6, 1886.]

ACT

To Amend the Law relating to Enrolled Agents.

WHEREAS it is expedient to amend the law relating to enrolled agents practising in Courts of Resident Magistrate: Be it enacted by the Governor of the Cape of Good Hope, with the advice and

Preamble.

No. 32—1886.

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

Amendment of eighth section of Act 43 of 1885.

1. Notwithstanding anything in the eighth section of the “Magistrates’ Jurisdiction Act, 1885,” contained, all agents admitted and enrolled in any Court of Resident Magistrate before the passing of the said Act shall be entitled to be admitted and enrolled, and to practise, in any other Court of Resident Magistrate, as if the said Act had not been passed: Provided that the Resident Magistrate to whom any application for admission and enrolment shall be made by any such agent may refuse to admit and enrol the applicant for any reason which would have warranted such refusal upon an original application under the provisions of the thirty-sixth section of the “Resident Magistrates’ Court Act, 1856.”

Short title.

2. This Act may be cited as the “Enrolled Agents Act, 1886.”

No. 32—1886.]

[July 6, 1886.

ACT

To Authorise the Cape Central Railways (Limited) to construct a Line of Railway from Roodewal (Kogman’s Kloof) to Montagu. (1)

Preamble.

WHEREAS it is desirable to have the Line of Railway now under construction from Worcester to Roodewal extended to Montagu: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Cape Central Railways Company authorised to construct and work line of railway as shown on plans.

1. The Company styled the Cape Central Railways (Limited) shall be and is hereby authorised and empowered to construct, equip, maintain and work a railway similar to railway lines already constructed in this Colony on a gauge of not less than three feet six inches wide, and at a gradient of not more than one in forty, in continuation of the Company’s line to Roodewal (Kogman’s Kloof), as shown by the plans duly lodged with the Clerk of the House of Assembly, save and except in so far as the said plans may be inconsistent with any of the provisions of this Act, or any deviation or alteration therefrom as hereinafter provided.

Route of railway and powers of deviation.

2. The said railway shall commence at the terminus of the line of the railway now being constructed by the Cape Central Railways (Limited) under Act 16 of 1883, thence across or over or near the farms of Gorree Karpat, Sadowa, Roodeberg, Grant No. 1007, Drooge Kloof, Keur Kloof, Aasvogel Krantz, Fontein Kloof, along, over or upon the main road through Kogman’s Kloof, and terminating at or on the outspan at the village of Montagu, in accordance with the plans and sections deposited with the Clerk of

¹ See Acts 16, 1883 and 37, 1894.

FISCAL DIVISION OF SIMON'S TOWN ABOLISHED. 2413

the House of Assembly: Provided always that it shall be lawful for the said Company to deviate from and vary the said line, as shown by the said plans, at the request of any owner or owners through whose lands the said line may pass or to such extent as may be allowed by the Commissioner of Crown Lands and Public Works upon the request of the directors.

No. 33—1886.

3. The provisions of "The Cape Central Railways Act, (1) 1883," with the exception of the first, second, fourteenth, fifteenth and twenty-first sections thereof, are hereby incorporated, and shall extend and apply to the railway hereby authorised to be constructed, as if the same had been included in the said Act: save and except as to the application of the eleventh section, that it shall not be compulsory upon the Company to fence so much of the line passing through Kogman's Kloof as the Commissioner of Crown Lands and Public Works may deem it unnecessary to cause to be fenced.

Certain provisions of Cape Central Railways Act, 1883, applicable to Railway now authorised.

4. The Company shall, at its own cost, construct, to the satisfaction of the Divisional Council of Robertson, a road through Kogman's Kloof, for wagon traffic, in place of so much of the existing road as may be taken for the purposes of the said railway.

Company to construct road through Kogman's Kloof.

5. The directors shall be bound and are hereby required to finish and complete the said railway within one year, reckoned from the date of the first commencement of the works thereof, so that the said railway may be opened for the public conveyance of goods: Provided that the said Company shall be bound to commence the said railway not later than one year from and after the taking effect of this Act: Failing which all and singular the powers and authorities conferred by this Act shall cease and determine.

Time for completing railway.

6. This Act may be cited for all purposes as "The Cape Central Railways Extension Act, 1886."

Short title.

No. 33—1886.]

[July 6, 1886.]

ACT

To Abolish the Fiscal Division of Simon's Town and to include that Division within the Fiscal Division of the Cape.

WHEREAS it is expedient that the Division of Simon's Town shall cease to be a Fiscal Division and shall be included in the Fiscal Division of the Cape: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Upon the issue of a proclamation to that effect by the Governor to be published in the *Gazette*, the division of Simon's Town

Fiscal Division of Simon's Town abolished, and to become part of the Cape Division.

No. 34—1886.

shall cease to be a division for fiscal purposes, and shall become and be part of the fiscal division of the Cape.

Main and Divisional roads to be repaired to satisfaction of Government road Inspector.

2. The proclamation in the last section mentioned shall not be issued until the main and divisional roads in the division of Simon's Town shall be placed in a reasonable state of repair, to the satisfaction of the Government Road Inspector.

After such general election, districts of Simon's Town to be entitled to return members to Divisional Council of the Cape.

3. During the period intervening between the issue of such proclamation as aforesaid and the time for holding the next general election of members of the divisional council of the Cape, the districts constituting the said division of Simon's Town shall not be entitled to return members to the divisional council of the Cape; but at such general election they shall be so entitled, and then and thenceforth the districts of the Cape division shall be and shall continue to be until otherwise altered, those existing before the passing of the Act No. 36 of 1879.

Toll-gates and toll revenues to be transferred to Divisional Council of the Cape.

4. From and after the issue of the said proclamation the toll-gate with the buildings and appurtenances belonging thereto; and the revenue to arise from the tolls levied thereat, which were transferred by the Act No. 8 of 1882 to the divisional council of Simon's Town, shall be re-vested in the divisional council of the Cape, and such revenue shall be carried to and form part of the general revenue of such last-mentioned divisional council, anything contained in the third section of Act No. 3 of 1857 to the contrary notwithstanding.

No debts of Simon's Town Council to be chargeable to the Divisional Council of the Cape. Arrear rates.

5. No such proclamation as aforesaid shall be issued until all debts incurred by the divisional council of Simon's Town shall have been duly paid and satisfied.

6. All arrear rates which shall be payable to the divisional council of Simon's Town at the date of the proclamation aforesaid shall be payable to the divisional council of the Cape.

Repeal of part of Act 36 of 1879 and Act 8 of 1882.

7. So much of the Act No. 36 of 1879 as relates to the said Division of Simon's Town, and the Act No. 8 of 1882, are hereby repealed.

Short title.

8. This Act may be cited as the "Fiscal Division of Simon's Town Abolition Act, 1886."

No. 34—1886.]

[July 6, 1886.]

ACT

To Amend "The Graaff-Reinet Municipality Act of 1880."

Preamble.

WHEREAS, by the Act No. 10 of 1880, commonly called "The Graaff-Reinet Municipality Act, 1880," and hereinafter called the said Act, the Municipality of Graaff-Reinet is divided into seven wards, the ratepayers in each of which are entitled to elect two councillors to represent them in the council of the said municipality: And whereas the council thus constituted of fourteen

councillors so elected does not fairly and properly represent the majority of ratepayers in the said municipality: And whereas the aforesaid division of the said municipality into wards is inexpedient and inequitable, inasmuch as many ratepayers having great and important interests in the said municipality are thereby not at all or insufficiently represented in the said council: And whereas it is expedient and necessary to amend the said Act, so as to repeal and abolish the division of the said municipality into such wards as aforesaid, and to provide that every ratepayer in the said municipality shall have an equal right to vote in the election of any and every councillor to represent him in the said council, and to that end to constitute the entire body of ratepayers of the said municipality one constituency for the election of such councillors and for all municipal purposes in respect of which heretofore under the said Act the several wards have had a separate voice: And whereas, moreover, it is expedient and necessary to amend the said Act in certain respects with regard to the qualification of voters in municipal elections and of councillors, and with regard to the disqualification of any councillor by reason of his being personally interested in any contract to which the said council is a party and also to provide additional security against the borrowing of money by the said council without the authority of the necessary majority of ratepayers: And whereas at a public meeting of the said ratepayers convened and held on the 10th day of March, 1886, and at another public meeting of ratepayers, convened by the Mayor in conformity with the provisions of the 76th section of Act No. 10 of 1880, and held on the 25th day of May, 1886, it was resolved by a majority of ratepayers then present to seek Legislative amendment of the said Act:

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

1. The sections five, six, seven, eight, ten and nineteen of the said Act are hereby repealed. Sections repealed.

2. The fourth section of the said Act shall be amended by expunging the word "fourteen" and substituting the word "nine," and by the addition of the following words at the end of the clause: Section 4 amended.

"And the said councillors shall be elected by the ratepayers of the said municipality voting as one constituency in manner hereinafter provided: Provided, however, that every councillor elected before the passing of this Act shall notwithstanding anything herein contained continue to hold office in the said council as if this Act had not been passed."

3. The following sections of the said Act are hereby amended Certain sections amended. as follows:

(1) The eleventh section by the omission of the words "for any ward," and of the words "of such ward."

No. 34—1886.

- (2) The twelfth section by the omission of the words "in each ward."
- (3) The fourteenth section by the omission of the words "in every ward," of the words "for any ward," and of the words "for such wards" wherever they occur in the said section; and by the insertion of the words "or persons," and at some place "or places" after the word "person" where the same occurs in the second line of the said section.
- (4) The sixteenth section by the omission of the words "for his ward" and of the words "for the ward."
- (5) The twenty-first section by the omission of the words "with the numbers of the wards for which such persons are elected."

Who entitled to be enrolled on voters' roll.

4. Every person of full age, not disqualified under the provisions of this Act, who on the first day of June in any year is the owner or occupier of any immovable property in the municipality, and who shall have paid all sums if any then payable by such person in respect of any rates made three months or more before such day, shall be entitled to be enrolled on the assessment roll for the municipality according to the following scale:

Number of votes for which person entitled to be enrolled.

- (1) If the property liable to be rated be of the value of or exceeding one hundred pounds, and less than five hundred pounds, he shall have one vote.
- (2) If such value amount to five hundred pounds and be less than one thousand pounds, he shall have two votes.
- (3) And if such value amount to or exceed one thousand pounds, he shall have three votes.

How for purposes of last section when more persons than one liable to be rated in respect of any property.

5. Where more persons than one are jointly liable to be rated in respect of any property, each of such persons, not exceeding three in all, shall for the purposes of the last preceding section, be deemed to be liable to be rated, in respect of rateable property, equal to that of the whole of such first mentioned property divided by the number of persons so rated not exceeding three. In case more than three persons are liable to be rated in respect of any property the persons to be deemed liable and qualified to vote shall be any three whom the remaining or other persons so liable shall nominate in writing, and failing such nomination, those three whose names stand first in order upon the rate book in use, or if no rate book has been made, upon the valuation roll: Provided that in any such case the annual value of the property liable to be rated shall be of an amount which when divided by the number of persons jointly liable to be rated, not exceeding three, shall give a sum of not less than one hundred pounds for each such person.

Who not qualified to vote at elections under this Act

6. The following persons shall not be qualified to vote at any elections held under the provisions of this Act:

- (1) Persons who have not paid all sums due from them in respect of any rates made or levied three months or more before the day of voting.

- (2) Persons convicted of treason, murder, rape, theft, perjury, or of bribery, or receiving a bribe, or of any other corrupt practice at any election, or any infamous crime, and who shall not have received a free pardon.
- (3) Persons whose names do not appear upon the assessment roll for the time being.

7. The thirty-first section of the said Act shall be amended by the insertion after the word "business" of the words "or shall directly or indirectly sell or supply any goods whatsoever to the council." Section 31 amended

8. The forty-fourth section of the said Act shall be amended by the insertion after the word "borrowed" where it occurs in the proviso to the said section of the words "from Government or from any person or persons or body corporate, or for any purpose whatsoever." Section 44 amended

9. The costs, charges and expenses of promoting and procuring the passing of this Act shall be paid out of the revenue derived from rates in the said municipality. Costs of obtaining Act out of revenue from rates.

10. This Act may be cited as "The Graaff-Reinet Municipality Amendment Act, 1886." Short title.

No. 35—1886.]

[July 6, 1886.

ACT

To Extend and Regulate Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service. ⁽¹⁾

WHEREAS the law relating to the Liability of Employers to make Compensation for Injuries suffered by workmen in their service is at present vague and uncertain, and it is desirable to amend the same, and to extend and regulate such liability: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. Whenever, after the taking effect of this Act, personal injury is caused to a workman: In what cases compensation to be made to injured workmen.

- (1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with, or used, in the business of the employer; or
- (2) By reason of the negligence of the employer, or any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (3) By reason of the negligence of the employer, or any person in the service of the employer to whose orders or directions the workman at the time of the injury was

¹ Extended by Proclamation No. 206 of 1893 to all the Native Territories.

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bound to conform, and did conform, when such injury resulted from his having so conformed; or

- (4) By reason of the act or omission of the employer, or any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) By reason of the negligence of the employer, or any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, train upon a railway, or any machinery or hauling gear in or about any mine, the workman or, in case the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Exceptions to the provisions of the above Section.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,—

- (1) Under sub-section one of section one of this Act, unless the defect therein mentioned arose from, or had not been, or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition.
- (2) Under sub-section four of section one of this Act unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned: Provided always that in case any such rule or by-law shall have been submitted to the Governor, and approved of by him by notification in the *Gazette*, or in case such rule or by-law shall be made under the provisions of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.
- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Limit of sum recoverable as compensation.

3. The amount of compensation under this Act shall not exceed such sum as may be found to be equivalent to the estimated earn-

ings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

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4. No workman, or representative of a workman, shall be entitled to recover compensation for any injury done to him under any other existing law in addition to the compensation to which he may be entitled under this Act.

No compensation recoverable under any other law as well as under this Act.

5. All actions under this Act shall be commenced within six months after the occurrence of the injury for which compensation is sought.

Limit of time within which actions must be brought.

6. For the purposes of this Act, unless the context otherwise requires,—

Definitions.

The expression “person who has superintendence entrusted to him” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

The expression “employer” includes a body of persons corporate or unincorporate.

7. This Act shall take effect only within such mining areas as the Governor may from time to time declare by proclamation to be published in the *Gazette*, and may be cited as the “Employers’ Liability Act, 1886.”

Where Act to be in force, and Short title.

No. 36—1886.]

[July 6, 1886.

ACT

For the Better Preservation of Game. (1)

WHEREAS it is expedient to consolidate and amend the laws relating to game: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof:—

Preamble.

1. The following Game Law Proclamations are hereby repealed; that is to say, the Proclamation dated 21st March, 1822, entitled “Game Law Proclamation”; the Proclamation dated 23rd August, 1822, entitled “Amendment of Game Law—Elephants”; and the proclamation dated 14th March, 1823, entitled “Amendment of Game Law—Elands.”

Repeal of existing Game Laws.

2. The word “game” shall for the purposes of this Act, be taken and understood to mean and comprehend the several birds and animals of this Colony following, not being domesticated, commonly known as paauw, korhaan, guinea-fowl, pheasant, partridge, grouse, and dikkop, elephant, camelopard, seacow (hippopotamus), buffalo, zebra, quagga, Burchell zebra, buck (comprehending the whole antelope species, with the exception of springbucks actually

The word “gam defined.

¹ See Act 21, 1890. Amended by Act 38, 1891. See Act 30, 1894 § 4. Extended by Proclamation No 66 of 1887 to Transkei and Griqualand East, and by Proclamation No. 356 of 1893 to Tembuland.

No. 86—1886.

Game licence.

Governor to have power to proclaim the close season for the several districts of this Colony.

Penalty for shooting, killing, capturing, or selling game without a licence.

Except game found in lands, gardens, &c.

Special permission of Governor required for destruction of certain game.
Penalty.

Penalty for shooting or selling game during close season.

Penalty for taking away, &c., eggs of game birds, or for selling or purchasing the same.

migrating, but including the gnu or wildebeeste), hare and rabbit (not being coney); and the words "game licence" shall, for the purposes of this Act be taken and understood to mean a game licence duly issued by Government.

3. It shall be lawful for the Governor, by proclamation to be by him issued, to fix and prescribe for each district in this Colony, the close time or fence seasons within which it shall not be lawful to kill, pursue, hunt, or shoot at, the different kinds of game respectively within such district either with or without a game licence respectively, or with or without the landowners' permission.

4. (1) No person shall, save as is hereinafter provided, kill, catch, capture, pursue, hunt, or shoot at, sell, hawk, or expose for sale, game in any part of this Colony, without having previously obtained a game licence, under the penalty of not exceeding thirty shillings sterling for the first offence, and not exceeding five pounds sterling for every subsequent offence, excepting therefrom any game found injuring crops in cultivated lands or gardens. No person, however, shall be at liberty to pursue, shoot, kill, destroy, or capture any elephant, hippopotamus, buffalo, eland, koodoo, hartebeest, bontebok, blesbok, gemsbok, rietbok, zebra, quagga, Burchell zebra or any gnu or wildebeest of either variety, without having obtained a special permission to that effect from the Governor, (2) under penalty for the first conviction of a fine not exceeding twenty-five pounds or, in default of payment thereof, imprisonment with or without hard labour, not exceeding three months, and for a second or any subsequent conviction, a fine of £50, or in default of payment thereof to imprisonment with or without hard labour for a period not exceeding six months; provided, however, that landed proprietors and persons authorised by them shall, without having such special permission, be at liberty to shoot elephant upon the property of such landed proprietors.

5. (3) No person shall kill, pursue, or shoot at game in any district in the Colony during the close time, or shall possess, sell, hawk, or expose for sale game in such district after the expiration of one week from the commencement of the close time which shall be proclaimed for any such district, under a penalty of four pounds sterling for the first offence, and eight pounds sterling for every subsequent offence.

6. No person shall, without special permission of the Governor, for purposes to be mentioned in such permission as hereinafter is provided, at any time wilfully take away, disturb or destroy eggs, or sell, hawk, or expose for sale, or shall purchase eggs of any game birds in any part of this Colony, under the penalty of any sum not exceeding four pounds sterling for the first offence, and

¹ See § 2, Act 38, 1891.

² Printed as amended by Act 28, 1891, § 1.

³ See § 4, Act 38, 1891.

not less than eight pounds sterling, nor exceeding ten pounds sterling for every subsequent offence; and the said eggs shall be confiscated to Government in whose custody soever the same may at any time be found, and may be seized *brevi manu* by any land-owner, occupier of land, justice of the peace, field-cornet, constable or police officer: Provided, always, that it shall be lawful for the Governor to permit under his hand any fit or proper person or persons to take, or carry away the eggs of any game bird, or the young of any game, whether bird or other game, for the purpose of rearing or breeding the same, or for the purpose of acclimatization or scientific investigation; and any person so obtaining the Governor's written permission as aforesaid may himself obtain or take the said eggs, birds, or animals: provided, always, that such writing shall distinctly state the number and denomination of such eggs, birds, or animals, which the holders are employed to obtain or take, which shall collectively not exceed the number specified by the Governor's permission aforesaid. And any person obtaining or taking a greater number or other kinds of such eggs, birds, or animals than those specified in the Governor's permission as aforesaid, or giving or affecting to give any person or persons authority to take or obtain, together with what he shall himself take or obtain in the whole, more than the number or other than the kinds specified in such permission as aforesaid, shall be held guilty of wilfully taking all such young or eggs as he shall have taken or obtained, or shall have given or affected to give authority in the whole to take or obtain.

7. No person shall at any time, either with or without a game licence, kill, catch, capture, pursue, hunt, or shoot at any game⁽¹⁾ or with gun or dog trespass on any lands within this Colony, without the permission of the owner of such lands, if private property, under the penalty of any sum not exceeding five pounds sterling for the first offence, and not exceeding ten pounds sterling for every subsequent offence, in addition to any penalty, if any, to which he may be liable under any other section of this Act, the penalty provided by this section to be paid to the owner of the land; but any permission given by such owner after the event with reference to the offence shall be as valid as if given before the offence. But no penalty under this section shall in any case be enforced unless notice and warning shall have been given, either personally or by letter, or in the *Gazette*, or in a local newspaper by the owner that he is desirous to preserve the game thereon. For the purposes of this section the word "owner" shall be taken to include the occupier or the person entitled to the right to shoot game on the lands in question.

8. Whenever any person shall be charged with killing, or capturing, pursuing, hunting, or shooting at, selling, hawking or exposing for sale game, in any part of the Colony without a

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Governor may grant permit to take young birds, eggs, &c., for certain purposes.

Number and denomination of birds, eggs, &c., to be stated in permit.

Any one exceeding terms of permit guilty of contravention, &c.

No person to kill, &c., game on any land without land-owner's permission.

Permission subsequent to commission of the act sufficient.

No penalty unless landowner have given notice personally or in *Gazette*, &c., of intention to preserve game.

Burthen of proof in case of shooting, &c., without a licence to rest with person charged.

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licence, and shall allege in defence that such game was injuring crops in cultivated lands or gardens, the proof of the truth of such allegation shall be with the person charged.

Game animals presumed to be wild.

9. In any case prosecuted under this Act every game animal shall be presumed to have been wild until shown to have been domesticated.

How fines to be recovered, and to whom paid.

10. The several fines above mentioned may be recovered by any person, on behalf as well of himself as of the Crown, in all cases where the fine shall not exceed twenty-five pounds sterling, in the Court of the Resident Magistrate of the district where the offence may have been committed, and in other cases in the Supreme Court, the Court of the Eastern Districts or the High Court of Griqualand, as the case may be, or the Circuit Court for the district where the offence may have been committed; and a moiety of any fine imposed upon any offender, on conviction, for contravening any of the provisions of this Act, shall, save as is hereinbefore otherwise specially provided, be paid to the person on whose information such conviction shall have taken place, provided such person be not an accessory.

Moiety of fine to go to informer.

Governor may by special proclamation protect certain game animals for any time not exceeding three years.

11. It shall be lawful for the Governor, by proclamation in the *Gazette*, to proclaim and declare as to any parts of this Colony that any bird or animal, to be specified in such proclamation, shall be protected and not destroyed for any number of years not exceeding three, to be mentioned in such proclamation, and also to extend to any such bird or other animal the protection of this Act, as if the same were included among the game animals in this Act defined, or to extend to any such bird or other animal the protection of such of the provisions of this Act as may be specified in such proclamation, as if such bird or other animal were expressly protected by name in such provisions respectively; and also from time to time to revoke, alter, or amend such proclamation.

Governor on advice of Divisional Councils may suspend operations of this Act.

12. It shall be lawful for the Governor, on good cause shown by the Divisional Council of any of the divisions of the Colony to suspend, by proclamation in the *Gazette*, in whole or in part, as may seem right, the operation of this Act, or any part or parts thereof, in the said division, for any time or with regard to any animal, or both, for any time and with regard to any animal to be specified in the said proclamation.

Penalties for contravention of Act not specially provided for.

13. Any offender being convicted for contravention of any of the provisions of this Act, in default of payment of the fine imposed upon him, and in default of other provision in that behalf in this Act specially provided, shall be liable to imprisonment for any period not exceeding one month, with or without hard labour, unless the fine be sooner paid.

What shall be *prima facie* evidence of non-possession of licence.

14. In any prosecution for infringement of any section of this Act, by doing anything without licence, it shall be *prima facie* sufficient for the prosecutor to show that the accused does not appear as the holder of a licence in the list of persons to whom the requisite licence in such case shall have been issued, respectively,

kept in the office of the Resident Magistrate before whom or in whose district such case shall be brought for trial in any Court; but it shall be lawful for such accused person to rebut such evidence by proof that he was in fact, at the time of the commission of the offence charged, the lawful holder of such a licence.

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15. Until otherwise proclaimed by the Governor, under the provisions of this Act, the fence or close season at present established by law shall continue to be such fence or close season.

Until otherwise proclaimed, close season to be that by law now existing.

16. No landowner shall require a game licence for the purpose of shooting game on his own land.

No licence required for shooting on own land.

17. This Act may be cited as the "Game Law Amendment Act, 1886."

short title.

No 37—1886.]

[October 25, 1886.

ACT

To provide for the Annexation to the Colony of the Country known as the Xesibe Country. (1)

WHEREAS by Resolution passed in both branches of the Legislature it has been declared to be expedient that the country situated between the district of Kokstad in Griqualand East and Pondo-land East, known as the Xesibe Country, comprised in the district now called Mount Ayliff, should be annexed to the Colony: And whereas it is the intention of Her Majesty the Queen to issue her Royal Letters Patent to authorise the Governor of the Cape of Good Hope, by a Proclamation under his hand and the Public Seal of this Colony, to declare that from and after a day to be therein mentioned, the said country should be annexed to, and form part of, this Colony, and to determine and signify the limits of the said country so annexed, in case the Legislature of the Colony should have passed an Act providing that the said country should become a part of this Colony: And whereas it is expedient that such an Act should be passed: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after such day as the Governor shall, pursuant to the powers in that behalf contained in any Royal Letters Patent which may be issued for that purpose, by proclamation (2) under his hand and the Public Seal of the Colony, fix in that behalf, the country in the preamble to this Act mentioned, or so much of the said country as shall be defined in or by any such proclamation, and with the limits and name in any such proclamation signified, shall be annexed to and become a part of that portion of the Colony known as Griqualand East, and be subject to the laws for the time being in force in such portion of the Colony.

Governor may proclaim Xesibe Country to be annexed to the Colony and form part of Griqualand East.

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

1 Extended by Proclamation No. 174 of 1886.

2 Proc. in Gazette 25th October, 1886.



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