

STATUTES
OF THE
CAPE OF GOOD HOPE,
1652-1905.

BEING A REVISED REPRINT OF THE AUTHORISED
EDITION ISSUED IN 1895
BY
H. TENNANT AND E. M. JACKSON,
TO WHICH HAVE BEEN ADDED THE ACTS OF
PARLIAMENT PASSED IN THE SESSIONS HELD DURING
THE PERIOD 1896-1905.

REVISED AND EDITED
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VOL. II., 1880-1893.

PAGES 1663—3313.

CAPE TOWN :
CAPE TIMES LIMITED, GOVERNMENT PRINTERS.
1906. P. 4516.

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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."

Preamble.

WHEREAS certain persons have come into this Colony from Scotland and elsewhere in Great Britain, as agricultural immigrants under special agreements made and executed by them and by certain persons acting for and on behalf of the Government of this Colony in England; and in such agreements and in the notices annexed to or accompanying the same, no mention is made of the perpetual quitrent to be paid by such immigrants, as provided by the 6th sub-section of section 3 of Act No. 10 of 1877; And whereas such persons, being wholly ignorant of the provisions of the said sub-section, have been misled into the belief that they are entitled, after paying yearly for ten years one shilling per acre for such land as may be allotted to them under such Act, to receive a grant of the said land in perpetuity: And whereas it is expedient to relieve such immigrants from the payment of quitrent under the aforesaid circumstances: Be it 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. 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 sections 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.Accounts of stock,
debentures, &c., to
be laid before Par-
liament.

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.

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.]

[uly 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 ad-
vanced to appli-
cant.

2. Notwithstanding the provisions contained in section sixty-four of Act 8, 1877, if the Government should think that a loan in respect of any application under this Act, should be expedient, it shall be lawful for the Commissioner of Crown Lands and Public

¹ See Act 10, 1893 (p. 3150).

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 (p. 1839).

That Schedule is repealed by Act 14, 1896 (p. 3597) an amended Schedule being substituted.

No. 8—1880.

Newspaper telegrams protected for 120 hours from time of publication

Period of protection not to exceed 120 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 *primâ 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 *primâ 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 im-

prisoned for any period not exceeding three months, unless such penalty be sooner paid.

No. 9—1880.

7. This Act may be cited as “The Telegraphic Messages Copyright Act, 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 £60,000 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 Acts, 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.

¹ Printed as amended by Act 34 of 1886 (p. 2414).

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 councillor so 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 or candidates, not being more than the number to be elected, by

Number of votes
allowed to each
voter.

¹ See also § 6, Act 34, 1886.

- No. 10—1880. 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.]
- Duty of polling officers after close of election. 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.
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.

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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
officers not to be
contractors.

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
council.

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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 of water.

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 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
redeem those fall-
ing 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 said bank as his absolute property; and the said council, upon so

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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 authorised, 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.

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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.

No. 10—1880.
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.

No. 10—1880.
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 be made elsewhere than in the part or parts so set apart, shall be

Burial grounds.

- No. 12—1880. 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-Rienet 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.

[Administration of Justice. Repealed by Act 35, 1896.]

No. 13—1880.]

[July 2, 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 tranquility 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.

Regulations to be made.

Prisoners going beyond limits to be apprehended, &c.

Penalties for attempt to rescue, or assist in escape of prisoners.

Indemnity clause

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.

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.

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.

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.

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.”

[See note to Act 29, 1868.]

No. 15—1880.]

[July 29, 1880.]

ACT.

To provide for the Establishment and Regulation of a force to be called “The Cape Field Artillery.”

[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 the 11th Sept., 1884.]

[p. 1690.]

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 (p. 2455).

No. 18—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.

No. 18—1880.

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.]

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 (1)

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.”

¹ Borrowing powers reduced by Act 39, 1899. See Act 37, 1899.

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:—

Preamble.

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.

¹ Printed as amended by Act 12 of 1881. See Act 11, 1895 (p. 3441). See Acts 4 and 10 of 1898, and 22 and 23 of 1899; 21 of 1905 (p. 4848).

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 (Tapson'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. 23—1880.

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 (p. 3441).

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.

Republication 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 into 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 polling officer, who shall forthwith deposit such paper in a locked-

Voting to be by ballot.

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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
voters.

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 poll-
ing.

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 ac-
counts.

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
of mayor vac-
ant.

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 councillors, 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
contracts.

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.

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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 case 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 purpose, 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.

37. [Repealed by Act 32, 1902.]

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

What municipal regulations may be framed.

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 municipality for holding of public auctions, and the imposition of

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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.

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 the 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

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Lands and servitudes vested in Town Council.

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.

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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 terms 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 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 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 every 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 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.

52. The ordinary meeting of councillors following the first general election of councillors under this Act shall be held on the

Quorum of council.

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
appointed; 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.

Street keepers,
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.

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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 in 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 revenue.

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 *primâ 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

Treasurer to
lodge moneys in a
bank.

No. 23—1880.

How payments
to be made.

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.

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 partly 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-grounds 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 powers 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.

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_____.

No. _____.

(A. B.),
Mayor.

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 of 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:—

Power to raise on stock or debentures, £133,376.

1. It shall be lawful for the Governor to raise and take up upon the security of the public revenue of the 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.

In case Free State before 13th July, 1881, establish a certain railway, further sum of £15,000 to be raised in aid thereof.

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

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.

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.

No. 24—1880.

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	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 *Phylloxera Vestatrix* 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 mean 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 (p. 2330). As to Insect Pests and Plant Diseases in Colonial Nurseries, see Act 29, 1905 (p. 4911).

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 anyone 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 many 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 due 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 has 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 29, 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 autho-
rised.

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 bor-
rowed on deben-
tures 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 multi-
ples 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 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 borrow 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 and 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 (p. 2461).

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—1881.

20 of 1861, entitled "An Act for the Regulation of Electric Telegraphs."

Power of entry
on lands for pur-
poses 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 con-
tractor.

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 afore-said 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 in respect of such land or materials to be settled afterwards in

¹ Repealed by Act 40, 1883.

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.

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.

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.

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.

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.

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 conveyance of passengers, and the cost of obtaining such certificate shall be borne by the contractor.

No. 5-1881.

Also protection of Sections 56 and 57 of same Act.

Provisions in cases where railway crosses any street or road.

Streets or roads may be made crossing railway.

Contractor may act by duly appointed agent.

Railway not to be opened until certificate of Government officer obtained.

¹ Repealed by Act 40, 1889.

No. 6—1881.

After 20 years' traffic Government may purchase the railway.

Arbitration.

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.

Regulation of Railway 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

¹ No. 17.

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 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 provisions 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.”

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. 8—1881.]

[June 25, 1881.

ACT

To increase the Powers of the Municipal Council of Port Elizabeth.

[Repealed by Act 27, 1897.] [Pages 1732 to 1744.]

No. 9—1881.]

[June 25, 1881.

ACT (1)

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.

¹ The School Board Act 35, 1905 (p. 4927), does not apply to this institution, but Divisional Council or Municipality may give grants in aid, § 76 *ibid.*

No. 9—1881.

Names of first
members of the
council.

4. The Reverend John Murray, M.A., the Reverend Nicolaas Jacobus Hofmeyr, the Reverend Johannes Henoch Neethling, Cornelis Smuts, M.D., the Reverend Johannes Izaak Marais, Henry Edward Richard Bright, Petrus Wilhelmus Jacobus Bosman, George Lodewyk Meiring, Gideon Johannes Krige, shall become the first council of the Stellenbosch Udenominational 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 pre-
side 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 coun-
cillors.

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 appoint-
ed to be communi-
cated 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.
Proceeding
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 occur-
rence 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

By whom vacan-
cies to be supplied.

No. 9—1881.

thereof 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 institution 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 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.

- No. 10—1881.
How council to
sue and be sued.
26. All actions and other proceedings at law to be instituted by or against the Council of the Stellenbosch Undenominational College and Public Schools shall be so instituted and proceeded in by or against the secretary to the said council for the time being.
- 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 en-
titled 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 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.

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.

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

Conditions under which he may take lands public or private.

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 purpose, 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 500lbs., 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 500lbs., 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 upwards, 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 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 *bona 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
- Substitution of new Section.

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.

No. 12—1881.

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.

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.

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.

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 by to the 30th June and 31st December preceding.

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.

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."

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.

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.

11. This Act may be cited for all purposes as the "Prince Albert Divisional Council Loan Act, 1881."

No. 13—1881.

After paying interest, fund to be applied in paying off capital sum.

Separate accounts to be kept of borrowed money.

To be audited under the "Divisional Councils Act, 1865."

Subject to "Public Bodies Debts Act, 1867."

Expenses to be paid out of loan.

In case of Willowmore being created a fiscal division.

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...

} Members of the Divisional
} Council of
} Prince Albert.

Entered

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: -

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

Governor to provide for construction and equipment of railways mentioned in preamble.

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 cost 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 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 £4,000.

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 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

Provisions of "Public Bodies Debts Act, 1867," not to affect such order.

No. 16—1881.

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 Amended by Acts 18, 1883 (p. 2084); 17, 1888 (p. 2568); 3, 1892 (p. 2944); 19, 1899, §§ 3, 4 (p. 4102). See Act 21, 1878 (p. 1581) (Loans through Crown Agents). For Sinking Fund provisions, see Acts 20, 1899 (p. 4102); 11, 1897 (p. 3724); 12, 1900 (p. 4282); 43, 1905 (p. 4965). To facilitate investment of Trust Funds in United Kingdom in Colonial Stock, see Act 30, 1902 (p. 4475).

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⁾

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⁾

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.

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.

9. The Governor, with the advice of the Executive Council, shall have and may exercise the following powers and authorities, or any of them:

- (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 for redeeming any outstanding loans, and of paying any

No. 16—1881.

In case of sinking fund one per cent. beyond annual interest of loan to be charged on revenues.

Portion of such fund not required for interest to be applied in extinguishing the debt.

Cancellation of redeemed debentures.

Special accounts to be kept, and submitted to Parliament.

Powers and authorities given to the Governor.

¹ See Act 11, 1897 (Sinking Fund) (p. 3724).

No. 16—1881.

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. Powers the Governor may exercise.

14. The Governor, with the advice of the Executive Council, shall have and may exercise the powers following :

(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; 27, 1896; 20, 1897; 34, 1898; 20, 1900; 33, 1902; 50, 1905. See also Acts 7, 1871; 12, 1876.

² Further sums raised by Act 30, 1882.

SCHEDULE.

No. 20—1881.

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
	<u>£54,358</u>	<u>0</u>	<u>0</u>

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
	<u>£649,960</u>

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 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

¹ See Act 22, 1899 (p. 4110) § 12.

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 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.

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.

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 away, 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.

No. 21—1881.

Governor may grant certain lands to the Council.

Compensation to persons injured by diversion of water, &c.

Power to make necessary works.

Power to appropriate Crown lands

And lands of private owners on conditions provided for.

E

No. 21—1881.

Power to take Crown and other lands to protect sources of the Buffalo River.

Pipes and conduits may be laid in streets.

Right of access along line of works

Arbitration provided for where water or land of private owners expropriated.

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.

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.

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.

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 provision 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 expropriated.

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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 appraisal shall be paid as aforesaid to the Master of the Supreme Court, and the person who was entitled to the life or other limited interest to draw the interest payable on the sum so paid in: Provided, however, that if any such person shall desire to have his share of such sum apportioned and paid out, it shall be lawful for him to apply by motion to the Supreme Court for an apportionment of such sum, and such Court shall in a summary manner, upon hearing the parties interested, apportion the said sum and order the share of the applicant to be paid out to him, leaving the share of the minor or other person under disability in the hands of the said Master, to be administered in like manner as moneys in the Guardian's Fund, the property of minors or persons under disability, are therein administered: Subject, however, at all times to such orders as the Supreme Court aforesaid may, upon motion of any person having an interest, see fit to make in regard to such money. 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 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, or 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.

Penalties for injuring, &c. the works.

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 therein any dog or other animal, or who shall place or

Penalties for washing, bathing in, and otherwise defiling the streams

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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 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.]

An 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 (p. 3,491), authorising cession of all powers, rights, etc., conferred under this Act to the "Metropolitan Tramways Company."

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

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said 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 so 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 proceeding 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 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 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 12th 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 5th 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^o 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^o. 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^o. 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^o. 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^o. 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 bill.

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

No. 24—1881.

Council 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.



I.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.

Parcels exceeding one hundred pounds in weight, such reasonable sum as the owners of the tramway may think fit to charge after no ice 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.

[Repealed by Act 36, 1896.] [Pages 1788—1791.]

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.]

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.

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Persons having claim on derelict land may petition Supreme Court for relief.

5. Every petition to the Supreme Court under the provisions of this Act shall be lodged with the Registrar of the said Court, and the allegations contained in such petition shall be supported by affidavit and such documents in proof as the petitioner may be able to adduce.

Petitions to be filed and supported by affidavits.

6. Every such petition shall be laid before one of the Judges in Chambers, who shall make such order thereon as to him shall seem fit, and any such Judge may order that any matter arising upon any such petition shall be argued before and determined by the full Court.

Petition to be laid before Judge in Chambers.

7. Upon considering any petition for registration of title, the Court or Judge may, if such Court or Judge shall deem it expedient to do so, grant a rule setting forth the description of the property mentioned in such petition, and calling upon all persons having or pretending to have any right or title to such property to appear and establish their claims to the same upon some day to be named in the rule, or be for ever barred therefrom, and may direct the mode of service or publication of such rule.

Rule nisi to be granted by Court or Judge.

8. Upon considering any such petition for registration of title, the Court or Judge may, and upon the return of any such rule granted as aforesaid, and no cause being shewn to the contrary, the Court may order the Registrar of Deeds to enregister the property mentioned in such order as the property of the person therein named, subject to such terms and conditions as may be therein mentioned.

Power of Court or Judge to order registration of title as prayed.

9. In case any person should appear to shew cause against any rule so granted as in the last preceding section mentioned the Court may, if it shall see fit to do so, and without the issue of any summons, require any issue of fact to be tried upon pleadings or may make such order as will in the most speedy and inexpensive manner determine the matter in controversy.

In case of objection, Court or Judge may direct trial of issues without pleadings.

10. Upon considering any petition for the sale of immovable property abandoned and left derelict, to satisfy any such claim as is referred to in the fourth section of this Act, the Judge before whom such petition is laid, or the Court, should such Judge,

Judge or Court may order property to be attached or sold to satisfy claims.

¹ Printed as amended by Act 24, 1887 (p. 2478) ; and § 274, Act 40, 1889 (p. 2779). See Act 3, 1879, for Crown land (p. 1588).

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by order or rule granted, refer such petition to the Court, may order that the property mentioned in the petition be attached and sold to satisfy such claims as aforesaid thereon.

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.

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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 guardians' 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 the day 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 (1)

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 (2) or shall be liable for the payment of Divisional Council rates as owner or lessee of immovable property within such limits which is not in occupation of any occupier entitled to vote under this Act, 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. (3) 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

And to call meeting of voters to elect Board of Managers.

¹ Amended or amplified by Acts 28, 1882 (p. 1907); 7, 1884 (p. 2180); 21, 1889 (p. 2667); 26, 1889 (p. 2675); 4, 1891 (p. 2828); 27, 1892 (p. 3102); 7, 1894, § 21 (p. 3323); 13, 1894 (p. 3336); 29, 1895 (p. 3529); 30, 1895 (p. 3531); 30, 1899, § 27 (p. 4148); 16, 1903 (p. 4634); 17, 1905 (p. 4840); 35, 1905, §§ 56, 76 (p. 4937). In areas where, in consequence of war and rebellion, voters' rolls not made or elections held, see § 14, Act 10, 1902 (p. 4371). No new area to be proclaimed after 8th June, 1905, until land set aside for school purposes. See § 56, Act 35, 1905 (p. 4937). This Act extended to Native Territories by Proclamations 23, 1892, 456 of 1894, but repealed in Elliot District by p. 175, 1902.

The provisions of Act 28, 1879 (p. 1620), and of 24, 1897 (p. 3730), Municipalities Irrigation Loans, apply to Village Boards.

² Printed as amended by Act 17, 1905.

³ See Act 27, 1892.

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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 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 ⁽⁴⁾ 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,

How to be elect-
ed.

¹ Printed as amended by Act 13, 1894 (p. 3336).

² See § 2, Act 28, 1882, and § 4, Act 7, 1884 (pp. 1907 and 2180).

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 (p. 3417).

⁴ Number may be increased to 5. See Act 16, 1903 (p. 4634). Provision made for ballot at elections by Act 27, 1892 (p. 3102).

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.

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 management 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.

9. In case any member of the said board shall resign his seat on the Board, or ⁽¹⁾ 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.

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.

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.

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 ⁽²⁾ 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.

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

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Magistrate to publish names of persons elected.

In case member becomes disqualified, fresh election.

Governor may appoint members if voters fail to elect.

Meetings of the board.

Chairman to be chosen.

Quorum.

Questions to be decided by a majority of those present.

¹Printed as amended by Act 13, 1894. ²Three form a quorum when board consists of five members, Act 16, 1903 (p. 4634).

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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.

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 *prima 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.

Accounts to be kept and rendered to Magistrate.

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.

Members of the board to receive no pay.

Nor to be contractors.

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.

Duties of the board.

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 ⁽²⁾ 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

¹ See §§ 226 and 231 of Act No. 40, 1889 (p. 2,766).

² May also plant and cultivate trees. See Act 26, 1889 (p. 2,675)

No. 29—1881.

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 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 (1) 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.

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 to enforce regulations.

23. It shall be lawful for every board of management to enter into contracts, and to employ labour for the purpose of carrying

Board may enter into necessary contracts.

(1) See also Act. 21, 1889 (p. 2,667).

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.

No. 2—1882.

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 of ————," without mentioning the names of any of the members comprising such board.

How board to sue and be sued.

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

Preamble.

¹ See Act 7, 1884 (p. 2,180).

No. 2 1882.

and large reservoir and cleaning and renewing the existing water pipes: and whereas it is desirable that the commissioners of the 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. }
 C. D. } Commissioners of Municipality.
 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.

[Not printed. The purchase of the Indwe Railway by Government was authorized by Acts 19, 1900, and 38, 1902.] [pp. 4283 and 4500.]

[Pages 1806--1810.]

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 letters, 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."

4. The Governor may from time to time make, alter, and repeal regulations for all or any of the purposes following:

Governor empowered to make regulations for purposes mentioned in the sub-sections.

(1) For the establishment and management of Post Offices.

¹ Amended by Acts 35, 1892 (p. 3137) : 17, 1895 (p. 3454) : 6, 1898, § 7 (Customs) (p. 3854) : 34, 1902 (p. 4483) 1, 1905 (p. 4805).

As to Postal drafts see Act, 4, 1885 (p. 2253). For Post Office Savings Banks see Acts 6, 1883 (p. 2022) : 4, 1886 (p. 2326) : 5, 1889 (p. 2641).

See also Act 7, 1897 (p. 2453) regarding manufacture or issue of counterfeit postage stamps of foreign countries.

² The provisions of this Act extended to the Native Territories by Proclamations 98 and 100, July, 1882, and to Pondoland by Proc. 33, 1897.

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- (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. (1)

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.

¹ And 10 for insurance and compensation for loss, &c., of letters, parcels and packets. Act. 34, 1902 (p. 4483).

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)

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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 (p. 3137).

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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 recognise, 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 merchandise 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.

Prohibitions.

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 on 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.

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.

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:

- (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.

32. Copies of all arrangements or conventions made between the Government of this Colony and the Postmaster-General of the United Kingdom, or the proper authorities of any British posses-

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Sender of opened letter to pay postage.

Penalty for refusal.

Power to Governor to make postal conventions.

How convention to be promulgated.

Conventions so made to be laid before Parliament.

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sion 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 regulation 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 ⁽¹⁾ 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.

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 removing stamps from letters posted.

36. If any person shall enclose in or with any letter, packet, newspaper, or parcel, or shall put into any Post Office, pillar-box,

Penalties for sending dangerous substances by post.

¹ Single money orders for sums not exceeding £40 may be issued. Act 1, 1905 (p. 4805) Void money orders and unclaimed postal notes are applied towards reduction of the Public Debt by § 7, Act 43, 1905 (p. 4,965).

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.

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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 and 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 (1) 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 Office 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

Power to order imprisonment, &c., in case fines not paid.

¹ See also § 7 Act 34, 1902 (p. 4,485).

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Act, and the person convicted shall not forthwith pay the same, 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.

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[June 14, 1882.

Act to Authorise the Extension of certain Lines of Telegraph.
 [Spent.]

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(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.

(1)

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

¹ See also Act 29, 1898, § 31 (arbitrations) p. 3961.

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 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,

No. 6—1882.

In cases of minors
and persons under
curatorship.

to remit the matters referred, or any of them to the re-consideration and re-determination of the arbitrator or arbitrators, upon such terms as to costs and otherwise, as to such Court may seem proper.

4. As often as any of the persons interested or concerned in any arbitration under this Act shall be a minor or person under curatorship the following provisions shall apply:

(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:—

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.

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.

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.

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.

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.

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

Preamble.

Repeal of repugnant laws.

Courts of Resident Magistrates substituted for "Matrimonial Courts."

Magistrates may grant marriage licences.

Licence to be void after 3 months.

Intending spouses to make declaration in schedule 2.

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 Sept. 1888, and notes (p. 231).

No 9—1882.

satisfied that the inheritances which have devolved upon such minors have been settled by payment into the Guardian's Fund or secured by the customary bond or obligation commonly called a "Kinderbewys" duly registered in the Deeds Registry, or unless it shall be made to appear to such Magistrate by the widower or widow as the case may be, that the value of the estate in question in such case was under one hundred pounds.

Consent of parents, &c., in case of minors.

7. No licence shall be granted by any Resident Magistrate for the marriage of any person, not being a widower or widow, under the age of twenty-one years, unless and until there be produced to such Magistrate the written consent of the parents or guardians, or other person (if any) whose consent is required by law, or an order of the Chief Justice of the Colony, granted in terms of the seventeenth section of Her Majesty's Order in Council, dated the seventh day of September, 1838.

Questions may be put before granting licence.

8. Any Resident Magistrate to whom application shall be made for any special licence as aforesaid, may put to both or either of the parties intending marriage all such questions as shall be relevant and necessary for determining whether there be or be not any lawful impediment to such marriage, and may refuse to grant such licence unless satisfactory answers shall be given.

Offences and penalties.

9. Whoever shall commit any of the following acts or offences, shall, upon conviction, be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding five years:

- (1) Make any declaration such as is referred to in the fifth section of this Act, for the purpose of obtaining a licence to marry, containing any wilfully false statement as to any fact therein alleged.
- (2) Make any wilfully false statement in answer to any question put by any Resident Magistrate under the provisions of the eighth section of this Act, as to any fact material to be ascertained.
- (3) Forge or fraudulently alter any consent or writing purporting to be a consent to the marriage of any person being a minor under the age of twenty-one years.
- (4) Forge or fraudulently alter any licence of marriage.

Short title.

10. This Act may be cited for all purposes as "The Marriage Licence Act, 1882."

THE FIRST SCHEDULE.

MARRIAGE LICENCE ACT, 1882.

It having been made to appear that there does not exist any legal impediment to B. B., of _____ in the district of _____ { Bachelor }
 { Widower }
 and C.D., of _____ in the district of _____ { Spinster }
 { Widow }

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 ⁽¹⁾ 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 authorities.

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, or for the purposes of any Institution being the recipient of any sum of money, or portion thereof, granted by Parliament for the purpose of higher and professional education, and administered in accordance with the provisions of the “Higher Education Act, 1874.” ⁽²⁾
- (7) For providing baths and washhouses.
- (8) For providing pleasure grounds, botanic gardens, libraries, museums and places of public resort and recreation.

¹ The following are also included in term local authority :—(a) Cemetery Trustees appointed under Act 3, 1883 (p. 1995), by Act 29, 1885 (p. 2295); (b) District Councils (Glen Grey Act) by § 54, Act 25, 1894 (p. 3385); (c) Urban local authority under Public Health Act, 23, 1897 (p. 3766); (d) Any institution administered under the Higher Education Act. See Act 45, 1902 (p. 4530). Loans for construction, &c., of cold storage buildings may be advanced under this Act. See § 7, Act 23, 1898 (p. 3920).

² See Acts 14, 1895 (p. 3452); 15, 1898 (p. 3891); 45, 1902 (p. 4530); 25, 1904 (p. 4748). Printed as amended by Act 45, 1902.

- (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. ⁽¹⁾

No. 11--1882.

3. Every application for a loan under the provisions of this Act shall be in writing addressed to the ⁽²⁾ Commissioner, and shall distinctly state the purpose and object of the proposed loan.

Purpose of loan to be stated.

4. The Commissioner ⁽²⁾ 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. ⁽³⁾ The Commissioner ⁽²⁾ 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, etc.

¹ Printed as amended by Act 14, 1895 (p. 3452).

² To Colonial Secretary for purposes under the Municipal Act 45, 1882, and the Public Health Act 23, 1897. See § 22 Act 25, 1904 (p. 4749) Colonial Secretary substituted for Commissioner.

³ See Act 14, 1895, § 2 (p. 3452).

No. 11—1882.

No loan for a greater period than forty years.

How loans to be redeemed.

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 (1) determined by the Governor.

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 (2) 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 (2) per centum per annum shall be payable on any sum advanced by the Treasurer from the date on which it is advanced.

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 (3) 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.

¹ For educational purposes term of loan (not to exceed 40 years) may be extended. Act 10, 1905 (p. 4818).

² See Act 14, 1896 (p. 3597), which substitutes another schedule and reduces rate of interest to four per cent.

³ Amended by Act 25, 1904 (p. 4748). Repayments on loans for educational purposes to form a separate account in Treasury to be used solely for further loans to School Committees. See also § 2, Act 25, 1904 (p. 4749).

14. (1) 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.
- (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, (2) 1867."

16. This Act may be cited for all purposes as "The Local Works Loans Act, 1882."

No. 11—1882.

Provisions to apply to cases of loans granted upon security other than that of rates.

Public Bodies Debts Act, 1867, to apply.

Short title.

SCHEDULE.

Table for the Redemption of Loans, showing the annual sum required to repay a Loan of £100, and interest within the following periods.

[Repealed by Act 14, 1896, p. 3597, and an amended schedule substituted thereby.]

¹ As to loans for school purposes, see Act 15, 1898 (p. 3891). ² No. 11, (p. 1063).

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 superin-
tend 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 of this Act conferred upon the commissioners and to the regulations to be made by the Governor, as is hereinafter provided.

Governor may
appoint Acting
Commissioner.

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 dis-
miss 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 police-
men.

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 em-
ployed 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 (p. 1314) ; 27, 1882 (p. 1897) ; 13, 1886, §§ 1-3 (p. 2335) ; 21, 1894 (p. 3365) ; 32, 1895, § 50 (p. 3547).

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.

No. 12—1882.

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, etc., con-
ferred cease on
dismissal or dis-
charge.

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 Gover-
nor 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 con-
travention of rules,
etc.

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, etc.

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 superan-
nuated.

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.

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.

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.

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.

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.

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.

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.

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

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Discharge for misconduct bars claim to pension.

Members of existing police forces entitled to benefits of this Act.

Rewards for extraordinary services.

How cases of misconduct to be inquired into in cases of sergeants.

How in cases of misconduct of policemen.

Power to issue subpoenas to give evidence at such enquiries.

Penalties to be recoverable under Ordinance 6 of 1839.

Proceedings in case of alleged misconduct of officers above rank of sergeant.

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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, etc., 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 (p. 2151).

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, etc., 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 of 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 etc., 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, etc.

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Articles forbid-
den to be sold can-
not 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 exempt 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 ex-
acting 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 im-
prisonment 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 Magis-
trates 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

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 Magistrates 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.

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. All repugnant portions of this Act are repealed by Act 22, 1899 (p. 4104).

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 thereof, 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 im-
pound 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 con-
struct works for
carrying out pur-
poses of the Act.

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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, com-
monage, &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.

In case the lands, &c., of minors and persons under curatorship required to be taken.

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

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

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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 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 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 watercourses.

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-leavings, 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-leavings, 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-leavings.

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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
bye-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," as 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-leavings 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 pay-
ing interest and
capital borrowed.

¹ See § 10, Act 11, 1895.

No. 15—1882.

said council from any source whatever, and not specifically appropriated or required for any other object.

Assessment roll of municipality to be assessment roll for this Act.

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."

19. [Repealed by Act 22, 1899, §21.]

Costs of Act, &c.

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.

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.

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.

23. This Act may be cited as "The East London Water Supply Act, 1882."

No. 16—1882.
Provisions of this Act not to affect the rights of the Council under other Acts.

Interpretation clause.

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 (1) 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.

¹ See also § 6, Act 6, 1905 (p. 4,812) offences against Railway bye-laws or regulations may be tried by any R.M. of district through which railway passes.

No. 16—1882.

all cases civil and (1) 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 (2) 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

¹ But see § 42, Act 36, 1902 (p. 4498). No Assistant R.M. under 10 years' service, &c., competent to try cases under Betting Houses and Brothels Suppression Act.

² Additional powers conferred by Act 33, 1905 (p. 4,923).

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 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 Magistrates 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 £200,000.

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; 25, 1896; 33, 1898; 35, 1899; 20, 1900; 33, 1902.

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 a 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.

¹ No. 29.

No. 18—1882.

Further regula-
tions authorised.

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.

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 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.

¹ Printed as amended by Act No. 7, 1885.

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 Government 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 necessary to protect sources of impounded 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 reservoirs, dams, places or place where the said works may take off the water of the said river.

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.

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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 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 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

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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. And 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 things, 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 of 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

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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.

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Sinking fund of one per cent. for extinction of debt.

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.

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., }

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,

¹ See Act 9. 1886 (p. 2331).

be stated or 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.

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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 thereof 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 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-laws.

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.

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.

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.

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.

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.

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

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Liabilities under bye-laws not to affect other liabilities.

Rates of charges for admission to the club's land.

Power to chairman to lease lands for races and other sports.

Committee may borrow on security of club's property.

Commissioner of Crown Lands may authorise inspection of land and buildings.

If report of inspector unfavourable, Commissioner may call on committee to make repairs.

H

No. 21—1882.

repair, 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.

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[June 22, 1882.

ACT

For the Management of the Harbour of Port Elizabeth.

[Repealed by Act 36, 1896. Pages 1877—1880.]

No. 22—1882.]

[June 22, 1882.

ACT

To Amend the Law relating to the Extradition of Criminals.

[This Act which applied only to criminals in Transvaal and Orange River Free State has in consequence of their being declared British possessions become obsolete. By order in Council published under Proclamation 152 of 28 September, 1901, Part II. of the Fugitive Offenders Act, 1881 (44 and 45 Vict., Ch. 69) has been applied to all British Possessions in South Africa. [Pages 1881—1887.]

¹ Act applied to S. A. Jockey Club, by Proc. in Gazette 20th Oct., 1882.

No. 23—1882.]

[June 30, 1882.

ACT (1)

To make provision to release a further Portion of the Estate Orangezigt from the Entail *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,

¹ See Act 10, 1899.

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 courses 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 waters 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.

£760 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 Good 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:—

No. 24—1882.

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 sterliug.
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.
To make, &c.,
rules and regula-
tions.

3. The said corporation hereby created shall have power from 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.

Act 26—1882.]

[June 29, 1882.

ACT (1)

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 to acquire the same, describing in such notice the line of passage along which he proposes to convey the water, the mode in which

Notice of desire to acquire such right.

¹ See also § 10, Act 40, 1899 (Water Act.), (p. 4216).

No. 26—1882.

In case of no private agreement, arbitration to take place.

Powers and duties of arbitrators.

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.

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.

5. The ⁽¹⁾ 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

¹ These functions may be exercised by Superior or Water Court § 10, Act 40, 1899, (p. 4216).

to the arbitration, if in the course of proceedings under the reference such lessee shall claim compensation.

No. 26—1882.

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 benefiting 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 Arbitration 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:

To what localities police provisions to apply.

- (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."

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 Acts 13, 1886 (p. 2335), 44, 1898 (p. 4022), 25, 1891 (p. 2901), 21, 1894 (p. 3365), 32, 1902 (p. 4479), 36, 1902 (p. 4497), 40, 1902 (p. 4511).

² No. 29.

No. 27—1882.

(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) Riding 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.

¹ See §§ 27 and 28, Act 3, 1883 (p. 2000).

- (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 (1) 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. (2)—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 (3)
- (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 any abusive or insulting language to any passenger, or

¹ The penalty for an offence under Sub-Sec. 29 increased to fine not exceeding £5 or 30 days, and for second conviction imprisonment without option. See Act 44, 1898 (p. 4022).

² See § 2, Act No. 21, 1894 (p. 3365).

³ Printed as amended by § 1, Act 13, 1886 (p. 2335).

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) (1) Betting in any street or open place, or playing therein at any game for a wager or stake, or playing at or with any table or instrument of gaming.

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.
- (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 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.

Penalty on conviction of certain other offences.

Offences enumerated.

¹ Printed as amended by § 37, Act 36, 1902 (p. 4497).

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 conduct.

9. Any person (1) 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, abusive language, &c.

10. Any person (2) 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 seaman 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 (p. 2336). If convicted four times during a year may be sentenced to 12 months' hard labour. See § 28, Act 25, 1891 (p. 2901), or in lieu detention not exceeding three years in a State Inebriate Reformatory, § 8, Act 40, 1902 (p. 4511).

² See also § 2, Act 21, 1894 (p. 3365), prescribing further penalties for abusive language, &c., on land not in possession of accused.

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 there-to 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 (p. 3365).

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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 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

¹ See also Act No. 28, 1888 (p. 2403) (Forest Act).

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.

19. (1) 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 not exceeding 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.

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,

No. 27—1882.

Search and detention of vessels, carriages, &c., suspected to contain stolen goods.

Persons arrested without warrant to be taken before nearest Court having jurisdiction as soon as possible.

Release on bail for minor offences.

Offences in Part I and sections 9 and 10 may be prosecuted before special justices.

¹ Printed as amended by Act 44, 1898 (p. 4022).

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 (p. 2000). By Act 32, 1902 (p. 4479) local authorities are relieved of contributing towards cost of police. These fines are now paid into Public Revenue.

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 Wine 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, 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 (p. 1797) and notes thereto. 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.

No. 30—1882.

[Sections 3 to 5 repealed by Act 28, 1882.]

Short title.

6. This Act may be cited for all purposes as “The Villages Management Amendment Act, 1882.”

 No. 29—1882.]

Act to Amend the “House Duty Act, 1878.”

[June 29, 1882.]

[Repealed by Act 4, 1889.]

 No. 30—1882.]

[June 29, 1882.]

ACT

To Authorise the Raising of Money 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
£300,000.

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 0
For Works and Buildings :—			
Transference of Robben Island Asylum : Preliminary Ex- penses		15,000	0 0
For Bridges :—			
Orange River Bridges to supple- ment 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 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 Kimberley Railway survey	20,000	0	0
	<hr/>	110,000	0 0
		<hr/>	<hr/>
		£309,365	0 0

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.]

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TEMPORARY LOAN.

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.

[Lapsed.]

No. 36—1882.]

[June 29, 1882.

ACT

To Remove doubts as to the legality of the Payment of an Annual Allowance or Salary to the Chief Justice of the Colony of the Cape of Good Hope as President of the Legislative Council.

WHEREAS doubts may arise as to the legality of the payment of an allowance or salary to the Chief Justice as President of the Legislative Council, and it is expedient that such doubts should be removed: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Nothing in the Charter of Justice contained shall be construed so as to prevent the payment to the Chief Justice of the Colony of the Cape of Good Hope, so long as the said Chief Justice shall continue to be the President of the said Council, of such annual allowance or salary for or in respect of his duties as President of the Legislative Council as Parliament may from time to time direct.

Chief Justice empowered to receive salary as President of 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 (p. 2314); 15, 1887 (p. 2461); 40, 1895 (p. 3566); and 46, 1899 (p. 4230). 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⁽¹⁾ 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 Commis-
sioner 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 ap-
pointed.

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 (p. 2461).

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.

No. 37—1882.

19. As soon 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 and 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.

Interpretation
clause.

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.

Short title.

25. This Act may be cited for all purposes as the "Agricultural Lands Act, 1882."

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.

[Lapsed.]

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.

[Repealed except as to sections 22 and 23 by Act 35, 1896.]

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, ⁽¹⁾ 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.

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

Their powers of fine and imprisonment.

[Pages 1918 to 1922.]

¹ Jurisdiction extended to all offences against Masters and Servants Acts by Act No. 30, 1889.

No. 41—1882.]

[June 29, 1882.]

ACT (2)

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 any 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 summonses, writs, &c., by telegraph.

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

Telegram stating issue of warrant or writ of arrest, authority for execution of the same.

¹ See § 3, Act 34, 1888 (p. 2622).

² Extended to Transkei, Tembuland, East Griqualand and Port St. John's by Proclamation 183, 1896.

No. 41—1882.

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, (1), 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 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.

Penalty for delivering messages to others than persons addressed.

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

¹ No. 18.

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.

No. 42—1882.

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 Wihelmus 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 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:—

Preamble.

1. It shall and may be lawful for the said Philippus Johannes Andreas Watermeyer, and Adriaan Johannes Botha, or the sur-

Power to surviving Members of Church Committee

No. 42—1882.
to transfer remain-
der of property to
Hanover Municipality.

No transfer duty
payable.

Lands to be held
under conditions in
schedule.

Municipality may
transfer under con-
ditions.

Short title.

vivor 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.

2. No such transfer as is required to be passed by the preceding section shall be subject to the payment of transfer duty.

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.

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.

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 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.

¹ See Act No. 23, 1894.

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.

ACT¹

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 Acts 22, 1893 (p. 3199) ; 20, 1896 (p. 3603) ; 30, 1898 (p. 3968) ; 30, 1899, § 27 (Native Locations) (p. 4148) ; 41, 1899 (p. 4220) ; 29, 1895 (Sale of Bread) (p. 3529) ; 30, 1895 (Native Traffic in Streets) (p. 3531).

For adoption of ballot at elections see Acts 27, 1892 (p. 3,102) and 18, 1899 (p. 4101).

Applications for Loans under Local Works Loan Acts to be addressed to Colonial Secretary, see Act 25, 1904 (p. 4749).

For powers and duties under Public Health see Act 23, 1897 (p. 3741) ; 4, 1891 (Dairies) (p. 2828).

In Municipalities where, in consequence of war and rebellion, voters' rolls not made and elections not held, see § 11, Act 10, 1902 (p. 4370).

No new Municipality to be proclaimed after 8th June, 1905, until land set aside for school purposes. See § 56, Act 35, 1905 (p. 4937).

This Act extended to all Native Territories by Proclamation 56, 1892, to East Griqualand, by Proclamation 113, 1892, and to Pondoland by Proclamation 163, 1904.

No. 45—1882.

Repeal of Laws
in Schedule.

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.

Governor may re-
peal special Acts
incorporating Mu-
nicipalities coming
under provisions of
this Act.

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.

Existing Muni-
cipal Laws to con-
tinue until Muni-
cipality comes under
this Act.

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:

Provisions to ap-
ply to Municipali-
ties coming under
this Act.

- (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.

No. 45—1882.

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 by the Governor be named in that behalf.

No. 45—1882.

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

Proceedings of Council to be valid though defect existed in mode of election.

¹ See §§ 1, 2, Act No. 22, 1893 (p. 3199).

No. 45—1882.

afterwards 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 (p. 2661). This section to apply to Municipalities which have not yet come under the operation of this Act. See also § 3, Act 22, 1893 (p. 3,200) as to powers of Mayor to declare seat vacant.

- (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.

No. 45—1882.

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 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 show—

- (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 *primâ 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 (p. 3102). In Municipalities where, in consequence of war and rebellion no election held, such election held on first Wednesday in August, 1903, and thereafter in accordance with this Act. See § 12, Act 10, 1902 (p. 4370).

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 (p. 3199).

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 officers 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.

Voting papers to be sealed up and kept for 6 months.

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

of six months such papers may be destroyed in the presence of two councillors, unless the council shall otherwise direct.

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.

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.

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.

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.

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.

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.

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

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Such packets not to be opened except by competent authority.

In case of riot, poll may be adjourned, &c.

In other cases of non-election on polling day.

"Wards" included in foregoing provisions.

Elections not to be impeached for want of title of polling officer.

Actions by or against Council not affected by mode of election.

In cases where there is no Mayor or other officer in this Act mentioned.

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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.

(2) 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 22, 1893, where equality of votes (p. 3200).

² See Act 10, 1902, § 11 (p. 4370). In every Municipality where, in consequence of war and rebellion, auditors not elected, such auditors to be elected on or before first Wednesday in August, 1903, and thereafter annually elected under this Act.

PROCEEDINGS OF THE COUNCIL.

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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.

Committees may adjourn.

Quorum.

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.

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. 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

To be signed by Chairman and received in evidence

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 such balancing the auditors shall audit the said accounts as soon as conveniently may be. And the council shall, by the Municipal Clrk, 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.

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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 ap-
point 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.

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 regu-
lations.

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, conferring further powers (p. 3200).

- (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 other 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 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 ⁽¹⁾ 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 prop-
erty 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 (p. 29(1)), abolishing exemption of certain Crown property, as amended by Act 19, 1892 (p. 3028), and § 97, Act 26, 1893 (p. 3231), Cape Town Municipal Act.

118. The annual value of any property valued under the provisions of this Act shall, for the purpose of framing any ⁽¹⁾ 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,

Questions which valuer may put.

Penalty for refusing to answer such questions.

¹ In Municipalities where, in consequence of war and rebellion, voters' roll not made, such roll to be made out before 1st June, 1903, and elections held thereon on first Wednesday in August, 1903, and thereafter rolls and elections to be made out and held in accordance with this Act. See Act 10, 1902, § 12 (p. 4370).

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Valuation Roll to
be open for inspec-
tion.

such person shall, for every such offence, be liable to a penalty not exceeding ten pounds.

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 ob-
jections.

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 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.

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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. (1) 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 for 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

How defaulters to be sued.

¹ But see § 12, Act 41, 1899 (p. 4223). This section does not apply to any Municipality coming under the operation of Act 41, 1899 (p. 4223).

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place of residence, or place of business, or office, shall make default, 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 hereinafer 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 *primâ 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
owner or occupier
ceases to be such

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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before 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 default.

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.

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- (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.

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.

(1) 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 or 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.

¹ Applications for loans under Local Works Loans Act 11, 1882 (p. 1835) to be addressed to Colonial Secretary. See Act 25, 1904 (p. 4749).

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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 (1) 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

Police, street-keepers and other officers.

¹ But see now § § 72, 73, 76 of School Boards Act 35, 1905 (p. 4940) as to rating powers and grants in aid.

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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 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 (1) 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 applica-
tion for such deal-
ing 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 Govern-
or.

162. In every case in which any such council as aforesaid shall apply to the Governor for such consent as aforesaid, they shall

¹ As to alienation of land by sale or transfer or mortgage or lease thereof see § 10 Act 39, 1905 (p. 4949).

transmit, together with such application, a copy of the notice posted as aforesaid, and of all objection 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.

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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 there, 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 (p. 3024).

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law made thereunder, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

What shall constitute offences against this Act.

171. Where any matter or thing is by this Act or by any order or notice made and published under the authority hereof directed or forbidden to be done, or where any authority is given, by this Act to any person to direct any matter or thing to be done, or to forbid any matter or thing to be done, and such Act so directed to be done remains undone, or such act so forbidden to be done is done in every such case, every person offending against such direction or prohibition shall be deemed guilty of an offence against this Act.

Penalties.

172. Every person guilty of an offence against this Act or any bye-law in force in any municipality shall for every such offence be liable to the penalty expressly imposed by this Act, or by the bye-law, and if no other penalty be imposed to a penalty not exceeding ten pounds.

Recoverable in Resident Magistrate's Court.

173. All penalties or other moneys payable in respect of any offence against this Act, or any bye-law made thereunder, may be recovered before the Court of the Resident Magistrate of the district.

Offences against bye-laws.

174. All offences against any bye-law or regulation in force in any municipality shall be deemed to be offences against this Act, and in any prosecution for contravening the provisions of any such bye-law or regulation it shall be sufficient to allege that the accused is guilty of contravening or offending against a bye-law or regulation in force in the municipality, without describing the bye-law or regulation by number or otherwise, and alleging the act complained of.

Punishment if penalty not paid.

175. Whenever any penalty shall have been imposed under the provisions of this Act or of any bye-law made thereunder, 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 such person shall be detained and kept to hard labour accordingly unless he shall sooner pay the penalty.

Application of penalties paid.

176. (1) *All penalties recovered for offences against the bye-laws of any municipality, or for offences against this Act committed in any municipality, or in any way in respect of the municipality, shall be paid into the municipal fund of such municipality.*

"Lands and Arbitration Clauses Act, 1882," to apply.

177. For the purposes of any land taken, or any arbitration under the provisions of this Act, the provisions of the "Lands and Arbitration Clauses Act, (2) 1882," are hereby incorporated.

Boundaries of Municipality may be altered by Proclamation and Regulations repealed.

178. Notwithstanding anything in this Act contained it shall be lawful for the Governor from time to time, by proclamation to be published in the *Government Gazette*, to alter the boundaries of

¹ This section is repealed by Act 32, 1902 (p. 4479).

² No. 6.

any existing municipality, not being a municipality incorporated by any Ordinance or Act, or to repeal any municipal regulations now in force in any municipality whether incorporated or not.

179. For the purpose of assizing weights and measures, the provisions of "The Weights and Measures Act, (1) 1876," are hereby incorporated.

180. This Act may be cited as the "Municipal Act, 1882."

No. 45—1882.

"Weights and Measures Act, 1876," to apply.

Short title.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ordinance No. 9, 1836.	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.	So much as has not been already repealed.
Ordinance No. 2, 1844.	Ordinance for amending the Ordinance No. 9, 1836, entitled "An 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.
Ordinance No. 8, 1848.	Ordinance for enlarging in certain respects the Powers of Municipal Commissioners in regard to the Common Pasture Lands of the Municipality.	The whole.
Ordinance No. 5, 1852.	Ordinance to enable Municipal Commissioners appointed under Ordinance No. 9, 1836, to purchase or hire immovable property for Municipal purposes.	The whole.
Act No. 15, 1860.	For continuing the Ordinance No. 9, 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," as also the Ordinance No. 2, 1844, intitled "Ordinance for amending the Ordinance No. 9, 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.

¹ No. 15 (p. 1422).

No. 46—1882.

Number and Year.	Title.	Extent of Repeal.
Act No. 13, 1864.	To amend the Ordinance No. 9 of 1836, intituled "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 Amended by Act 29, 1886, § 1 (p. 2410).

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.

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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, etc.

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.

¹ See Act 29, 1886, § 1 (p. 2411).

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 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 (p. 2411).

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, etc

¹ See Acts 14, 1885 (p. 2265); 34, 1888 (p. 2621); 11, 1899 (p. 4082); 33, 1904 (p. 4764).

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 in 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

¹ See § 8, Act 34, 1888 (p. 2622).

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, etc., from persons incompetent to sell.

Licensed dealers to adhere to terms of licence.

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pecially 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 proper.

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 any

Powers of entry
into and search of
premises, etc.,
where stones sus-
pected to be con-
cealed.

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Power of arrest
at any time of sus-
pected person.

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, etc.

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 requir-
ing 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 recovered 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, etc., 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 Magis-

Persons applying for licences to deal to produce certificate of fitness.

Who prohibited from being licensed

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strate 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 the 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 recognizance hereinafter mentioned as assisting in such) or make a solemn declaration that he is not under tutelage. Nor in any case until the person applying for such certificate, together with two sureties, shall have entered into a recognizance in the form G set forth in the second schedule.

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 concealment 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

Washing permits.

Particulars to be stated.

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Restrictions.

were actually found by him in such ground or soil as aforesaid, and such declaration shall be made in the form L set forth in the second schedule: and provided also that the said Resident Magistrate shall keep a record of all such washing permits and of all such declarations as aforesaid: and provided also that no such washing permit shall be issued to any person to whom the Resident Magistrate would not have power to issue a certificate under the twenty-first section of this Act: and provided lastly that such permit shall only be available in the district over which the Resident Magistrate so issuing such permit shall have jurisdiction.

Permits to police and detectives.

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.

—Buyers and cutters to have place of business mentioned in licence.

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.

Transactions to be confined to such place of business.

31. It shall not be lawful for any licensed 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.

Licences of persons removing to be endorsed by distributor of stamps.

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.

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- (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.

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 ⁽¹⁾ 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.

39. The board mentioned in the last preceding section shall consist of eight members who shall be elected on the first 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.

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.

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.

42. Every licensed broker or factor shall keep copies or counterfoils of his bought and sold notes, as in the form M, contained in

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Application of registration fees.

Constitution of Board for protecting mining interests.

In what cases Governor may appoint members of the Board.

Penalties for refusing to produce licence when called on by proper authority.

Counterfoils of broker's notes to be kept and produced when required.

¹ But see § 5, Act 37, 1899 (p. 4207).

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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.

[The Special Court created under sections 44-55 of this Act was abolished by section 8, Act 35, 1904 (p. 4764). The ordinary rules of criminal procedure now apply to offences under this Act.]

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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 (1) 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 ser-
vants stealing dia-
monds, &c.

Accessories, &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 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

¹ See note to § 44.

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.

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.

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.

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.

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:—

“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.

No. 48—1882.

Diamonds found on servant presumed to be master's.

Penalties for inducing servants to steal diamonds.

Punishments may be inflicted under Sections of repealed Ordinances.

Previous convictions.

Accessories may be charged as principals.

Interpretation clause.

No. 48—1882.

“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.
Aug 10, 1872, No. 14	Sir Henry Barkly's Master and Servants' Proclamation	Sections 14, 15, and 17.
No. 4 of 1877	Diamond Trade Ordinance, 1877	The whole.
No. 8 of 1880	Diamond Trade Amendment Ordinance, 1880	The whole.

SCHEDULE. II.

A.

FORM OF DIAMOND DEALER'S LICENCE.

[DIAMOND TRADE ACT, 1882.]

I,
 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
 ending 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 .

L

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.

A.
 COUNTERFOIL TO BE KEPT BY SELLER OR
 BROKER AS REGISTERED.

No.....188
 Sold for.....
 Sold to.....

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.					

Certified correct.

.....
 Licensed Seller or Broker.

[M.]
 BROKERS', COMPANIES', & OTHER
 LICENSED SELLERS' NOTES OF SALE.

B.
 NOTE TO BE HANDED BY BROKER TO
 SELLER.

No.....188
 Sold to.....

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.					

Certified correct.

.....
 Licensed Seller or Broker.

[M.]
 BROKERS', COMPANIES', & OTHER
 LICENSED SELLERS' NOTES OF SALE.

C.
 NOTE TO BE HANDED BY BROKER, DEALER,
 ETC., TO BUYER.

No.....188
 Bought of.....

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.					

Certified correct.

.....
 Licensed Seller or Broker.

DIAMOND TRADE.

1989

No. 48-1882.

No. 1—1883.]

[July 5, 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)

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the legal conditions of aliens: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The laws mentioned in the first schedule to this Act shall be and are hereby wholly repealed: Provided that such repeal shall not, as to any time before the passing of this Act, affect

Repeal (with exceptions) of Laws in Schedule.

(1) Any right acquired or thing done.

(2) Any liability accrued or accruing.

(3) Any penalty or other punishment incurred, or to be incurred, in respect of any offence committed.

(4) The institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, or punishment as aforesaid.

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

Governor may grant Letters of Naturalization.

¹ Amended by Act 35, 1889 (p. 2684). See also Act 37, 1904 (p. 4797), Chinese Exclusion, and 47, 1902 (p. 4531), Undesirable Immigrants. 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; or of Divisional Council, Act 40, 1889 (p. 2711); or member of School Board or School Committee, § 13, Act 35, 1905 (p. 4929); nor can he serve as Juror, Act 22, 1891 (p. 2878). No person not a British subject accepted as candidate for Civil Service Examination. See Government Notice 366, 1900, § 88, Act 32, 1895 (p. 3555).

No 2-1883.

of this Act: Provided that no Letters of Naturalization shall be 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

¹ Printed as amended by Act 35, 1889, § 2.

- (2) Their birth-place.
- (3) Occupation.
- (4) Residence in the Colony.
- (5) Date of the issue of letters.

No. 2--1883.

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, 1861.	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.

<ol style="list-style-type: none"> 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? 8⁽¹⁾. 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 _____ day of _____ 18____
the _____
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 _____
Before me :

A.B.
18

Justice of the Peace.

¹ Printed as amended by Act 35, 1883 (p. 2684).

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, etc., 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 (p. 2017), and Act 28, 1897 (p. 3757). Extended by Proclamation No. 15 of 1891, and 114, 1903, to all the Native Territories, including Pondoland.

² See § 17, Act No. 7, 1894 (Births and Deaths, p. 3322).

³ For loans to trustees, see Act 29, 1885 (p. 2295).

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 tombstones.

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.

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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, etc.

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 cha-
pels, etc.

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
keeping said ac-
counts.

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 recoverable in the Court of the Resident Magistrate.

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.

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.

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.

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.

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.

27. The fifth section of the "Police Offences Act, (2) 1882," shall be in operation in and within the limits prescribed for every

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Registration of burials.

Returns of deaths and the causes thereof.

Penalty for wilfully injuring cemeteries, &c.

Damages for injuries not wilful.

Animals found trespassing may be impounded.

Cemeteries to be named "public places."

¹ See Act No 7, 1894, § 17, (p. 3322).

² No. 27 (p. 1898).

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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."

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[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:—

Preamble.

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.

Repeal of repugnant laws.

PART I.—GENERAL PROVISIONS.

2. In the construction of this Act the term “local authority” (3) 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 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.

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.

Municipality may levy rates.

¹ Amended by Acts 10, 1884; 23, 1897; See also 3, 1883, (Cemeteries), 39, 1885 (Contagious Diseases); 8, 1884 (Leprosy); 40, 1889; § § 209 *et seq.* (Divisional Councils); 4, 1891 (Dairies). Extended by Proclamation No. 179 of 1883 to Port St. Johns; by Proclamation No. 175 of 1884 to Tembuland and the districts 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 (p. 1797).

³ Divisional Council included. Printed as amended by Act 23, 1897 (p. 3755).

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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. (1)

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

¹ But see also § 48, Act 23, 1897 (p. 3759). Quarantine to apply only to such contagious or infectious disease as the Governor may proclaim.

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.

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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 ⁽¹⁾ 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.

19. [Repealed by Act 23, 1897.]

¹ Surgeon in charge must also sign. See § 45, Act 23, 1897.

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.

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In case of quarantine, duty of Port Officer.

21. [Repealed by Act 23, 1897.]

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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.

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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.

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- (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 quarantine 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.

No. 4—1883.

35. [Repealed by Act 23, 1897.]

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.

No. 4- 1883.

Penalties for infected persons exposing themselves.

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.

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, or 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.

40. [Repealed by Act 23, 1897.]

41. [Repealed by Act 23, 1897.]

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 or 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-

Penalty for resistance.

No. 4 - 1883.

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.

No. 4 1883.

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. [Repealed by Act 23, 1897.]

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.

No. 4-1883.

[55 and 56 repealed by Act 23, 1897.]

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. [Repealed by Act 23, 1897.] [p. 3757.]

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 (p. 1995).

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Penalties for burials after such closing.

discontinuance of burials, or otherwise alter or vary any such order or notice.

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.

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, (p. 2869). Extended by Proclamations No. 80 of 1890 and 108, 1900 to all the Native Territories including Pondoland.

No. 5—1883.

“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.

4. When any act, matter or thing, is by any law directed or required to be done by the Governor, the notification that such act, matter, or thing has been done may be by Proclamation, under the hand of the Governor, or by Order in Council.

Proclamations or
 Orders in Council.

¹ Printed as amended by Act No. 18, 1891, § 8.

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.

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From time to time.

5. When anything is directed to be done "in writing" it may be done partly in writing and partly in printing.

Writing or printing.

6. When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, New Year's Day, Good Friday, Easter Monday, Ascension Day, Whit Monday, Her Majesty's birthday (1), 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, etc.

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, etc., made by Governor to be laid before Parliament.

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.
As to penalties under repealed Acts.

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.

Repeal of repealed Act not to revive former one.

11. The repeal of any law whereby any former law was repealed shall not have the effect of reviving such last-mentioned law.

12. When in any Act sections or words in any prior Act are respectively directed to be omitted, or added, or substituted for other sections or words, in all copies of such last-mentioned Act which shall subsequently be printed the sections or words respec-

As to reprints of altered or amended Acts.

¹ The 24th May (Queen Victoria Day). Act 15, 1902 (p. 4382).

- 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 and plural, male and female, etc. 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 Amended by Acts 4, 1886 (p. 2326); 5, 1889 (p. 2641). 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.

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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.

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.

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.

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.

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.

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.

¹ Printed as amended by Act No. 5, 1889 (p. 2641).

Limits of deposits

How repayments to be obtained.

Secrecy to be observed.

Accounts to be kept, and investments made.

Interest.

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How calculated.
- Names and address of depositors.
- Trust deposits.
- Deposits for minors.
- Married women.
- Deposits by Friendly Societies.
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.
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.
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.
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.
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.
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 ⁽²⁾ 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 of the Attorney-General, to

Illegitimate re-
presentatives of
deceased depositor.

¹ See §§ 1, 2, Act 4, 1886 (p. 2326).

² Applied to Reduction of Public Debt. See Act 12, 1900 (p. 4282).

No. 6-1883.

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 showing 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

No. 6-1883.

Expenses.

Short title.

Schedule 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 there- after.

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.

21. This Act may be cited as "The Post Office Savings Banks Act, 1833."

"A" (1) (FACE OF FORM.)

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

1 Printed as amended by Act 5, 1889.

No. 6—1883.

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.....
190... 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.
.....	

¹ Printed as amended by Act No. 5, 1889.

“ B.” (1) (FACE OF FORM.)

No. 6—1883,
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.

“ B ” (1) (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.

DEPOSITOR'S BOOK.
Place

DECLARATION.

No. I, being the
*..... of the Friendly Society called the *Insert "Trustee,"
..... held at "Treasurer," "Ste-
..... in the Division of ward," or "Clerk"
..... and duly†..... as the case may be.
do hereby declare that I am desirous on behalf of the †Insert "Enrolled,"
Trustees of the said Society, of depositing in the Post "Registered,"
Office Savings Bank, the sum of £..... or "Certified" as
the case may be.

¹ Printed as amended by Act 5, 1889.

hereby 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.

Place
No.

DECLARATION.

I,..... being the*..... § Insert "Trustee" or "Treasurer."
of the † § Insert "Charitable Society," "Provident Institution" or "Society," "Charitable Donation or Bequests for the Maintenance of Education or Benefit of the Poor" as the case may be.
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.....

Witness my hand this.....day of.....18...

‡.....of the said § Insert "Trustee" or "Treasurer."
Signed in presence of me.....

E.

DEPOSITOR'S BOOK.

Place
No.

POST OFFICE SAVINGS BANK.

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.....

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; 43, 1899 (p. 4225.)

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 "Village 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 (p. 3416).

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 "Stockenström Locations Management Act, 1883."

No. 9—1883.]

ACT (1)

[September 12, 1883.

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.

¹ See also Act 26, 1902 (p. 4446); 21, 1859 (p. 755); 48, 1899 (p. 4237).

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 ⁽¹⁾ 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

¹ See Act 26, 1902, § 4 *et seq.* (p. 4446).

No. 9—1888.

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.

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TRIAL OF A PETITION.

8. With respect to the trial of election petitions under this Act, the following provisions shall apply:—

- (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 declared duly elected; and, in the case of a respondent

Provisions for the trial of election petitions.

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) (1) 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

¹ The provisions of this sub-section extend to every illegal practice mentioned in Act 26, 1902 (p. 4458).

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.

No. 9—1883.

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 not 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

¹ No. 21.

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 requir-
ed for withdrawal.
- Abatement by
death.

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.

Consequence of
abatement.

30. On the abatement of a petition, any person who might have been a petitioner in respect of the election to which the petition relates may, within twenty-one days after such abatement apply to the Court to which such petition was presented, or any judge thereof, to be substituted as a petitioner, and such Court or judge may thereupon, if it or he think fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount given as is required in the case of a new petition.

Respondent who
has given notice
that he will not
oppose cannot ap-
pear.

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.

Court to decide
as to 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.

Taxation of costs.

33. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the superior Courts of this Colony.

Neglect to pay
witnesses.

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 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 ⁽¹⁾ 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 convicted of corruption.

- (1) Of being registered as a voter and voting at any election for members of Parliament in this Colony;
- (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 ⁽¹⁾ 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.

¹ See §§ 13 and 14 Act 26, 1902. (p. 4449).

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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⁽¹⁾ 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.)

¹ But see now Act 26, 1902 (p. 4446).

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 contained in one Act: It is therefore expedient

Preamble.

¹ Constitution Ordinance (p. 497).

² Printed as amended by Acts 30 of 1884, 10 of 1886, and 31, 1887. See also Act 8, 1898 (p. 3865); 18, 1900 (p. 4238).

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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 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.

Exceptions.

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.

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 Corporate created.

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"

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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.

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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 resignation, &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.

Quorum.

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.

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.

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Councillors not to have interest in contracts.
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.
- 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 excavate 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 schools 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 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 provision 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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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.

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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 may be

Power to lease lands.

- No. 11 1883. 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 on 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, 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 calling 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 person 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'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 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.

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

Powers of entry
on lands, streets,
&c.

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.

No. 11-1883.

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.

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.

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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 coun-

Estimate and Assessment.

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cil 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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Fresh Valuation.

Triennial.

Treasurer's
accounts.Fines to be ap-
plied to municipal
purposes.

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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 of 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 (1)

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 Section 60 of same Act.

¹ See Act 21. 1896 (p. 3606), and 15, 1904 (p. 4669), repugnant portions of this Act repealed.

No. 13—1883.

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.

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.

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.

7. Each House of Parliament may summarily punish for contempt to the extent and according to the standing orders thereof by fine and fees or either; and, in case such fine and fees or either so imposed shall not be immediately paid, by imprisonment in the custody of its own officer in such place as the House may direct until payment shall be made, or for a period not later than until the end of the then existing Session, for or in respect of any of the offences hereinafter enumerated whether committed by a member of the House or by any other person:—

- (1) Disobedience to any order of either House or of any committee duly 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

No. 13—1883.

Payment of reasonable expenses.

Attendance of members before either House.

Objections to answer questions or to produce papers to be reported to and decided by the House.

Houses empowered to punish for certain contempts.

No. 13—1883.

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 (p. 2621).

No. 14—1883

Speaker to act not withstanding Dissolution of Parliament.

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

Short title.

the purposes of this Act, apply to and include the Speaker, precisely as if he had been named therein.

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.

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.

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:—

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

Borough Council empowered to borrow to amount of £75,000.

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; by Proclamation No. 63 of 1890 to Tembuland; by Proclamation 357, 1903 to Pondoland.

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 Acts 32, 1886; 37, 1894; 42, 1898 (p. 4010); 2, 1903 (p. 4536).

No. 16—1883.

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 Vallie, Middelburg, Outspan, Hex Rivier or aan de Gooree, Goorree aan de Breede Rivier, Gooree's Hoogte, Zand Rivier, Outspan (Robertson), Over het Roode Zand, Goedemoed, Riet Vallei, Kraalbosch Vlake (otherwise Kraalbosch Vlake), 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.

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.

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.

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.

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*.

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.

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."

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.

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

No. 16—1883.

Also protection of sections 56 and 57 of the same Act.

Provisions in case railway crosses any street or road.

Streets or roads may cross railway.

Directors may act by duly appointed agents.

Railway not to be opened until certificate of Government officer obtained.

Regulations of Railways Act, 1861, to apply.

Regulations as to gates, &c.

Conveyance of plant, &c., on Government lines of railway.

No. 16—1883.

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. 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

On completion to Roodewal a further sum of £25,000

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 provisions 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.
Name or style of Company.

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.

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.

[Repealed by Act 27, 1897.] [Pages 2082 and 2083.]

No. 25—1892.

and shall be invalid accordingly; and for the purpose of this section, the presentation of a petition for winding-up a company shall be deemed to correspond with the order for the sequestration of the estate of a private person according to law. And any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of its creditors shall be void to all intents.

Power of court to assess damages against delinquent directors and officers.

209. Where, in the course of the winding-up of any company under this Act, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such promoter, director, manager, liquidator, or other officer, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the court thinks just.

Penalty on falsification of books.

210. If any director, officer, or contributory of any company wound up or in course of being wound up under this Act destroys, mutilates, alters or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall upon being convicted be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, etc., in the case of winding up by court.

211. Where any order is made for winding-up a company by the court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, etc., in case of voluntary winding up.

212. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be the

No. 18—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.

3. [Repealed by Act No. 17, 1888.]

Expenses of raising loan.

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. [Repealed by § 1, Act 11, 1897.]

¹ See Act 16, 1881 (p. 1764) and footnote thereto. See also Act 11, 1897 (Sinking Fund Commissioners). (p. 3723).

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."

No. 19—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.

[So much of this Act as relates to precious minerals (gold, silver, or platinum) repealed by Act 31, 1898 (p. 3969).

The remainder is repealed by Act 11, 1899 (p. 4060) except in so far as its provisions apply to Mines and Alluvial Diggings on private property the title to which contains no reservation of precious stones and minerals in favour of the Crown, and which are at the time of the promulgation of Act 11, 1899 (October 6, 1899) duly proclaimed Mines and Diggings within the meaning of Section 79, Act 19, 1883.]

[Pages 2086 to 2106.]

No. 20—1883.]

[September 27, 1883.

ACT

For Raising a Sum not exceeding One Million Pounds Sterling for the Public Service.

[Repealed by Act 13, 1897.] [Page 2107.]

No. 21—1883.]

[September 27, 1883.

ACT (1)

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
	<hr/>
	£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.]

¹ See Act 37, 1899 (p. 4207).

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.

[Repealed by Act 36, 1896.]

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.]

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 £190,000.

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, 25 of 1896, 33 of 1898, 35 of 1899, 20 of 1900, 33 of 1902.

² See § 10, Act 16, 1894, and § 66, Act 36, 1896 (p. 3675).

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.

3. The short title of this Act shall be the "Port Elizabeth Harbour Loan Act, 1883."

No. 27—1883.

Money to be entrusted to Port Elizabeth Harbour Board.

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:

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. 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.

¹ See Act 30, 1892 (p. 3106). Amended by Act 11, 1903 (p. 4591).

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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 Buissine, 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: 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

Minute book to be kept.

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, or

Duration of office of first President, &c.

other presiding member shall form a quorum. At least ten members of the society shall be required to form a quorum at any meeting.

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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

Powers of the council.

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have the sole and entire management of the society and of the income and the 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.

Annual meeting.

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 thereafter 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 attorney shall be entitled to an order for such admission until he shall have lodged with the Registrar of such of the above men-

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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.

¹ See § 3 and 6, Act 30, 1892 (p. 3106), and 11, 1903 (p. 4591).

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tioned 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.

17. [Repealed by Act 11, 1903, p. 4591.]

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 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

¹ See § 3, Act 30, 1892 and § 6.

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.

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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 *bonâ 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." 1

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 now established, or the constitution and object of any other Law Society to be hereafter established within this Colony under similar articles of association.

Constitution of E. D. Law Society not affected by this Act.

26. This Act may be cited for all purposes as "The Incorporated Law Society Act, 1883."

Short title.

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 produce as aforesaid, upon any public market, or to any licensed dealer;

¹ Amended by Acts 44, 1885 (p. 2318); 38, 1887 (p. 2510); 42, 1887 (p. 2514); 25, 1891 (p. 2894); 22, 1894 (p. 3365); 25, 1894, Part VI., Glen Grey (p. 3386); 28, 1898 (p. 3957); 34, 1904 (p. 4760).

For Railway Refreshment and Catering see Acts 44, 1902 (p. 4528) and 8, 1903 (p. 4589).

With regard to the issue of Licences, restrictions as to sale to Natives, &c., in the Native Territories and Walfish Bay, see Proclamations 110 and 112 of 1879 and 104 of 1903.

² Re-enacted by § 27, Act 25, 1891 (p. 2901).

- (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, (2) ale, beer, (3) 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.

Interpretation clause.

“Licence” means any licence for the sale of liquors granted under this or any other Act now or hereafter to be in force relating to the sale of such liquors.

“Licensing Court” or “Court” means the Licensing Court of the district wherein a licence is intended to take effect.

LICENCES. (4)

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.

¹ Printed as amended by § 2, Act 44, 1885 (p. 2318).

² Sale of wines containing more than 25 per cent. alcohol of a certain specific gravity forbidden. See § 36, Act 36, 1904 (p. 4774).

³ Kaffir beer. See § 31, Act 25, 1891 (p. 2901). Sale of beers diluted or fortified with spirits forbidden, § 36 Act 36, 1904 (p. 4774).

⁴ See § 6, Act 38, 1887 (p. 2507). and § 9 Act 5, 1890. (Adulteration) p. 2791. Licensed dealer cannot be a diamond dealer § 21 Act 48, 1882. (p. 1973): nor a Poundmaster Act 15, 1892 (p. 3007).

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Description of
licences.

6. Licences under this Act may be granted of the several descriptions following, that is to say :

- (1) Wholesale Licences.
- (2) Retail Licences.
- (3) Bottle Licences.
- (4) Temporary Licences.
- (5) Club Licences.

Definitions and
provisions in re-
gard to licences.

7. In regard to licences granted under this Act the following definitions and provisions shall apply :

- (1) A "wholesale licence" ⁽¹⁾ 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) (2) 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) (3) 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 li-
cences.

8. No licence shall be granted or transferred to any person or to the wife of any person

¹ But liquor cannot be sold to Natives not registered voters. See § 3, Act 28, 1898 (p. 3058, and 39, 1887 (p. 2511)). As to what constitutes an "unbroken case" under this licence. See § 10, Act 34, 1904 (p. 4762).

² See § 4, Act 25, 1891 (p. 2895).

³ See Act 44, 1885, § 4, 5 (p. 2318).

- (1) Holding office or appointment under Government;
- (2) Occupying premises of which any constable or member of a police force is the proprietor or landlord, or in which such constable or member has any interest;
- (3) Convicted of selling liquor without a licence until after a period of one year subsequent to the date of such conviction;
- (4) Licensed to sell or otherwise deal in diamonds or keeping a native eating-house in any district in which the Diamond Trade Act of 1882 is or shall hereafter be in operation.

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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. (1) 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.

Club licences.

11. (2) A certificate from a Licensing Court shall be a condition precedent to the issuing of all licences except a temporary licence, a railway licence, or a Colonial Forces Regimental Club licence.

Certificate of licensing court required prior to issue of all licences

WHOLESALE LICENCES. (3)

12. [Sections 12 and 13 repealed by Act 34, 1904.]

¹ Printed as amended by Act 34, 1904 (p. 4760). See § 7 as to objections to Club licences, and § 4, Act 44, 1885 (p. 2318).

² Printed as amended by Act 34, 1904.

³ See § 10, Act 38, 1887. These licences expire annually on 31st March.

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Companies.

14. Wholesale licences may be issued in the name of a company or co-partnership where two or more persons carry on business as a company or co-partnership in the same house or premises.

Number of whole-
sale stores within
two miles un-
limited.

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 (1) RAILWAYS.

Conditions on
which licences to
be issued for rail-
way refreshment
rooms.

17. Licences for the sale of intoxicating liquors at any railway station refreshment room, upon property owned or occupied by the Government of the Colony for railway purposes, shall be granted, and shall be obtainable upon and subject to the conditions following :

- (1) The lessee or occupier may apply in writing to the Commissioner of Crown Lands and Public Works, or any officer of the railway department whom the said Commissioner may appoint for that purpose, for a certificate to obtain a licence.
- (2) The said Commissioner or such officer may, if he sees fit, issue a certificate 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 recrea-
tion.

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 tem-

¹ See also § 24, Act 25, 1891 (p. 2900) ; § 1, Act 28, 1898 (p. 3957) ; Acts 44, 1902 (p. 4528 and 8, 1903 (p. 4589) Railway Refreshments.

porary 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 (2) 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. (3) 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 to be made.

24. (4) With respect to every such memorial the following provisions shall apply:

What provisions applicable.

- (1) It may be in the form marked A in the third schedule, or to the like effect.

¹ Printed as amended by Act 44, 1885, § 6.

² See now Act 37, 1884 (p. 2238). See also § 7, Act 28, 1898 (Kaffir beer) and sale to Natives of liquor (p. 3958).

³ See § 12, Act 44, 1885 (p. 2320).

⁴ See § 14, Act 25, 1891 (p. 2898).

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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

¹ See § 14. Act 25, 1891 (p. 2898).

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 (p. 3387) as to Glen Grey.

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- Divisional Council to elect three members of court.
- Annual appointment of J. P.'s as members.
- Duration of office.
- Days of meetings of the court.
- Quorum.
- Adjournment in absence of quorum.
- Adjournment generally.
- President of court.
- Lists of certificates to be sent to distributor of stamps.
30. Before the last day of February in every year, and as often as a vacancy shall occur, the Divisonal 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.
31. The Justices of the Peace to be appointed members of the Licensing Court by the Governor as aforesaid shall be appointed annually, or on the occurrence of any vacancy.
32. Every member of the Divisonal 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.
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."
34. Three members of a Licensing Court shall form a quorum for the dispatch of business.
- 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.
35. Any meeting of a Licensing Court may be adjourned from time to time as such court may determine.
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 deliberate vote.
37. The Magistrate or member presiding at any meeting of the Licensing Court shall, within seven days, cause to be forwarded to the Treasurer of the Colony and the distributor of stamps of the district, a list signed by him specifying the names and places of residence of all persons to whom certificates shall have been granted by the court for obtaining or renewing licences, and the nature of the licence authorised to be granted or renewed.

38. The Licensing Court may, as a (1) 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 (2), 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. (3) On or before the last day of the months of January and July, any person desiring to obtain at the next Licensing Meeting any licence for which the certificate of a Licensing Court is necessary, or the renewal of any such licence or the removal of any such licence from the licensed premises or club premises to other premises in the same district or the transfer of a licence by the holder to any other person shall make application in writing to the Resident Magistrate of the district setting forth the nature and 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 premises and the street or road where the business or club is intended to be, or is being carried on, and, in the case of transfer of a licence the name and description of the person to whom the same is desired to be transferred: provided that in case a transfer is made after the 31st January or after the 31st July the application may be made to the following sitting of the Licensing Court.

When and how application for licences to be made.

¹ As to sale of liquor to Natives see Act 28, 1898, § 1 (p. 3957).

² But see Act No 44, 1885, § 1 and 7 (p. 2319).

³ Printed as amended by Act 34, 1904.

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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.

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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. (1).

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:

- (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.

Objections to renewals.

¹ As to memorials against renewal of country licences. See Act 28, 1898, § 6 (p. 3958).

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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 (2) 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

¹ See Act 44, 1885, § 8 and 9, and § 16, Act 28, 1898 (billiard table) (p. 3960).

² See § 13, Sub. Sec. 4 Act 25, 1891 (p. 2320). No transfer lawful until all Excise spirit duty paid. § 35, Act 36, 1904 (p. 4774).

circulating in the district for not less than fourteen days, and in such other manner as may by the said Magistrate and members be directed; provided that in case objections be made to the removal of the licence to the premises proposed by any person who would be entitled to object to the granting of a licence for such premises, such removal shall not be 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.

DUTIES AND LIABILITIES OF LICENSED PERSONS AND OTHERS.

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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 person 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 (2) twenty-five 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 (3) or deliver, or knowingly permit to be delivered or supplied to any person apparently under the age of fifteen years, any description of liquor (4), or permit or suffer any such person to drink any such liquors (4) upon his premises.

¹ See § 9, Act 25, 1891.

² Increased from £10 to £25 by Act 34, 1904.

³ Printed as amended by Act No. 22, 1894.

⁴ Printed as amended by Act No. 25, 1891, § 19. Person under age of 15 not to be employed in sale, &c., of liquors. See § 14, Act 28, 1898 (p. 3960).

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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 ⁽¹⁾ fifty 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 fifty 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. (2) 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 ⁽¹⁾ penalties, that is to say:

For the first offence a penalty not exceeding fifty 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 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 six months, unless such penalty be sooner paid or levied.

For a third or any subsequent offence a penalty not exceeding one hundred and 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 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,

¹ Penalties increased by § 5, Act 34, 1904. Printed as amended.

² See § 64, Act 25, 1894 (Glen Grey). For Sale to Natives see § 2, Act 28, 1898 (p. 3957).

forfeit such licence, or both such licences if both be held by such person, and that the offender be disqualified from taking out any other retail shop licence during the remainder of the then current year, and also from holding any licence for the sale of intoxicating liquors for any term of years or at any time.

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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 (p. 2320). Manager of licensed business subject to the same penalties.

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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 ⁽¹⁾ 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

¹ May be required to leave 15 minutes before closing time. See § 15, Act 28, 1898 (p. 3960).

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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Penalties for con-
travention of Act.

85. Any person convicted of contravening any of the provisions of this Act for or in respect of which no penalty is specially provided, shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and when a penalty has been provided for any offence without any period of imprisonment in default of payment thereof then the person convicted of such offence shall be liable

To imprisonment with or without hard labour not exceeding one month if the penalty do not exceed five pounds; or

To imprisonment with or without hard labour not exceeding three months if the penalty exceed five pounds;

unless such penalty be sooner paid.

JURISDICTION OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE.

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 seiz-
ed 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 purpose of levying any penalty imposed under the provisions of this Act execution may be levied upon all goods and chattels found on the premises upon or in respect of which the offence shall have been committed, whether the said goods and chattels be or be not the absolute property of the person upon whom the penalty was imposed. The provisions of this section shall not apply to goods the *bonâ fide* property of lodgers or travellers or of persons who may leave or deposit such goods for safe custody, or convenience, or for the purpose of being worked by any hand-craftsman.

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.	The whole.
No. 19 of 1880.	"Liquor Law of 1879 Amendment Ordinance, 1880."	

THE SECOND SCHEDULE.

Sums payable for or in respect of Licences granted or renewed, and privileges allowed under the "Liquor Licensing Act, 1883."

1. For a Wholesale Licence (') Thirty pounds.

¹ Printed as amended by Schedule 1, Act 38, 1887 (p. 2510).

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 ⁽¹⁾ Licence to endure for one year from date of issue thereof Eighteen ⁽¹⁾ 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 ⁽²⁾ 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-Cornerity, Municipality, or other area, describing it*] of.....do hereby object to the increase of the number of

¹ £40 is now charged for a Club licence other than a Colonial Forces Regimental Club licence. See § 8, Act 34, 1904 (p. 4762).

² For sale of aerated waters and tobacco and cigars licence of £1 10s. to be taken out. Act 38, 1887 (p. 2510), when not licensed also as a General Dealer.

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licensed premises for the sale of liquor within the said [*field-cornetcy, or as the case may be*] under any Retail Licence [or Bottlę 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 be*) 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.]

[Septembsr 27, 1883.

ACT

To Regulate the Erection and Maintenance of Dividing Fences. (†)

Preamble,

WHEREAS it is expedient that the erection and maintenance of dividing fences between adjoining properties should be regulated: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

PRELIMINARY.

1. In this Act, if not inconsistent with the context,
 - “To repair” shall include to trim, keep and maintain a live fence or ditch or part thereof.
 - “Occupier” shall (2) include :
 - (a) Any person, company, co-partnership, or public body in actual occupation of or entitled as owner to occupy any land alienated from the Crown.

Interpretation clause.

¹ Amended by Acts 15, 1891 (p. 2859), and 42, 1905 (p. 4963). See Act 11, 1893, modified. Part II. extended by Proclamation No. 261 of 1891 to Transkei, Tembuland, and Griqualand East. Part I. modified by Proclamation 117, 1892, to Mount Currie; Proclamation 250, 1893, to Umzimkulu; Proclamation 385, 1896, to Maclear; Proclamation 170, 1894, to Elliot; Proclamation 169, 1892, Matatiele; extended by Proclamation No. 116 of 1892 to Griqualand East, and by Proclamation No. 168 of 1894 to Tembuland.

² Printed as amended by Acts 15, 1891 (p. 2860), and 42, 1905 (p. 4963).

- (b) The Colonial Government in respect of Native Locations situated on Crown land, and in respect of all Crown lands.
- (c) The council, board of commissioners, or other governing body of any municipality or corporate town, and the board of management of any place wherein "The Villages Management Act, 1881," is in force, in respect of all lands to which, or to the use of which, the inhabitants of such municipality, corporate town, or place, have acquired or may hereafter acquire a common right.
- (d) The divisional council of every division, in respect of every public outspan or baiting place, duly surveyed or marked off by beacons, and situated upon or near any public road within such division.

"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. [Repealed by Act 42, 1905.]

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. (1)—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 (1) 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.

¹ Extended by Proclamation No. 168 of 1894 to Tembuland. See Act 15, 1891, § 5 (p. 2861). As to contribution towards cost of vermin-proof fence, see § 2, Act 42, 1905 (p. 4963).

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Notice to any person required to contribute towards making fence.

7. Any person desiring any other person to ⁽¹⁾ 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 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.

Arbitration provided for.

In case of refusal to comply with Award, etc.

8. If the person serving and the person served with such notice agree as to the matters aforesaid relating to the construction of such fence, or if, in default of such agreement, an arbitrator or arbitrators is or are appointed and make an award, and in either case either of such persons fail within the time named in that behalf in such agreement or award, or, if no such time be named, within six months after the date of such agreement or award, to perform his part of such agreement or to comply with such award, then the other of such persons may construct the whole fence as agreed upon or prescribed by such agreement or award, and may recover such part of the cost of constructing the same as may have to be contributed by the other of such persons in any Court of competent jurisdiction.

When contributions may be paid by instalments.

9. ⁽²⁾ 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

¹ Extended by Proclamation No. 168 of 1894 to Tembuland. See Act 15, 1891, § 5. (p. 2861). As to contribution towards cost of vermin-proof fence. See § 2, Act 42, 1905. (p. 4963).

² See Act 15, 1891, § 6 (p. 2861).

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.

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10. When the occupier of any land is absent from the Colony or cannot be found or any land is unoccupied, the occupier of any adjoining land shall insert in the *Gazette*, and in a newspaper (if any) published or circulating in the district in which such land is situated, at least once a month during six consecutive months, a notice addressed to the occupier of such land, describing him as the occupier of such land, requiring him to contribute to the construction of a fence and may then proceed *ex parte* to obtain from the Resident Magistrate of the district an order 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.

Proceedings in case of absent owners.

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 tenant 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

Notice of required repairs to occupier of adjoining land.

¹ Printed as amended by § 10, Act 15. 1891.

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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 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 (2) 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.

¹ Printed as amended by § 10, Act 15, 1891.

² See § 10, Act 15, 1891.

19. Where a fence is erected on the boundary of any land, and any adjoining land is at the time of the erection of such fence crown land excepted from the application of this Act, then the occupier thereafter of such adjoining crown land shall, within six months after a demand in writing made upon him, pay to the occupier of the land upon which, or the boundary of which such fence was erected, a reasonable portion not exceeding one-half of the then value of such fence: And if any difference shall arise as to the amount to be paid, such difference shall be settled by arbitration.

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When fence divides land from Crown Land subsequent occupier of latter to pay a portion of the cost.

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

Damages against person neglecting to clear inflammable matter from boundary line.

No. 30—1883.

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 aforesaid to repair or re-erect such dividing fence, and all sums of money which shall or may be so expended or laid out under the provisions of this section shall be deemed and taken to be money paid to the use of the occupier in default: Provided that nothing herein shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for or in respect of any damage or injury to any fence occasioned by the reckless or negligent use of fire.

Right of way to
construct fences.

24. Every person engaged in constructing or repairing a fence under this Act, his agents and servants, may, if there be no available access thereto over the land of such person, with or without cattle, carts or other vehicles, at all reasonable times during such construction or repairing, enter upon the contiguous lands, and do thereupon such acts, matters, and things as are necessary or reasonably required to carry into effect the construction or repairing of such fence: Provided that nothing herein contained shall 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 con-
tracts 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.

No. 30—1883.

29. This Act may be cited as “The (1) Fencing Act, 1883.”

Short title.

THE FIRST SCHEDULE.

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

¹To be read as one with Acts 15, 1891, and 42, 1905, and cited as “The Fencing Laws,” 1883, 1905.

No. 31—1883.

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. [Sections 4 and 5 repealed by Act 32, 1902.]

6. The word "last-mentioned" occurring between the words "such" and "person" in the thirty-first section of the "Police Regulation Act, (1) 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.

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.

(1) SECOND SCHEDULE.

No. 32—1883.]

[September 27, 1883.

ACT (2)

To Provide for the Repression of Thefts of Ostrich Feathers and of Skins.

Preamble.

WHEREAS the Theft of Ostrich Feathers prevails extensively throughout the Colony, and is increasing, and whereas the theft of 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:—

Buyers of ostrich feathers to be licensed.

1. It shall not be lawful for any person to deal as a buyer of ostrich feathers for purposes of trade unless such person shall have obtained a licence so to deal: Provided, however, that this prohibition shall not apply to any person purchasing ostrich feathers at any public sale. Such licence shall be in the form A, set forth in the schedule to this Act.

¹ Repealed by Act 32, 1902.

² Extended by Section 194, Act 24, 1886, to all the Native Territories. See also § 194 of the Penal Code (p. 2392).

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

No. 32—1883.

To keep special book. Entries therein.

- (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 (p. 2336).

No. 33—1883.

[B.]

Form of Entry to be kept by Licensed Buyer.

Register of Ostrich Feathers purchased by.....
 a Licensed Buyer.
 188

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 examination to writing.

No. 33—1888.

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 exepense shall be paid by the person requiring or demanding the holding of the inquest.

The certificate of the Attorney-General, Solicitor-General or Crown Proscutor, 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. Repealed by Act 3, 1902.]

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."

¹ Act No. 7, 1878.

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 ⁽³⁾ two 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, Nqamakwe, 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, &c., for school purposes free of transfer duty, stamp duty, or fees of office. Acts 56 of 1893 (p. 3149) and 46, 1902 (p. 4530).

³ Printed as amended by Act 10, 1896 (p. 3593). Every R.M. or Assistant R.M. has the powers of a Civil Commissioner for the receipt of duties and interest payable under this Act. See Act 33, 1905 (p. 4923).

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: 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.

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

Arrear rent to be added to purchase price.

Other sums payable by purchaser in addition to purchase price to be added to amount of purchase money.

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 (1) 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 (2) 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 expected 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

Solemn declaration of sale.

¹ Or to Resident Magistrate or Assistant R.M., Act 32, 1905 (p. 4923).

² Or until Divisional Council rates have been paid. See § § 275 and 276 Act 40, 1899 (p. 2779).

No. 5 - 1884.

Solemn declaration of sale by agent or broker.

declaration marked A, and until the purchaser shall have taken 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 purposes 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 com-

petent 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.

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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 forbidden.

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Return of duty
when sale declared
void.

Exemptions from
obligation to pay
duty.

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.

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

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 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 enregistrement 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 consideration
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. Acts 6, 1893 (p. 3149. and 46, 1902 (p. 4530)

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 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.

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.

Auctioneer forbidden to sell to undisclosed principal.

28. No auctioneer, broker, or agent shall take down or receive in regard to any purchase, the name of any purchaser as purchasing in the manner commonly called and written "q.q." or receive, in any other form, the name of any person as purchasing for an unnamed principal; and any auctioneer, broker, or agent contravening this section of this Act shall incur and be liable to any penalty not exceeding fifty pounds.

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 declara-
tion 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.

Declaration 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.

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 paid upon the said sale ;
 5. The transfer duty payable thereon ;
 6. The costs 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
purchaser. of

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.

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DECLARATION OF SALE BY AN AGENT.

I,
do solemnly and sincerely declare, that I have acted as the agent
(auctioneer or broker, as the case may be)
in making the sale (or purchase) of certain
sold by

Declaration of
sale by Agent.

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 _____ 18____
day of _____
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 _____ in
extent _____ morgen and _____ square roods, situated in the Division _____ of
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,

Declaration of
partition by Joint
Proprietors.

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

19

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.

(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. Extended also to the Bechunaland Protectorate, Rhodesia, Transvaal and Orange River Colony.

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)

Preamble.

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:—

Municipalities to succeed to all assets and liabilities of Boards of Management.

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 Proclamation No. 456 of 1894 to Griqualand East, but repealed in Elliot district by P. 175, 1902.

² No. 29. See also Act 28, 1882 (p. 1907) and notes thereto.

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 lauded 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.

¹ No. 29. See also Act 28, 1882.

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 the 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 (p 3421). Extended by Proclamation No. 42 of 1893 to all the Native Territories, and by Proclamation No. 340, 1894, to East and West Pondo-land.

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 (p. 2001).

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."

New "Local Authority" to discharge debts of old one.

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."

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 Kimberley, 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 (1)

To Levy and Collect a Duty on Beer brewed within this Colony.

WHEREAS it is expedient to levy and collect a duty on beer brewed in the colony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. This Act may be cited as the “Excise Beer Duty Act, 1884.”

Short title.

¹ Repealed by Act 25, 1887, and re-enacted with minor amendments by Act 36, 1904 (p. 4765). See also Act 27, 1885 (p. 2294A).

2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent therewith.

“ Person ” (1) includes a body of persons whether corporate or otherwise :

“ Beer ” includes ale, porter, spruce beer and black beer, and any other description of beer, and shall be taken to mean any liquor made from infusion or decoction of malt, grain, or saccharine matter which contains spirit, and to which any bitter flavour has been communicated by the addition of hops, herbs, or other ingredients capable of being used as a bitter; and any fermented liquor which shall contain not less than three per centum of proof spirit, although the same shall not be included under the foregoing definition, or cannot be regarded as sweets, or made wines, shall, for the purposes of the revenue, be deemed beer, and be subject to all regulations applicable to beer (2) :

“ Brewer ” means a brewer of beer for sale :

(1) “ Sugar ” means any saccharine substance, extract, or syrup, and includes any material capable of being used in brewing except malt or corn :

“ Sweets ” means any home-made wine produced from the juice of fruit and in which spirit is produced by fermentation :

“ Chief Inspector ” means the Chief Inspector of Excise :

“ Civil (1) Commissioner ” means the Civil Commissioner for the division in which the premises of a brewer are situate :

“ Officer ” means officer of Excise :

“ Proper Officer ” means the officer of the division or place in which the premises of a brewer are situate, and includes a person acting as such officer, and also any officer superior in matters of Excise to such officer :

“ Prescribed ” and “ approved ” mean respectively prescribed or approved by the Governor by regulations or otherwise, or by the Chief Inspector :

“ This Act ” includes any regulations made under the provisions hereinafter contained.

BREWERS AND EXCISE DUTY ON BEER.

3. (1). No person shall brew beer for sale without a licence in the prescribed form : and in respect of every such licence there shall be paid by means of stamps the following sums :—

Brewer's licence.

For a licence paid before the thirtieth June in any year, to expire on the thirty-first day of December One pound.

¹ See also § 2, Act 36, 1904 (p. 4766).

³ For definition of “ Lager beer ” see § 2, Act 36, 1904. The term “ beer ” does not include any liquor containing 2 % or less of proof spirit *ibid.*

No. 11—1884.

For such licence if paid after the thirtieth day of
June Ten shillings.

Penalty and forfeiture for brewing without licence.

- (2) If any person shall brew beer for sale without having in force such licence, he shall incur the penalty by this Act provided, and all worts, beer, vessels, utensils, and materials for brewing in his possession shall be absolutely forfeited.

Duty on beer.

4. On and after such date as may be fixed by the Governor in that behalf, there shall be levied, collected and paid, in respect of beer brewed in the colony, a duty calculated according to the specific gravity of the worts thereof at the rate mentioned in the first Schedule to this Act.

Equivalent of "bushel of malt" in corn or sugar, and definition of expression.

5. Forty-two pounds weight of malt or corn of any description, or twenty-eight pounds weight of sugar, shall be deemed the equivalent of a bushel of malt; and the expression "bushel of malt" shall include either of its equivalents, or any quantities of malt, corn, and sugar, or any two of those materials, as by relation to such equivalents shall be equal to a bushel of malt.

Regulations as to charge of duty and allowance for waste

6. (1) Every brewer shall be deemed to have brewed thirty-six gallons of worts of the gravity of one thousand and fifty-seven degrees for every two bushels of malt entered or used by him in brewing.
- (2) If the amount of worts deemed to have been brewed by relation to materials, exceeds in quantity and gravity by more than four per centum the worts produced from such materials, the duty shall be charged in respect to the excess over and above the four per centum.
- (3) In respect of such loss and waste as arises in brewing of beer including sour beer a deduction shall be made from the quantity of wort produced at the rate of ten per cent.
- (4) Where the materials used in brewing are proved to the satisfaction of the Chief Inspector to be of such a description or nature that some deduction from the quantity chargeable by relation to the materials should be made, such a deduction shall be made from that quantity as shall in the opinion of the Chief Inspector afford just relief to the brewer.

Payment of duty.

7. The duty on beer shall become due immediately on the same being charged by the officer, but the Governor shall have the power to allow the charge to be made up on the last day of each month, and in case the last day shall be a Sunday then on the previous Saturday, in respect of all the brewings during that month, and in that case the aggregate of the amounts of worts deemed to be brewed by relation to materials, and the aggregate of the amounts of worts produced, shall be treated as worts deemed to be brewed or produced in one brewing.

Power to distrain for duties in arrear.

8. (1) If any duty be in danger, or if payable by a brewer remains unpaid for a period of fifteen days after the

expiry of any month, the Resident Magistrate or Chief Inspector may, by warrant signed by him, empower any person to distrain all beer, malt, or other materials for brewing, vessels and utensils belonging to the brewer, or in any premises in possession of the brewer or of any person on his behalf or in trust for him, and to sell the same by public auction, giving six days' previous notice of the sale, and all such beer, malt, or other materials for brewing, together with the vessels and utensils in any premises in the use or possession of the brewer or of any person in his behalf, or in trust for him, whether the same be the property of the brewer or not, are hereby made chargeable with such duty.

- (2) The proceeds of sale shall be applied in or towards payment of the costs and expenses of the distress and sale, and in or towards payment of the duties due from the brewer, and the surplus, if any, shall be paid to the brewer.
- (3) In the event of any beer, malt, or other materials being so distrained, the brewer may at any time before the day appointed for the sale, release the whole or any part thereof, on paying to the Civil Commissioner, Chief Inspector, or other duly authorised officer, in or towards payment of the duty, the true value of the beer, malt, or other materials.

9. When any materials upon which a charge of duty has been made, or any worts or beer shall be destroyed by accidental fire, or other unavoidable cause, while the same are on the entered premises of a brewer, the Chief Inspector shall, on proof of such to his satisfaction, authorise the remission or re-payment of the duty charged or paid.

Loss by fire, &c.

AS TO BREWERS.

10. Every person who brews beer for sale, whether by wholesale or retail, or for any purpose of trade, shall be deemed to be a brewer within the meaning of this Act, whether the said person be licensed to deal in or retail beer or not.

Who deemed brewers of beer.

11. Every brewer shall keep such books as the Governor may prescribe, setting forth from day to day the nature and quantity of materials used by him in brewing, and an officer duly appointed in that behalf may at all times demand an inspection of any such books, make extracts therefrom, and examine and take account of any materials and worts upon the premises of such brewer, or in any warehouse or store connected therewith.

Books to be kept by brewers: what to contain and how to be examined.

12. All materials for the manufacture of any beer shall be received into and delivered from any building or place used by any brewer for the purposes of his business as such brewer, in accordance with such rules and regulations as the Governor may prescribe.

Materials to be received and used in accordance with regulations.

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Marking of premises and vessels.

13. All premises used by any brewer for the purposes of his business, and all utensils or vessels used by him for or in connection with such business, shall be marked, numbered, or otherwise distinguished in such manner as the Governor may by any regulation in that behalf prescribe.

Prescribed form of entry of premises, &c.

14. (1) Every brewer shall, before he begins to brew, make entry in the prescribed form, of all premises, rooms, places, and vessels intended to be used by him for his business, specifying the purpose for which each room, place, and vessel is to be used, and the mark by which it is distinguished: Provided that every brewer intending to use sugar in the brewing or making of beer shall keep and store such sugar in a warehouse, storehouse, room or place which shall be entered and used for that purpose, and no other, and any sugar which shall be found in any part of the brewery premises not entered for the purpose of keeping and storing sugar, except such sugar as shall be in the course of removal for mashing or dissolving, under the prescribed notice, shall be absolutely forfeited, and the brewer shall be liable to the penalty by this Act provided.

(2) The brewer shall sign the entry and deliver it to the proper officer.

Operations to be carried on in accordance with regulations.

15. The period of time allowed for the various operations of brewing, and for removing any material or wort from the several vessels used in such operations, shall be in accordance with such rules and regulations as the Governor may prescribe.

Provisions for case of excess in gravity of worts.

16. If the original gravity of any worts contained in the collecting or fermenting vessels shall at any time be found to exceed by five degrees the gravity as entered in the book by the brewer, or as ascertained by the officer, such worts shall be deemed to be the produce of a fresh brewing, and be charged with duty accordingly.

Officers may take samples.

17. (1) An officer may take such samples as he may deem necessary of any worts or beer, or materials for brewing, in the possession of any brewer.

(2) The brewer may, if he wishes, before any such sample is taken, stir up and mix together all such worts, beer, or materials from which the sample is taken.

Mode of ascertaining gravity of wort.

18. (1) An approved saccharometer and tables shall be used to ascertain the quantity by relation to gravity of all worts: and, in calculating the gravity, a degree of gravity shall be taken as equal to one-thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

(2) The quantity and gravity so ascertained shall be deemed to be the true quantity and gravity of such worts.

(3) When fermentation has commenced in any worts so that the original gravity cannot be ascertained by the saccha-

rometer, such gravity may be determined in the following manner:—

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- (a) A sample is to be taken from any part of such worts, and a definite quantity thereof by measure at the temperature of sixty degrees Fahrenheit shall be distilled.
- (b) The distillate and residue shall each be made up with distilled water to the original measure of the quantity before distillation, and the gravity of each shall be ascertained.
- (c) The number of degrees by which the gravity of the distillate is less than the gravity of distilled water shall be deemed the spirit indication of the distillate.
- (d) The degrees of original gravity standing opposite to such indication in the table in the second Schedule to this Act added to the specific gravity of the residue shall be deemed to be the original gravity of the worts.

19. If any brewer shall conceal any worts or beer, so as to prevent any officer from taking an account thereof, or shall mix any sugar or other material with any worts or beer so as to increase the quantity or gravity thereof after an account of such worts or beer has been taken by an officer and the duty has been charged thereon, he shall, for every such offence, be liable to the penalty by this Act provided, and the worts or beer in respect of which the offence is committed, together with the vessels containing the same, shall be absolutely forfeited.

Concealing worts or beer, or adding sugar thereto after duty charged.

20. Every brewer shall

- (1) Provide and maintain sufficient and just scales and weights and other necessary and reasonable appliances to enable the officers to take account of, or check by weight, gauge, or measure, all materials and liquids used or produced in brewing, and shall
- (2) Render all necessary assistance to the officers in the taking of such accounts, and shall
- (3) If required by the officer, provide sufficient lights, ladders, and other conveniences.

Brewer to provide scales, weights, ladders, &c.

21. (1) An officer may at any time, either by day or night, enter any part of the entered premises of a brewer, to take an account of the materials used or to be used in brewing, and of the worts and beer produced.

Power of entry and examination by officers.

- (2) If an officer after having demanded admission into the entered premises of a brewer, declares his name and business at any entrance or window thereof, is not immediately admitted, the officer, and any person acting in his aid, may at any time, either by day or night, **break open** any door or window of the premises, or break

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Power to enter
and search for con-
cealed pipes, &c.

through any wall thereof for the purpose of obtaining admission.

22. (1) If any officer has reason to suspect that any private or concealed pipe, or conveyance, or vessel, is kept or made use of by a brewer, he may, either by day or night, break open any part of the premises of such brewer and forcibly enter therein, and may break up the ground in or adjoining such premises, or any wall thereof, to search for such private or concealed pipe, or conveyance, or vessel.
- (2) If such officer shall find any such pipe or conveyance, he may enter any house in the possession of any other person into which such pipe or conveyance may lead, and may break up any part of such house or premises to search for the vessel communicating with such pipe.
- (3) Every such pipe, conveyance, or vessel and all beer, worts, or materials for brewing found therein, shall be absolutely forfeited, and the brewer shall be liable to the penalty by this Act provided.
- (4) If any damage is done in the search, and such search is unsuccessful, the damage shall be made good by the Treasury.
- (5) If any dealer in or retailer of beer shall keep or make use of any molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, as a substitute for malt, or shall mix or put into any beer any such molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, unless in accordance with prescribed regulations, he shall be liable to the penalty by this Act provided, and all such molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, shall be absolutely forfeited.
- (6) It shall be lawful for any officer to enter upon the premises of any dealer in or retailer of beer, to search for, discover and seize any molasses, sugar, honey, syrup, composition or extract of sugar, or any preparation whatever, which may be used as a substitute for malt or in the preparation of beer.

Substitutes for
malt.

RULES AND REGULATIONS.

23. The Governor may make rules and regulations for all or any of the following purposes:—

- (1) For the guidance and conduct of officers and persons employed in carrying this Act into effect.
- (2) For ascertaining the amount of duty payable, and securing and enforcing payment thereof.
- (3) For prescribing all things necessary to be done for effectually carrying the provisions of this Act into effect.

Rules and regula-
tions may be made
by Governor.

PENALTIES.

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24. Any person who shall

Penalties.

- (1) By himself or by any person in his employ obstruct, hinder, or molest any officer or person in the execution or performance of any duty, which such officer or person is, by this Act or by any regulations made under this Act, required to perform, or aid in performing: or
- (2) Contravene any of the provisions of this Act, or of any regulations made under this Act:

Shall upon conviction be liable to a penalty not exceeding one hundred pounds, in respect of each act or offence (in addition to any penalty or forfeiture by this Act otherwise provided), and in default of payment to imprisonment, with or without hard labour, for any period not exceeding twelve months, unless such penalty be sooner paid.

- (3) All penalties under this Act may be recovered in the name of the Chief Inspector or other duly authorised officer in the Court of the Resident Magistrate of the district in which the offence was committed.

DRAWBACK ON BEER EXPORTED.

25. There shall be allowed and paid in respect of beer which shall be exported from the colony as merchandise, or shipped for use as ship's stores, a drawback, calculated according to the gravity and rate of duty specified in the schedule, subject to such regulations as shall be prescribed.

Drawback on
beer exported.

FIRST SCHEDULE.

Duty payable in respect of beer brewed in the Colony, according to the provisions of the fourth section of the "Excise Beer Duty Act, 1884," that is to say: Upon every thirty-six gallons of worts of a specific gravity of one thousand and fifty-seven degrees, the duty of ⁽¹⁾ nine shillings; and so in proportion for any difference in quantity or gravity.

1st. Schedule.

¹ Printed as amended by Act 36, 1904 (p. 4765). See Act 27, 1885, for duty on worts of specific gravity less than 1040 degrees. Lager Beer to be charged at the higher rate, § 1, Act 36, 1904.

SECOND SCHEDULE.

TABLE A.

2nd Schedule.

TABLE TO BE USED IN DETERMINING THE ORIGINAL SPECIFIC GRAVITY OF WORTS OR WASH.

Degrees of Spirit Indication.	Degrees of original specific gravity.	Degrees of Spirit Indication.	Degrees of original specific gravity.	Degrees of Spirit Indication.	Degrees of original specific gravity.	Degrees of Spirit Indication.	Degrees of original specific gravity.
·1	·3	4·1	15·5	8·1	34·3	12·1	54·9
·2	·6	4·2	16·0	8·2	34·8	12·2	55·4
·3	·9	4·3	16·4	8·3	35·4	12·3	55·9
·4	1·2	4·4	16·8	8·4	35·9	12·4	56·4
·5	1·5	4·5	17·3	8·5	36·5	12·5	56·9
·6	1·8	4·6	17·7	8·6	37·0	12·6	57·4
·7	2·1	4·7	18·2	8·7	37·5	12·7	57·9
·8	2·4	4·8	18·6	8·8	38·0	12·8	58·4
·9	2·7	4·9	19·1	8·9	38·6	12·9	58·9
1·0	3·0	5·0	19·5	9·0	39·1	13·0	59·4
1·1	3·3	5·1	19·9	9·1	39·7	13·1	60·0
1·2	3·7	5·2	20·4	9·2	40·2	13·2	60·5
1·3	4·1	5·3	20·9	9·3	40·7	13·3	61·1
1·4	4·4	5·4	21·3	9·4	41·2	13·4	61·6
1·5	4·8	5·5	21·8	9·5	41·7	13·5	62·2
1·6	5·1	5·6	22·2	9·6	42·2	13·6	62·7
1·7	5·5	5·7	22·7	9·7	42·7	13·7	63·3
1·8	5·9	5·8	23·1	9·8	43·2	13·8	63·8
1·9	6·2	5·9	23·6	9·9	43·7	13·9	64·3
2·0	6·6	6·0	24·1	10·0	44·2	14·0	64·8
2·1	7·0	6·1	24·6	10·1	44·7	14·1	65·4
2·2	7·4	6·2	25·0	10·2	45·1	14·2	65·9
2·3	7·8	6·3	25·5	10·3	45·6	14·3	66·5
2·4	8·2	6·4	26·0	10·4	46·0	14·4	67·1
2·5	8·6	6·5	26·4	10·5	46·5	14·5	67·6
2·6	9·0	6·6	26·9	10·6	47·0	14·6	68·2
2·7	9·4	6·7	27·4	10·7	47·5	14·7	68·7
2·8	9·8	6·8	27·8	10·8	48·0	14·8	69·3
2·9	10·2	6·9	28·3	10·9	48·5	14·9	69·9
3·0	10·7	7·0	28·8	11·0	49·0	15·0	70·5
3·1	11·1	7·1	29·2	11·1	49·6	15·1	71·1
3·2	11·5	7·2	29·7	11·2	50·1	15·2	71·7
3·3	12·0	7·3	30·2	11·3	50·6	15·3	72·3
3·4	12·4	7·4	30·7	11·4	51·2	15·4	72·9
3·5	12·9	7·5	31·2	11·5	51·7	15·5	73·5
3·6	13·3	7·6	31·7	11·6	52·2	15·6	74·1
3·7	13·8	7·7	32·2	11·7	52·7	15·7	74·7
3·8	14·2	7·8	32·7	11·8	53·3	15·8	75·3
3·9	14·7	7·9	33·2	11·9	53·8	15·9	75·9
4·0	15·1	8·0	33·7	12·0	54·3	16·0	76·5

No. 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.]

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

PRELIMINARY.

Short title,
Definitions.

1. This Act may be cited as the "Excise Spirits Act, 1884."
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, were repealed by § 3, Act 19, 1886. By § 3, Act 36, 1904 (p. 4768) an excise of 6s. a gallon is imposed on Colonial spirits distilled from wine. See also Act 20, 1890 (p. 2818), penalty for compounding such spirits. As to Excise duty on foreign spirits, see §§ 1 and 2, Act 26, 1905 (p. 4856). 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 Griqualand 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 ⁽¹⁾ Spirits” means spirits liable to a duty of Excise :

“Foreign ⁽¹⁾ Spirits” means all spirits and strong waters liable to a duty of Customs :

“Low ⁽¹⁾ 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 ⁽²⁾ Inspector” means Chief Inspector of ⁽¹⁾ 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

¹ See also § 2, Act 36, 1904 (p. 4766) and § 2, Act 26, 1905 (p. 4856).

² Or Controller of Excise or other Chief Excise Officer. See § 37, Act 36, 1904 (p. 4775) and § 7, Act 26, 1905 (p. 4857).

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capable of being used or applied for the purposes of making vinegar, or acetous acid for sale:

“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 for which any offence is committed or supposed to have been committed, or any offender is apprehended or found, or any goods, or commodities are seized, or liable to seizure, or suspected to be so liable:

“Schedule” means the schedule to this Act:

“This Act” includes any regulations made under the provisions hereinafter contained.

LICENCES.

3. (1) On and after the first day of August, one thousand eight hundred and eighty-four, the following duties on licences granted in the Colony shall be paid; that is to say:

(a) On a licence to be taken out by a distiller
(except as hereinafter provided) £10 0 0

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 (p. 2819), and § 2, Act 36, 1904 p. 4767).

Licences.

(b) [Repealed by Act 19, 1886].

(c) On a licence to be taken out by a rectifier or compounder of spirits £10 0 0

(d) On a licence to be taken out by every person, not being a licensed distiller, or rectifier, or compounder of spirits, who keeps or uses any still or retort... .. £1 0 0

(e) On a licence to be taken out by a maker of vinegar or acetous acid for sale (except a maker of vinegar or acetous acid from wine the produce of land in his own occupation) £1 0 0

(f) On a licence to be taken out by a still maker £1 0 0

(2) Every such licence shall be in the prescribed form, and shall be paid by means of stamps, and shall expire on the thirty-first day of December in each year, but when any such licence shall be issued on and after the first day of July there shall be payable only one-half the yearly licence.

If any person contravenes this section by carrying on any business hereinbefore mentioned without being duly licensed, or if he fails, or refuses, to produce his licence on the demand of an officer, he shall, for each offence, incur the penalty by this Act provided, and all spirits and vessels, utensils and materials found in his possession for the purposes of such business shall be forfeited.

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.

WINE FARMERS WHO DISTIL SPIRITS.

[Sections 5—9 repealed by 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.

19. (1.) Except in the case of spirits removed to a warehouse, or for exportation, or ship's stores, in accordance with the provisions of this Act, the duty upon all spirits shall be paid upon the

In case of deficiency in spirits in a warehouse, duty on quantity warehoused to be paid.

removal of the same from the distiller's store; and no spirits shall be removed from any warehouse, save as in this Act provided, until the duty chargeable thereon shall have been paid.

(2) Duty shall be chargeable upon the full quantity of spirits shewn to be in the casks containing the same, according to the entries in the prescribed books, unless the Chief Inspector shall be satisfied that no part of any deficiency that may be found to exist in such quantity shall not have been fraudulently caused; in which latter case duty shall only be charged upon the quantity of spirits actually contained in such casks at the time of removal.

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 (p. 2185).

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 ser-

¹ See note to title of this Act.

vant, in the prescribed form, certifying the quantity and original gravity of the beer, and that it is unfit for use in his business as a brewer.

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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), 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 exportation.

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 Syke'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 purposes 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) When 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 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 posses-

Officers may enter upon the premises of a dealer in or retailer of spirits

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and examine and
take account of
stock of spirits.

sion, and take samples of any such spirits, paying for any samples so 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, 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 :

- (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 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 appeal shall not affect—

(a) Anything done or suffered before the commencement of this Act, and this repeal shall not affect—

(b) Any right or privilege acquired or duty or liability imposed or incurred under any enactments so repealed.

FIRST (1) 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

¹ See also the 1st and 2nd Schedules annexed to Act 36, 1904 (p. 4797.)

FIRST SCHEDULE—(Continued.)

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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
6	8·252	16	8·426	2	8·603	4	8·784
6	8·255	2	8·429	4	8·607	6	8·788
6	8·258	4	8·433	6	8·610	8	8·791
6	8·262	6	8·436	8	8·614	37	8·795
6	8·265	8	8·440	27	8·617	2	8·799
7	8·269	17	8·443	2	8·620	4	8·802
7	8·272	2	8·446	4	8·624	6	8·806
7	8·275	4	8·450	6	8·628	8	8·809
7	8·279	6	8·453	8	8·631	38	8·813
7	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
8	8·292	4	8·467	6	8·646	8	8·827
8	8·296	6	8·471	8	8·649	39	8·831
8	8·299	8	8·474	29	8·653	2	8·835
9	8·303	19	8·478	2	8·656	4	8·838
9	8·306	2	8·481	4	8·660	6	8·842
9	8·309	4	8·485	6	8·663	8	8·845
9	8·313	6	8·488	8	8·667	40	8·849
9	8·316	8	8·492	30	8·670	2	8·853
10	8·320	20	8·495	2	8·674	4	8·856
10	8·323	2	8·498	4	8·677	6	8·860
10	8·326	4	8·502	6	8·681	8	8·863
10	8·330	6	8·505	8	8·684	41	8·867
10	8·333	8	8·509	31	8·688	2	8·871
11	8·337	21	8·512	2	8·692	4	8·874
11	8·340	2	8·516	4	8·695	6	8·878
11	8·343	4	8·519	6	8·699	8	8·881
11	8·347	6	8·523	8	8·702	42	8·885
11	8·350	8	8·526	32	8·706	2	8·889
12	8·354	22	8·530	2	8·709	4	8·892
12	8·357	2	8·533	4	8·713	6	8·896
12	8·361	4	8·537	6	8·716	8	8·899
12	8·364	6	8·540	8	8·720	43	8·903
12	8·368	8	8·544	33	8·723	2	8·907
13	8·371	23	8·547	2	8·727	4	8·911
13	8·375	2	8·551	4	8·730	6	8·914
13	8·378	4	8·554	6	8·734	8	8·918
13	8·382	6	8·558	8	8·737	44	8·922
13	8·385	8	8·561	34	8·741	2	8·926
14	8·389	24	8·565	2	8·745	4	8·929
14	8·392	2	8·568	4	8·748	6	8·933
14	8·395	4	8·572	6	8·752	8	8·936
14	8·399	6	8·575	8	8·755	45	8·940
14	8·402	8	8·579	35	8·759	2	8·944
15	8·406	25	8·582	2	8·763	4	8·947
15	8·409	2	8·586	4	8·766	6	8·951
15	8·412	4	8·589	6	8·770	8	8·954
15	8·416	6	8·593	8	8·773	46	8·958
15	8·419	8	8·596	36	8·777	2	8·962

FIRST SCHEDULE—(Continued.)

Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.	Column A. Indication on Sykes's Hydro- meter.	Column B. Weight per Gallon.
	4	8·965	6	9·154	8		9·545
	6	8·969	8	9·158	67	2	9·549
	8	8·972	57	9·162	2	4	9·553
47		8·976	2	9·166	4	6	9·557
	2	8·980	4	9·170	6	8	9·561
	4	8·984	6	9·173	8	78	9·565
	6	8·987	8	9·177	68	2	9·569
	8	8·991	58	9·181	2	4	9·573
48		8·995	2	9·185	4	6	9·576
	2	8·999	4	9·189	6	8	9·580
	4	9·002	6	9·192	8	79	9·584
	6	9·006	8	9·196	69	2	9·588
	8	9·009	59	9·200	2	4	9·592
49		9·013	2	9·204	4	6	9·596
	2	9·017	4	9·207	6	8	9·600
	4	9·021	6	9·211	8	80	9·604
	6	9·024	8	9·214	70	2	9·608
	8	9·028	60	9·218	2	4	9·612
50		9·032	2	9·222	4	6	9·615
	2	9·036	4	9·226	6	8	9·619
	4	9·039	6	9·229	8	81	9·623
	6	9·043	8	9·233	71	2	9·627
	8	9·046	61	9·237	2	4	9·631
51		9·050	2	9·241	4	6	9·635
	2	9·054	4	9·245	6	8	9·639
	4	9·058	6	9·248	8	82	9·643
	6	9·061	8	9·252	72	2	9·647
	8	9·065	62	9·256	2	4	9·651
52		9·069	2	9·260	4	6	9·655
	2	9·073	4	9·264	6	8	9·659
	4	9·076	6	9·267	8	83	9·663
	6	9·080	8	9·271	73	2	9·667
	8	9·083	63	9·275	2	4	9·671
53		9·087	2	9·279	4	6	9·674
	2	9·091	4	9·283	6	8	9·678
	4	9·095	6	9·286	8	84	9·682
	6	9·098	8	9·290	74	2	9·686
	8	9·102	64	9·294	2	4	9·690
54		9·106	2	9·298	4	6	9·694
	2	9·110	4	9·302	6	8	9·698
	4	9·114	6	9·305	8	85	9·702
	6	9·117	8	9·309	75	2	9·706
	8	9·121	65	9·313	2	4	9·710
55		9·125	2	9·317	4	6	9·714
	2	9·129	4	9·321	6	8	9·718
	4	9·132	6	9·324	8	86	9·722
	6	9·136	8	9·328	76	2	9·726
	8	9·139	66	9·332	2	4	9·730
56		9·143	2	9·336	4	6	9·733
	2	9·147	4	9·340	6	8	9·737
	4	9·151	6	9·344	8	87	9·741

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	9·976
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.

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 such demand produce a proper licence duly stamped and still in force, he shall be considered as a person carrying on an unlicensed

Police officers may demand licence.

¹ See Act 3, 1864 (p. 905) and notes thereto. See also Acts 38, 1887 (p. 2505); 36, 1889, § 34 (p. 2692); 6, 1893 (p. 3149), and 37, 1893, § 1 (p. 3313); 36, 1896 (p. 3680); 43, 1898 (p. 4015). 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.

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.

No. 20—1884.

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 I.

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.	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 "Resistering 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 (1)

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"

¹ See Act 37, 1893, § 1 (p. 3313).

TARIFF 15—LICENCES. (1)

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	3	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

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 practice as an Advocate	20	0	0
For admission to practice as an Attorney	20	0	0
For admission to practice as a Notary	12	10	0
For admission to practice as a Conveyancer	12	10	0
For admission to practice as a Translator	2	10	0
For admission to practice as a Medical Practitioner	5	0	0
For admission to practice as a Land Surveyor	5	0	0
For admission to practice as an Apothecary, Chemist and Druggist	2	10	0
For admission to practice as a Dentist	2	10	0

¹ Printed as amended by Acts 38, 1887; 36, 1889, § 34, and § 91, Act 36, 1896 (p. 3682). For annual licences for Joint Stock Companies, see Act 43, 1898 (p. 4017).

² See §§ 5 and 6 of Act 36 of 1886. (p. 2420.)

Expiring on the 31st day of December.

No. 20—1884.

	DUTY PAYABLE FOR A					
	Whole Year expiring 31st December.			Half Year from 1st July and expiring 31st Dec.		
	£	s.	d.	£	s.	d.
For every ⁽¹⁾ Wharf-Dingy plying for hire in any Port or Harbour	0	10	0	0	5	0
For every other Boat used in the con- veyance of Goods or Materials or plying for Passengers in any Port or Harbour :—						
Of ten tons and under	1	0	0	0	10	0
Above ten tons	1	10	0	0	15	0
For every Steam Launch plying for Passengers only, in any Port or Harbour	2	0	0	1	0	0
For every Steam Tug used in the con- veyance of Goods or Materials and the towage of lighters and ships and also plying for Passengers in any Port or Harbour	10	0	0	5	0	0
For every Steam Tug fitted and used only for supplying Water to Shipping in any Port or Harbour	10	0	0	5	0	0
For every Hulk or Condemned Vessel in any Port or Harbour not in process of breaking up	20	0	0	10	0	0
For every Hulk or Condemned Vessel in any Port or Harbour, in process of breaking up, and until the final removal of the broken portion or portions of such hulk or condemned vessel —						
For the first six months, £25.						
For the second six months, £30.						
For every additional six months, £35.						

¹ See §§ 88 *et seq.*, Act 36, 1896 (p. 3680). Where there is a lawfully constituted Harbour Board, these duties are paid over to such Boards. As to Simon's Town, see Act 43, 1902. (p. 4524).

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 arebate (2) 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. (1)

	£	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

¹ Printed as amended by Act 43, 1898 (p. 4015.)

² Section 9 Act 1, 1889 (p. 2635) which is repealed by § 5 Act 8, 1897 (p. 3710) is identified with this clause which does not appear to have been specifically repealed.

	£	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 Debenture issued by any Company or Corporation— For every £100 or fraction thereof	0	5	0

¹ See § 7 of this Act.

	£	s.	d.
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) *Scrip Certificates.*

1. On every scrip certificate, scrip or share (new scrip, share, or scrip certificates without change of proprietorship excepted), in any company, whether Colonial or Foreign, which may be issued or delivered in the Colony, there shall be payable for every £10 of subscribed capital or fraction thereof the sum of three pence.

The words scrip certificate, scrip or share shall mean and include every certificate of actual registered ownership of shares or stock in any company or syndicate, as well as certificates entitling any person to become the proprietor of shares or stock in any company or proposed company.

2. On every transfer of any such scrip certificate, scrip or share there shall be payable for every £10 of subscribed capital or fraction thereof the sum of one penny.

3. 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.

4. Protests and certificates of presentation of bills, notes, and cheques under £10 shall not be required to be stamped.

5. 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, For every £100 given by way of fine or foregift, and in	£	s.	d.
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
And for every additional £100 rent, or fraction thereof ...	0	10	0

¹ Printed as amended by Act 43, 1898 (p. 4019). On share warrants issued in place of scrip. See § 59, Act 25, 1892 (p. 3049).

No. 20--1884.

On every lease for any period exceeding one year, the amount of the above stamp shall be multiplied by the number of 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.

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.

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.

FEES 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

¹ Transfer of property for school purposes free from payment of transfer duty, stamp duty or fees of office—Acts 6, 1893 (p. 3149), and 46, 1902 (p. 4530).

² See Act 43, 1895, § 4 (p. 3583), for stamps on preferential debentures issued by Joint Stock Companies.

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.

	£	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.

[Repealed by Act 43, 1898.]

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.

1. Notwithstanding anything contained in the Charter of Justice or in the Act No. 20 of 1856, or in any other statutory enactment having the force of law in the Colony, the judges of the superior Courts of Justice may, and Resident Magistrates, Special Justices of the Peace and Field-cornets shall allow the use of the Dutch language equally with the English language at the hearing of any suits, cases, or enquiries, civil or criminal, in their respective Courts when requested so to do by any of the parties to such suits or other proceedings; and upon such allowance it shall be lawful for either of the parties to such suits, cases, or other proceedings, or their respective counsel, attorneys, or agents, to use either the English or Dutch language in the conduct of their cases before such Courts.

Judges may, and judicial officers shall, allow use of either Dutch or English in Courts of Justice.

Divisional Councils or number of voters may apply for summonses and notices to be in Dutch.

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

Power of Governor by proclamation to authorise the same.

¹ Dutch language may be used in Parliament. See Act 1, 1882. (p. 1803.)

² Printed as amended by § 14, Act No. 17, 1886 (p. 2343).

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.

3. This Act may be cited as "The Dutch Language Judicial Use Act, 1884."

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.

Short title.

No. 22—1884.]

[July 25, 1884.]

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 (p. 2563.)

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

¹ No. 1 (p. 1191.)

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 Stores 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.

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 present¹ 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.

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.

Penalty for contravention.

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 (p. 721.) Extended by Proclamation No. 212 of 1890 to Transkei, Tembuland, and Griqualand East.

No. 30—1884.

Act No. 8 of 1859
not affected.

Short title.

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.

6. Nothing in this Act contained shall be taken to remove any of the penalties imposed by the Act No. 8 of 1859.

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 provisions 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

¹ Printed as amended by Act 13, 1886 (p. 2332). See Act 31, 1887 (p. 2487).

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, out-spans, 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;

No. 30—1884.

to cause all 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.

No. 30—1884.

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.

No. 30—1884.

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 council unless there shall be present at the meeting at which such

New section sub-
stituted.Power to impose
rates.

No. 30—1884.

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 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:

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

Power to sue for rates due by absent owner.

- No. 30—1884. the land as well of his interest in such unoccupied or abandoned house, building, or other erection.
- Report 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 nineteenth section of the said Act No. 11 of 1883 shall be and hereby is repealed, and the following shall stand and be as the nineteenth 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 pre-
amble. 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 for the erection of the college proposed to be erected for the

Preamble.

No. 32-1884.

purposes of such educational institutions 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 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.

Preamble.

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 purposes 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:—

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 (p. 2674).

apply to the Malmesbury Board of Executors and Trust Company established under the provisions of this Act.

No. 34—1884.

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 sterlings, 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.

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 of fifteen miles south of Pelican Point to Scheppmansdorp 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

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:—

No. 35—1884.

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 may 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.

When Colonial Acts to apply.

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

Jurisdiction of E. D. Court.

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

Short title.

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.

[Sections 2-4 repealed by Act 30, 1899.]

¹ Amended by Act 30, 1899 (p. 4143), which is to be read with this. As to locations on private property (Mining Areas), see Act 5, 1899 (p. 4032). As to Native Reserve locations near urban areas see Acts 40, 1902 (p. 4511) and 8, 1905 (p. 4815). Native registered voters or natives holding certain certificates of education are exempted from the provisions of this Act. See Act 39, 1887 (p. 2511.) As to sale of intoxicating liquor in Native locations see §§ 20-22 Acts 28, 1883 (p. 2123) and 28, 1898 (p. 3958).

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.

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Governor may have limits of locations pointed out, and may limit number of huts, &c., therein.

6. [Section 6 repealed by Act 30, 1899.]

7. By Native Location on Crown⁽¹⁾ 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.

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.

Salaries of Inspectors.

¹ Urban Districts under Native Reserve Location Acts 40, 1902, and 8, 1905 (pp. 4511, 4815) not to include any portion of these locations. See § 1, Act 8, 1905 (p. 4815).

No. 37- 1884.

Hut-tax.
Liability therefor
of proprietor of
land.

10. (1) A fixed annual amount of ten shillings each shall be chargeable as hut-tax on all such huts in a private location 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.

Hut-tax on Crown
Lands.

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.

Powers of Inspect-
tors.

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.

! To keep a register.

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.

-Inhabitants to give
information.
Penalty for refus-
ing.

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.

Notice to be given
to Inspector of new
huts, &c.

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.

Inspector may
seize and impound
unregistered cattle,
&c.

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. Printed as amended by Act 30, 1899 § 23. See also § 24 of 30, 1899 (p. 4148).

² See § 24, Act 15, 1892 (p. 3010).

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 pounds: Provided that no animals so impounded as aforesaid by any inspector shall be delivered up by the poundmaster to any inhabitants 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 his 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 there-
of 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 § 2, Act 4, 1889 (p. 2640) and Act 31, 1899 (p. 4148).

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.

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.

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.

28. Whenever any occupier of such hut or dwelling⁽¹⁾ in a private location 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.

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 of 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.

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.

31. All proceedings for any contravention of this Act or of any regulations made thereunder shall be had and taken in the Court

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Sums payable under sections 10 and 11, to be due on 31st December.

Abandoned huts to be destroyed.

Liability of landed proprietor for value of stolen cattle.

Power to Governor to make, alter, and amend regulations under this Act

Regulations may provide penalties for infraction of the same.

Act not to apply to municipal native locations.

Magistrates to have jurisdiction.

¹ Printed as amended by Act 30, 1899.

No. 38—1884. of the Resident Magistrate of the district in which the offender 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 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, and by p. 220, 1896, to Port St. Johns.

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 sequestrated, and setting forth the grounds upon which such statements are based, to grant a provisional order for the sequestration of such estate in terms of the fifth, ninth, or tenth section, as the case may be, of the said Ordinance, and thereupon all and singular the provisions of the said Ordinance relating to the compulsory sequestration of persons, or companies, or estates of persons deceased, or of persons legally and actually incapable of the administration of their estate, shall, *mutatis mutandis*, apply to such provisional order.

Supreme, E. D. and High Courts on petition of creditors to grant provisional order of sequestration.

4. It shall be lawful, at any meeting of creditors of any insolvent estate, by resolution passed by the votes of the greater part in 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.

Security may be demanded from Trustee.

¹ See § 11, Act 17, 1886 (p. 2343).

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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.

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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 right of any insolvent whose estate shall have been sequestrated before the passing of this Act; and that any

No retrospective effect.

No. 38—1884.

Filing of accounts
by trustees.

application for discharge made by any such insolvent shall be dealt with as if this Act has not been passed.

15. If any trustee shall neglect to lay before the Master of the said Court any account by the said Ordinance required, within the time prescribed, it shall be lawful for the said Master, and he is hereby required, to call upon any such trustee to show cause before the Supreme Court why he should not forthwith be ordered to file the said account, and the said Court shall summarily make such order thereon and impose such penalty for the non-observance thereof as to such Court shall seem fit and proper: Provided that, in rendering all such accounts as aforesaid, the trustee shall be guided by and conform to all such rules, orders, and regulations as may be made in that behalf by the Supreme Court under and by virtue of the one hundred and thirty-eighth section of the said Ordinance.

Evidence of facts.

16. A copy of the *Gazette*, containing any notice inserted therein in pursuance of any law relating to or regulating the administration of insolvent estates, shall be evidence of the facts stated in the notice.

No decree of civil imprisonment or writ of execution against insolvent after lapse of four 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 commissioner may be appointed by Governor when necessary provision made by Parliament.

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:—

Preamble.

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.

Railway authorised to be constructed.

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.

Negotiation for loan of £400,000 from Imperial Government sanctioned.

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

Capital and Interest for Imperial loan to be a charge upon Colonial Revenue.

No. 1—1885.

Mode of repayment.

Debentures to be deposited with Imperial Government as security for advances.

The Governor may borrow money required for the repayment of instalments as they fall due.

Abstract of expenditure and report of progress of works to be rendered to H.M. Treasury.

Certain Sections of Act 19 of 1874 to apply.

Short title.

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.

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⁾

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.

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.

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.

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.]

¹ Printed as amended by Act No. 1, 1886 (p. 2325).

No. 3—1885.]

[July 14, 1885.

ACT

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

WHEREAS by resolution of both Houses of Parliament of this Colony, passed in the Session of Parliament held in the year of our Lord 1884, it was resolved that it is expedient that the British Territories known as Tembuland, Emigrant Tembuland, Gcalekaland and Bomvanaland should be annexed to this Colony: And whereas by Her Majesty's Letters Patent, bearing date at Westminster the 2nd day of October, 1884, and passed under the Great Seal of the United Kingdom of Great Britain and Ireland, the Governor for the time being of this Colony was 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:—

1. From and after such day as the Governor shall, pursuant to the powers in that behalf contained in the said Letters Patent, by

Preamble.

Governor may
proclaim date from
which Tembuland,

No. 3—1885.

Emigrant Tembuland, Gealekaland, 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 cases.

proclamation (1) under his hand and the Public Seal of this Colony fix in that behalf, the British Territories known as Tembuland, Emigrant Tembuland, Gealekaland 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 (2) 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. (3) The Resident Magistrates of such annexed Territories shall, until the Governor shall by any proclamation otherwise direct, have jurisdiction respectively in all cases of crimes and

¹ Proclamation No. 140, dated 26th August, 1885, in *Gazette* 1st September, 1885.

² Amended by § 1, Act 29, 1897, which see (p. 3846).

³ But see § § 250, 259 and 268 of Act 24, 1886, which came into force on 1st January, 1887 (p. 2349).

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 Magistrate's decision.

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 (2)

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 (p. 2349). These sentences are now reviewed by the E. D. Court. See § 9, Act 35, 1904 (p. 4764).

² Extended to Native Territories by Proclamation 183, 1896.

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.

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.

Production of draft returned for non-payment to be *prima facie* evidence of dishonour.

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.

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.

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.

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.

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.

12. Copies of all regulations and convictions, 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.

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."

No. 4-1885.

Receipts, &c., not chargeable with fees or duties.

Governor empowered to make conventions with foreign countries for system of postal drafts.

When Postmaster-General and officers discharged from liability on drafts.

Interpretation Clause.

Copies of rules and conventions to be laid before Parliament.

Short title.

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.

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.

Governor may prescribe forms of bills of entry and other necessary documents.

Penalty for contravention of regulations.

2. If any goods liable to the payment of duties shall be imported by land or sea into any part of this Colony, the Customs and other duties thereon not having been first paid or secured according to law, then such goods shall become forfeited to the Colonial Treasury: provided that nothing herein contained shall be taken to affect or remove any other penalty which shall be incurred under any other law in force by such importation.

Forfeiture of goods imported without duty paid.

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. [Section 3 repealed by Section 8, Act 8, 1897, in its turn repealed by Act 6, 1898. See Sections 5 and 6 of Act 6, 1898.]

No. 7—1885.

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 (1) 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.

¹ § 26 is repealed by Act 6, 1898 (p. 3854).

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. 9 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 contained 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 purposes 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, 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 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
Entered

Secretary.

this day of
Members of the Divisional Council
of Tarka.

No. 9—1885.]

[July 31, 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.

[Repealed by Act 18, 1902.] [P. 2262.]

No. 11—1885.]

[July 31, 1885.]

ACT

To Legalise certain Unauthorised Loan raised by the Divisional Council of Calvinia.

WHEREAS great expenses have hertofore 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 any thing 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 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."

¹ Repealed by Act 35, 1893 (p. 3311).

No. 13—1885.]

[July 31, 1885.]

Act to make further provisions 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 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 *bonâ 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 *bona fide* possession of diamonds rests on authorised person.

¹ See Acts 48, 1882 (p. 1967), 34, 1888 (p. 2621), 1, 1899 (p. 4082), 35, 1901 (p. 4764).

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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 con-
travening 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 a 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 author-
ised person for
buying, dealing in,
&c. any diamonds
from, with, &c.,
person not author-
ised.

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 li-
cence.

Penalty under
Section 2 extended
to any dealing not
specially author-
ised by the licence
held by an author-
ised 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 li-
cence.

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.

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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.

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Penalty on person dispatching 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.

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.

Order of Court sufficient warrant for the sale of diamonds seized, &c., under this Act.

Fines and proceeds of diamonds

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.

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 sold under this Act
 paid into Public
 Treasury.
 Rewards to in-
 formers.

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 posses-
 sion 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., unlaw-
 ful except by li-
 cence to buy, sell
 &c.

Penalty for con-
 travention of this
 section.

13. Every licence to deal in diamonds within the Colony shall be written upon or covered with stamps to the value of thirty pounds sterling for a yearly licence, or ten pounds sterling for a quarterly licence, and every such licence shall be in the form A set forth in the schedule to this Act.

Licences to deal
 how to be stamped,

14. Every licence to be a diamond broker or factor shall be written upon or covered with stamps of the value of fifteen pounds sterling for a yearly licence, or five pounds sterling for a quarterly licence, and shall be in the form B set forth in the schedule to this Act.

Broker's or fact-
 or'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 is-
 sued.

No certificate to
 be granted to cer-
 tain persons.

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Diamond cutter's licences, how to be stamped.

Termination of licences.

Forfeiture for licence for concealment or misrepresentation. Further penalty.

Diamond cutter may receive diamond from person producing permit.

Stamped permit to buy, sell, &c., diamonds upon solemn declaration by applicant.

Purchase, sale, &c., not to be for purposes of trade.

Record of permits to be kept.

Office of buyer or cutter to be described in licence; name

contravention of this Act shall, upon conviction, in addition to the penalties provided for in this Act, forfeit such licence.

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.

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.

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.

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.

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.

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.

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.

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 in 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.

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

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to be affixed on or near outer door of office.

Penalty for carrying on business of buyer, &c., away from office.

Penalty for removal of office without endorsement on licence.

Brokers' notes to be delivered to purchaser and seller by licensed broker or factor.

Particulars of broker's notes.

Penalty for contravening this section.

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broker's, seller's, and buyer's note shall be certified as correct by the licensed dealer disposing of the same; and any person convicted of any offence against this section shall be liable to a penalty not exceeding five 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 claimholders, 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 caused 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.

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.

Official register of imported diamonds kept in every district.

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.

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.

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.

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.

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.

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Penalty on person failing to obtain official certificate of registration within forty-eight hours.

Official register of exported diamonds kept in every district.

Penalty for contravening this section.

Registration fees paid into Public Treasury.

Penalty for failure to produce licence when called on by writing under hand of Resident Magistrate.

Counterfoils of broker's notes to be kept by broker or factor.

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Jurisdiction of Resident Magistrate only over cases remitted for trial for offences under this Act.

32. No Court of a Resident Magistrate shall have jurisdiction in any case in which any person shall be charged with an offence against the provisions of this Act unless such case, after a preparatory examination has been duly taken therein, shall have been remitted for trial to such Court by the Attorney-General, or the Solicitor-General, respectively, under the provisions of the statutes in that behalf made and provided.

Accessories dealt with as principals.

33. Any person who shall be an accessory either before or after the fact to the contravention of any of the provisions of this Act shall be liable to be charged and dealt with in all respects as the principal.

Advertisement of diamonds found or picked up. No claim being proved, diamonds sold and proceeds paid into public Treasury.

34. Whenever any person shall find or pick up any diamond not being his property, he shall forthwith take and deliver such diamond to the Resident Magistrate of the district, who shall thereupon advertise the same in a local newspaper: and if within twenty-one days from date of such advertisement the owner of such diamond shall not have been discovered, or in case no person shall have been able to prove to the satisfaction of the Resident Magistrate his right to have such diamond delivered to him, the Resident Magistrate shall thereupon order the same to be sold and the proceeds thereof to be paid into the public treasury: Provided always that a sum calculated at the rate of ten per cent. on the amount realised by such sale shall in all cases be paid to the person finding such diamond as aforesaid; and provided always that any person so finding or picking up any diamond as aforesaid, who shall fail or neglect to deliver the same to the Resident Magistrate, as provided by this section shall, on conviction thereof, be liable to a fine of five hundred pounds sterling, or to imprisonment with or without hard labour for a period not exceeding five years.

Ten per cent. paid to finder.

Penalty on finder not delivering diamond to Resident Magistrate.

Meaning of certain words and expressions.

35. In the construction of this Act the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the context repugnant thereto, that is to say:—

“Dealer” and “deal” shall include buyer, seller, broker and factor, and any sort of dealing in diamonds.

“Public place” shall mean any place except a private residence.

“Resident Magistrate” shall include the additional magistrate for any district.

“Diamonds” shall mean rough or uncut diamonds only.

“Rough and uncut diamonds” shall in the case of diamond cutters be taken to include diamonds which have been cut, shaped, and polished, by them out of the rough.

“Cutter” shall include cleavers and polishers of diamonds.

“Chief of the Police” shall mean any Commissioner or Inspector of Police, or the Resident Magistrate of any district.

“Banker” shall mean any manager, cashier, or other officer of a joint-stock bank, acting in his capacity as such.

“Registered Claimholders” shall include the registered or accredited agents of claimholders.

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“Import,” “Importer,” “Importing,” “Importation,” “Brought,” “Bringing,” “Introduction,” “Introducer,” shall not include such diamonds as have been duly registered in terms of clause 36 of Act 48 of 1882, and are in course of transit.

When any form is directed or required to be used, such form shall be as nearly as material according to the form set forth in the schedule to this Act.

36. It shall not be lawful for any person arrested for any offence against the provisions of this Act to sell, exchange, give, or otherwise alienate any property of which he may be possessed at the time of his arrest, whether movable or immovable, until he shall have been discharged from custody or acquitted of such offence, or if such person shall be convicted and sentenced to pay any fine, until such fine shall have been paid or recovered; and any such sale, exchange, gift, or other alienation made contrary to the provisions of this section shall be void.

Persons arrested for offences under this Act prohibited from alienating property.

37. (1) The funds necessary to defray the expenditure of the Detective Department in connection with carrying out the provisions of this Act, after giving credit for the proceeds of all diamonds confiscated and all fines, if any, recovered under this Act, shall be recoverable quarterly, commencing on the first day of October next, from the mining boards of Griqualand West respectively in such proportions as the Governor shall determine: Provided that before such quarterly payments as aforesaid any of the said mining boards shall be entitled to require that accounts of such expenditure and the receipts from the confiscations and fines shall be furnished to such board.

Expenses of carrying out this Act to be recoverable from Mining Boards of Griqualand West, who shall be furnished with accounts of expenditure.

38. This Act shall not be in force, except so far as regards the last preceding section, in any district of the Colony in which the Act No. 48 of 1882 is now or may hereafter be put in operation.

Limitation of Act

SCHEDULE.

A.

DIAMOND DEALER'S LICENCE.

(Under Act , of)

I, _____ distributor of stamps in
 on this _____ day of _____ 18 _____
 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

Schedule.

Form A.

¹ See § 12, Act 34, 1888 (p. 2624).

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.**

A.
 COUNTERFOIL TO BE KEPT BY SELLER OR
 BROKER AS REGISTERED.

No.....

Sold for _____ -18

Sold to _____

DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.		
Stones under 10 Carats each in Lump.	Stones 10 of a Carats Value each or of £100 over.	Stones of a Value of £100 or over.	CARATS. PRICE.	CARATS.	AMOUNT.	CARATS.	AMOUNT.	
							£	s. d.	£	s. d.

Certified correct.

Licensed Seller or Broker.

[F.]
**BROKERS', COMPANIES', AND OTHER
 LICENSED SELLERS' NOTES OF SALE.**

B.
 NOTE TO BE HANDED BY BROKER TO
 SELLER.

No.....

Sold for _____ -18

Sold to _____

DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.		
Stones under 10 Carats each in Lump.	Stone 10 of a Carats Value each or of £100 over.	Stones of a Value of £100 or over.	CARATS. PRICE.	CARATS.	AMOUNT.	CARATS.	AMOUNT.	
							£	s. d.	£	s. d.

Certified correct.

Licensed Seller or Broker.

[F.]
**BROKERS', COMPANIES', AND OTHER
 LICENSED SELLERS' NOTES OF SALE.**

C.
 NOTE TO BE HANDED BY BROKER, DEALER,
 ETC. TO BUYER.

No.....

Bought for _____ -18

Bought of _____

DETAILS OF PARCEL.			AMOUNT.			TOTAL OF PARCEL.		
Stones under 10 Carats each in Lump.	Stones 10 of a Carats Value each or of £100 over.	Stones of a Value of £100 or over.	CARATS. PRICE.	CARATS.	AMOUNT.	CARATS.	AMOUNT.	
							£	s. d.	£	s. d.

Certified correct.

Licensed Seller or Broker.

DIAMOND TRADE.

3977

No. 14-1885.

G.

G.

2278

DIAMOND TRADE.

IMPORTS, PURCHASES, AND OR FINDS.											SALES AND EXPORTS.													
DATE.	Owner or Con- signee.	Broker or own finds.	DETAILS OF PARCEL.					TOTAL OF PARCEL.			DATE.	Buyer or Con- signee.	Broker.	DETAILS OF PARCEL.					TOTAL OF PARCEL.					
			Stones under 10 cts. each in lump.	Stones of 10 cts. each or over.	Stones of Value of £100 or over.	Carats.	Price.	Amount.	Carats.	Amount.				Carats.	Price.	Amount.	Stones under 10 cts. each in lump.	Stones of 10 cts. each or over.	Value of Stones of £100 or over.	Carats.	Price.	Amount.	Carats.	Amount.
						£	s.	d.	£	s.	d.							£	s.	d.	£	s.	d.	
	Balance	on hand																						

H

DATE.	OWNER OR IMPORTER.	WHENCE IMPORTED.	CON-SIGNER.	DETAILS OF PARCEL.			CARATS.	PRICE.	AMOUNT.	TOTAL OF PARCEL.	
				Stones under 10 carats each in lump.	Stones of 10 carats each or over.	Stones of a value of £100 or over.				Carats.	Amount.
							£ s. d.		£ s. d.		
							Total £				
							Reg. Fee £				

I.

I, Resident Magistrate of _____ do hereby certify that _____ of _____ has this day registered with me, according to Section 27 of Act of _____ a diamond or parcel of diamonds containing :-

DETAILS OF PARCEL.			AMOUNT.		
Stones under 10 carats each in Lump.	Stones of 10 carats each or over.	Stones of Value of £100 or over.	Carats.	Price.	£ s. d.

and imported from the District of _____

Dated this _____ day of _____ 18____
Resident Magistrate of _____

DIAMOND TRADE.

2279

No. 14-1885.

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 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 ratepayers, 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

All moneys borrowed to be subject to provisions of Public Bodies Debts Act. 1867.

¹ No. 11.

No. 19—1885.

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 "Public Bodies Debts Act, (1) 1867,"³ 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 (2)

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,"

¹ No. 11.

² Amended by Act 12, 1899 (p. 4091), 30, 1905 (p. 4914).

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 thirty amended.

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 or 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 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.

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-eighth, 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 or sums of money which may be found necessary. ⁽¹⁾

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 duly 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.]

¹ Printed as amended by Act 12, 1899.

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 ($\frac{1}{2}$ d.) 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.

No. 21—1885.

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

Fund for repayment of loan.

Surplus revenue may be applied to reduction of debt.

Debenture holders to receive notice of drawing.

Proceedings at drawing.

No. 21—1885.

shall appear on the slip of paper thus drawn shall receive the said 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 Ssecretary 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 OUTDSHOORN.

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 certain respect "The Precious Stones and Minerals
Mining Act, 1883."

[Repealed by Acts 31, 1898, and 11, 1899.]

No. 23—1885.]

[August 11, 1885.

ACT

To Amend Act No. 15 of 1857, and Act No. 8 of 1873.

[Repealed by Act 32, 1902.]

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:—

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:—

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

Repeal of section
22 of Ordinance No.
12 of 1880.

Company to have
power to make bye-
laws.

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-law show 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 the United King-

Preamble.

No. 26—1885.

dom 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 and Patent Slip Company.

Property to vest in Colonial Government for certain purposes.

Conveyance of properties to be made to Admiralty Commissioners and title registered free of servitude, &c.

Costs, &c., and transfer duty to be paid by Company.

Schedule to this Act.

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.

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."

3. All costs, charges, and expenses incurred or payable in respect of the grant provided for in the second section of this Act shall be borne and paid by the "Simon's Bay Dock and Patent Slip Company."

SCHEDULE TO THIS ACT.

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 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 will obtain at the expense of the company, an Act of the Colonial

No. 26—1885.

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 King-
 dom of Great Britain and Ire-
 land, in the presence of
 "ARTHUR J. CLAYTON."
 Admiralty, Whitehall.

No. 27—1885.]

[11th August, 1885.]

ACT (1)

To amend the Provisions of the "Excise Beer Duty Act, 1884."

Preamble.

WHEREAS it is expedient to amend the provisions of the Act No. 11 of 1884, commonly called the "Excise Beer Duty Act,

¹ See Act 11, 1884 (p. 2185). This Act was repealed by 23, 1897, but has been re-enacted and amended by Act 36, 1904 (p. 4765). Lager beer is to be charged at the higher rate, Act 36, 1904, § 1.

1884": Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. Notwithstanding anything to the contrary contained in the "Excise Beer Duty Act, 1884," especially in the fourth section and first schedule thereof, there shall be levied, collected, and paid in respect of beer brewed in the colony from worts of the specific gravity of less ⁽¹⁾ than one thousand and forty degrees, a duty of ⁽¹⁾ four shillings and sixpence and no more upon every thirty-six gallons of such worts.

Duty of per gallon on light colonial beer.

2. This Act shall come into operation on a date to be hereafter proclaimed by the Governor.

Date of operation of Act.

3. This Act may be cited as the "Excise Beer Duty Amendment Act, 1885," and shall be read and construed as one with the "Excise Beer Duty Act, 1884." ⁽²⁾

Short title.

¹ See Act 11, 1884 (p. 2185). This Act was repealed by 23, 1897, but has been re-enacted and amended by Act 36, 1904. (p. 4765). Lager beer is to be charged at the higher rate, Act 36, 1904, § 1.

² and Part I of Act 36, 1904 (p. 4765).

No. 28—1885.]

[August 11, 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) 1883," 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 (p. 1995).

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

Preamble.

¹ No. 13.

² Extended by Proclamation No. 80 of 1890 to all the Native Territories.

No. 35—1885.

in Parliament private bills inconsistent or conflicting with those interests: and whereas it is furthermore expedient to legalise the necessary expenses incurred by any such body in respect of the introduction and promotion of or opposition to any such private bill: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Definition of certain terms.

1. "Public Body" shall, for the purposes of this Act, mean any public body empowered to levy rates.

"Local newspaper" shall mean any newspaper circulating in the neighbourhood wherein all or most of the persons reside who are liable to pay rates to such public body.

"Ratepayer" shall mean every person liable to the payment of rates to or qualified to vote in the election of members of such public body.

Public meeting to be convened to consider introducing or opposing private bills.

2. Whenever any public body shall deem it expedient and necessary to introduce into Parliament and there promote any private bill in furtherance of, or to oppose in Parliament any private bill inconsistent or conflicting with, the interests of the general body of ratepayers upon whom such public body is by law empowered to levy rates, it shall be lawful for such public body to summon and convene a public meeting of such ratepayers in manner hereinafter provided, for the purpose of laying before such meeting resolutions in favour of the introduction and promotion of or in favour of opposition to such private bill, as the case may be.

Public meeting, how convened.

3. Every such public meeting shall be summoned and convened to assemble at some convenient time and place and upon a day to be stated in a notice of such meeting, and such notice shall be published not less than four times in any one or more local newspapers, or in default of any such local newspapers in every issue of the *Gazette* during a period of not less than two weeks before the said day, and shall refer to this Act and shall contain as nearly as may be the words of the resolution or resolutions to be proposed for the consideration of the said meeting, and also a clear general statement of the object and purpose of such meeting.

Publication of notice required.

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.

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.

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.

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.

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.

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

No. 35—1885.

Voting by show of hands, or upon demand by signature of list.

Lists to lie open for signature by ratepayers on a day to be named by chairman.

Scrutiny of lists by chairman: result to be published at expense of public body.

When resolution passed costs, &c., of introducing or opposing private bill constitute debt of public body, payable out of rates.

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.

Act not to apply to municipalities under Act of Incorporation.
Short title.

11. Nothing in this Act contained shall apply to any Municipality acting under an Act of Incorporation.

12. This Act may be cited as the "Public Bodies' Private Bill Act, 1885."

No. 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:—

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.

2. This Act may be cited as "The Agricultural Immigrants Relief Act, 1885."

No. 38—1885.

Governor may relieve from quitrent Immigrants having no notice of its being payable.

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:—

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.

2. This Act may be cited as "The Public Work Loan Act, 1885."

Preamble.

Governor empowered to raise certain sum for purposes specified in schedule.

Short title.

SCHEDULE.

No. 39—1885.
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 Rhyn'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 :			
Breedede 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, and by Proclamation 438, 1896, to Pondoland.

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. When 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 of 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 of 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 hos-

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.

No. 30. 1885.

pital or not conforming to regulations.

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 uncured 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.

No. 39—1885.

Consequences of practising prostitution after forfeiture of recognizance.

prostitution, or otherwise within such limits shall conduct herself as a common prostitute.

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 there- to 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.

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.

No. 39—1885.

Penalty for state-
ment against fe-
male without
reasonable cause.

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

Magi-
strate after
inquiry upon re-
port by medical
inspector or dis-
trict surgeon may
authorise placing
under medical
treatment any per-
son.

No. 39—1885.

Inquiry private.
Results not to be
made public.

until released from such attendance by the said medical inspector or district surgeon or duly qualified practitioner.

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 pub-
lication 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 re-
quired 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 Sche-
dule 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 or 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 legalised. 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..... ato'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.

If 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.....

No. 39—1885.

Form (B.)

(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 to Medical Inspector of 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.)

Order by Resident Magistrate for Transfer.

No. 39—1885.
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 purposes 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.

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.
Form (I.)

(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 (1)

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.

¹ But see Act 46, 1899, as to sub-division of commonage lands referred to in Section 3 (p. 4230). Extended by Proclamations 276 and 277 to Transkei, Tembuland and East Griqualand.

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.
Shorttitle.

No. 41—1885.]

[August 11, 1885.]

ACT

To Amend the "Public Health Act, 1883."

[Repealed by Act 23, 1897.]

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-

No. 43—1885.

General Magistrates may sentence to one year's imprisonment with or without hard labour; or three months with spare diet and with or without hard labour, or to thirty-six lashes in cases of previous conviction within three years.

Forty-third, forty-seventh, forty-eighth and forty-ninth sections of Act 20 of 1856 to apply.

Solicitor-General and Crown Prosecutor to have same powers as Attorney-General.

Acts 12 of 1860, & 17 of 1867, not affected.

Magistrate may impose fine of £100 or imprisonment of 2 years, or 36 lashes

Jurisdiction extended in civil cases

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.

2. The provisions of the forty-third, forty-seventh, forty-eighth, and forty-ninth sections of the said 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.

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.

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.

5. Notwithstanding anything contained in the first, second, and fourth sub-sections of the eighth section of the Act No. 20 of 1856, intituled "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, intituled "An Act to Amend the Law relating to the Jurisdiction and Powers of Resident Magistrates," and also notwithstanding the provisions of any rule,

¹ Printed as amended by Act No. 1, 1894 (p. 3314).

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

- (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 (p. 2412).

No. 44—1885.

Repeal of sections 2 and 3 of Ordinance 13 of 1874 of Griqualand 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 (2) 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 Resident Magistrate shall not be held or considered a bar to any

Renewals subject to certificate by Magistrate and regulations made by Governor.

¹ Amended by Act 25, 1891. See footnote to Act 28, 1883 (p. 2118).

² See § 10, Act 28, 1883. So much of this section as is inconsistent therewith repealed by § 7, Act 34, 1904 (p. 4761).

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 employès, 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 authorised 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 to 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 30.

8. The Resident Magistrate (1) 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 case where the licensed person shall have absconded) the licensed person shall have served upon him

¹ See § 56, Act 28, 1883 (p. 2130), and § 16, Act 28, 1898 (p. 3960).

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 ⁽¹⁾ 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

¹ No transfer lawful until all Excise Spirit duty paid, § 35, Act 36, 1904 (p. 4774).

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. The "Defence Port" of Simon's Town is exempt from operation of this Act to a certain extent. Act 25, 1898 (p. 3950). As regards ports of Cape Town, Port Elizabeth and East London, special provisions exist. See Part IV., § 46, *et seq.*, Act 36, 1896 (p. 3670).

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, etc., 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.

- (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.

Owner may claim delivery in payment of expenses.

Interested person may give notice of intention to raise, etc., sunk vessel.

4. At any time after the said harbour authority shall have taken possession of any vessel which as is mentioned in the last preceding

section shall have been sunk, stranded, or abandoned, the owner, master, or agent of, or other person interested in the said vessel, may give notice to such harbour authority, of his intention forthwith to raise and remove, or to complete the raising or removal of the said vessel, and meanwhile to light or buoy her until so completely raised or removed, and thereupon if such owner, master, agent, or other person shall forthwith pay to such harbour authority the amount of expenses incurred by such authority, and give security to such harbour authority in such amount and with such surety or sureties as the said harbour authority shall deem sufficient, conditioned upon the proper lighting, 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 vessels 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. 43-1885.

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 owning 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

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, buoying, raising, removal or destruction of such vessels, or the recovery of such anchors or cables: Provided, however, that no such contractor shall be entitled to claim from the Treasurer of the Colony any sum out of the Colonial Treasury over and above the amount which such harbour authority would be entitled to claim in respect of the matter contracted for by such contractor.

No. 1—1886.
Power to delegate by contract powers under this Act.

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."

Shor titl .

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 au-

No. 4—1886.
 authorised chargeable to the general revenue.

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. Extended to Native Territories by Proclamations 183, 1896, and 33, 1897.

² See Act 5, 1889, § 11 (p. 2643).

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 repug-
nant 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

Divisional coun-
cils or divisions
affected by any
such proclamation

¹ Repealed by Act 40, 1889.

No. 6—1886.

the limits of the new division of Prieska, shall be entitled to vote at any election for members of the Divisional Council of the said new division of Prieska.

Provisions of Act
24 of 1858 to apply
to Division of
Prieska.

5. The several provisions of the Act No. 24 of 1858, entitled “An Act to regulate the respective rights of certain Divisions in regard to certain Road Rates,” shall, *mutatis mutandis*, as soon as the said proclamation shall have been issued, apply to the new division of Prieska, and to the division or divisions to which such newly constituted division belonged before the issue of such proclamation.

No change of
electoral divisions.

6. Notwithstanding the creation of such new division for fiscal and other purposes, such new division and every part thereof shall continue, for electoral purposes, to belong to and form part of whatever Electoral Division the said new division or any part thereof theretofore belonged to, precisely as if this Act had not been passed, and no such proclamation as aforesaid had been issued.

Short title.

7. This Act may be cited as “The Prieska Fiscal Division Act, 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 and gar-
dens to notify to
Field-cornet the ap-
pearance 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 pur-
sued 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 given 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.

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

No compensation to persons who have contravened this Act or Act 27 of 1880.

Section 4 of such Act repealed and present one substituted.

No. 6-1886.

Fresh powers
given to Governor.

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 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 remov-
ing living Phyl-
loxera.

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 receiv-
ing grapes, &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.

10. The provision of the fourth section of this Act shall be in force until the 30th June, 1887, and no longer.

11. This Act may be cited as "The Vineyards Protection Act Amendment Act, 1886."

No. 9—1886.

Fourth section in force till 30th June, 1887.

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.

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.

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

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."

No. 11—1886.]

[July 6, 1886.]

ACT

To Amend in certain respects the "Imvani and Indwe Railway and Coal Mines Act, No. 3 of 1882."

[Not printed. See note to Act 3, 1882, p. 1805.] [p. 2333.]

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.

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.

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.

2. Every person who shall have been served with a subpœna as in the previous section mentioned shall be bound to attend on the

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, Bomvana'land, Gealekeland, Griq. East and Port St. John's by Proc. No. 398, 1895, of 30th Sept., 1895; to Rhodesia and the Bechuanaland Protectorate by Proc. 199, 1898; to Orange River Colony by Proc. 88, 29th March, 1905; to Transvaal Colony by Proc. 166, 26th May, 1905; for tariff Transvaal, Orange River Colony and Basutoland see G. N. 1347, of 19th December, 1905.

For tariff of allowances see Government Notice 794, 1887, and codified Government circulars. (1904 edition) p. 602.

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 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 of 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. (2) 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.]

" 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 accounts or documents which are necessarily required in evidence in such proceeding, it shall be lawful for any Judge of the Supreme Court or the Magistrate presiding at such proceeding to issue an order, directing the officer to whom such order is addressed, to take possession of such books or documents, and to hand them over to such person as may be named in such order ; and thereupon such officer may lawfully execute such order, and any person who shall resist or hinder, or shall aid, incite, or encourage any other person to resist or hinder such officer in executing the same shall, upon conviction, be liable to imprisonment with or without hard labour for any period not exceeding twelve months.

11. This Act may be cited as "The Administration of Justice Act, 1886."

No. 14—1886.

Judge of the Supreme Court or Magistrate may order seizure of books or documents in possession of accused person in criminal proceeding.

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.

* 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 arbitrament and award of two arbitrators, one to be appointed by the representatives of the London Missionary Society, and one by the occupier or alleged occupier, and such arbitrators shall, before entering upon the reference, appoint an umpire, to act in case of difference of opinion between them, and the decision of such arbitrators or umpire, as the case may be, shall be final and binding on both parties, and the costs of such reference shall be borne and paid for as shall be directed in such award.

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.

[Repealed by Act 27, 1897.] [p. 2340.]

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.

Preamble.

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:—

(Section 1-5 repealed by Act 35, 1896.)

¹ See Act 24, 1888, § 2.

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.

No. 17—1886.
 Sheriff and Deputy Sheriffs of Albany and Kimberley to lodge moneys received with Civil Commissioner.
 How moneys to be distributed.

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

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

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

Execution stayed against petitioner for surrender for only 14 days.

12. The process mentioned in the tenth section of schedule B of Act No. 20 of 1856 may, in case neither the defendant nor any one of his household can be found after diligent search, be served by leaving the same at his usual or last known dwelling-house or place of business.

Service of process under Act 20 of 1856.

13. The judges of the Supreme Court may (by any rules or orders to be made in like manner as by law provided for the making of general rules or orders of the Supreme Court), make rules or orders respecting the manner and form of proceeding in civil and criminal cases before the courts of the Resident Magistrates; and any rules or orders so made shall be in addition to, or in place of the rules, orders, and regulations contained in schedule B to the "Resident Magistrates' Court Act, 1856," or in any other Act relating to the said courts.

Judges of Supreme Court may make rules and orders for Courts of Resident Magistrates.

14. (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.

Provision as to issuing process in Dutch or English

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

Short title.

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.

[Repealed by Acts 31, 1898, and 11, 1899.] [p. 2345.]

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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."

[Repealed by Act 36, 1904, p. 4765.]

No. 20—1886.]

[July 6, 1886.

ACT

To Amend the "Mossel Bay Wharfage Act, 1860."

WHEREAS it is desirable to amend in some respect the "Mossel Bay Wharfage Act, No. 7 of 1860," so as to exempt certain goods from being charged with wharfage due 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, 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

x

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.)

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 Extended by Proclamation 112 of 1886 to all the Native Territories: by Proclamation No. 340 of 1894, to East and West Pondoland, and by Proclamation 180, 1905, to Walfish Bay. Amended by Acts 41, 1898 (p. 4009) and 35, 1904 (p. 4764).

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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 pro-
perty 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 definite 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 jurymen 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 a 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 *umninamzi*.
- (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.

Punishment

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 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 from 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.

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.]

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.

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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Fines.

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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 justification 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 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, and 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 assisting 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 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, etc.

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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Self-defence
against unpro-
voked assault.

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 provoked 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.

Provocation within the meaning of this and the last preceding section may be given by blows, or words.

*Defence of Movable Property against Trespasser.*Defence of mov-
able 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 by one having claim of right.*Defence of mov-
able 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 Person not having claim of Right.*Defence of mov-
able 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

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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.

TITLE II.

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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

Abetting mutiny and desertion, or attempting to se-

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 duce a soldier or
 policeman from his
 duty.

police 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 TRANQUILITY.

Unlawful Assemblies.

Unlawful assem-
 bly.

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 acts 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 assem-
 bly 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, and 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, etc.

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, etc.

For accepting from seamen and others ships' stores, &c.

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 seamen and others removing ships' boats.

102. If any seamen 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.

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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 re-
frain 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 sub-
ornation 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.

Falsedeclaration.

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 evi-
dence.

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 accusa-
tions.

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 de-
feat 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 corrup-
tion 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 juryman, assessor, or interpreter in his conduct as such, whether such juryman, 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 juryman, assessor, or interpreter.

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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.

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

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 been 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 whatever.

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, etc.

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, etc.

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

(o) 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 abet-
ting 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.

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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, administer 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 en-
forcement of cir-
cumcision or inton-
jane.

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 Police Officers, and to resist Apprehension.*Assaults on peace
officers, and to re-
sist 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 anyone 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.

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 it 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 (*umtakati*) 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 carcass, 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 stocks 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.

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 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, etc.***Theft of Ostrich Feathers, Hides, Skins, Wool, Mohair, &c.**

194. All and singular the provisions of the Acts No. 32 of 1883, No. 19⁽¹⁾ 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

¹ Act 19, 1884, and 13, 1885, are repealed by Act 35, 1893.

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.

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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. (1) 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.

- (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.
- (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 lands in that neighbourhood; and any person refusing to permit such search is responsible for the value of the animals stolen.

¹ Printed as Amended by Act 41 of 1898 (p. 4009).

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- (3) When the owner of any animal is on the spoor of such animal, it shall be lawful for the 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 obliteration or loss of such spoor, is liable for the value of the animal stolen.
- (4) 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 (*abaninimzi*) 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.
- (5) 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.

Creating false
spoor.

201. Whoever fraudulently and with intent to injure another shall create any spoor, shall be punished with fine not exceeding

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 hereinbefore 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.

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.

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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 fraudulently 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 dispo-
sition 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 bargain 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.

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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, utter 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 the 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.

No. 24—1886.

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.

No. 24—1886.

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, etc.

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

No. 24—1886.

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 com-
mit 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 Resi-
dent 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 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 eighty-five to ninety inclusive.
- (b) Title III, Chap. VII, Offences against the Administration of Justice, section 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 (1) 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 E. D. Court.

Pleadings and Proceedings.

260. The Courts aforesaid shall be respectively Courts of Record, and the pleadings and proceedings of the said Court 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.

¹ See Act 35, 1904 § 9 (p. 4764). The judicial functions assigned to the Chief Magistrate have now ceased. All cases for review to be sent to the Supreme Court having jurisdiction. (The E. D. Court see § 13, Act 35, 1896 (p. 3648).)

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. (1)

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.

¹ See also § 9, Act 35, 1904 (p. 4764).

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 Extended by Proclamation No. 80 of 1890 to all the Native Territories. See page 1964.

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.

Z

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 con-
struct 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 de-
viation.

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 Karpas, 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.

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.

¹ No. 16.

No. 34—1886.

Main and Divisional roads to be repaired to satisfaction of Government road Inspector.

After such general election, districts of Simon's Town to be entitled to return members to Divisional Council of the Cape.

Toll-gates and toll revenues to be transferred to Divisional Council of the Cape.

No debts of Simon's Town Council to be chargeable to the Divisional Council of the Cape.
Arrear rates.

Repeal of part of Act 36 of 1879 and Act 8 of 1882.

Short title.

shall cease to be a division for fiscal purposes, and shall become and be part of the fiscal division of the Cape.

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.

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.

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.

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.

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.

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 as follows:

Certain sections amended.

(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.

No. 35—1886.

(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.

[Repealed by Act 40, 1905, p. 4951.] [p. 2418.]

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 migrating, but including the gnu or wildebeeste), hare and rabbit

The word "Game" defined.

Amended by Acts 38, 1891 (p. 2943), and 33, 1899 (p. 4153). Extended by Proclamation No. 66 of 1887 to Transkei and Griqualand East; by Proclamation No. 356 of 1893 to Tembuland, and by Proclamation 157, 1896, to Port St. Johns.

See Act 30, 1894, § 4, as to Commonages in Stockenstrom district (p. 3417).

See also Act 21, 1890 (p. 2819) (Rabbits).

No. 36—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.

(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 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, shoot at, 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 Acts 38, 1891, § 1 and 33, 1899. Permit must be returned to Magistrate. Act 33, 1899, § 2 (p. 4154). See also § 5 as to unlawful possession of skins, &c., of animals named.

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

No. 36—1886.

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.

¹ Printed as amended by Act 38, 1891, § 3.

No 36—1886.

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 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.

No. 37—1886.

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 Pondoland East, known as the Xesibe Country, comprised in the district now called Mount Ayliff, should be annexed to the Colony: And whereas it is the intention of Her Majesty the Queen to issue her Royal Letters Patent to 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 power in that behalf contained in any Royal Letters Patent which may be issued for that purpose, by (2) proclamation under his hand and the public seal of the

Governor may proclaim Xesibe country to be annexed to the Colony and form part of Griqualand East.

¹ Extended by Proclamation No. 174 of 1886.

² Proclamation in Gazette, 25th October, 1886.

No. 37—1886.
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Colony, fix in that behalf, the country in the preamble to this Act mentioned, or so much of the said country as shall be defined in or by any such proclamation, and with the limits and name in any such proclamation signified, shall be annexed to and become a part of that portion of the Colony known as Griqualand East, and be subject to the laws for the time being in force in such portion of the Colony.

Short title.

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

No. 1—1887.]

[July 1, 1887.]

Act to Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1888.

[Spent.]

No. 2—1887.]

[June 30, 1887.]

Act for applying a Further Sum not exceeding Forty-three Thousand Nine Hundred and Fifty-eight Pounds Sterling for the Service of the Year ending the 30th June, 1887.

[Spent.]

No. 3—1887.]

[July 8, 1887.]

ACT

To Authorise the Expropriation of Land, the Property of Private Persons, for Defence Purposes.

WHEREAS it is desirable that power should be granted to Government to expropriate, for defence purposes, land the property of private persons: 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 it shall appear to the Governor that any land, the property of a private owner, or land to the unobstructed use of which any neighbouring owner of land, or other person or persons, have a prescriptive right, is required for defence purposes, it shall be lawful for the Commissioner of Crown Lands and Public Works, on being authorised by the Governor so to do, to take possession of such land on payment to the proprietor thereof of such sum of money in compensation as may be mutually agreed upon between the parties concerned: Provided that failing such agreement the matter shall be determined by arbitration, one arbitrator to be appointed by the proprietor of the land and one by the Government with power to such arbitrators to appoint a third as umpire: and in case of difference of opinion between the original arbitrators, the decision of such umpire shall be final.

Land required for defence purposes may be expropriated with compensation to the owner, to be determined by arbitration.

2. In all other respects, the provisions of the "Lands and Arbitration Clauses Act, 1882," shall apply to arbitrations under this Act.

Lands and Arbitration Clauses Act to apply.

3. This Act may be cited as the "Lands Expropriation Act, 1887."

Short title.

No. 4—1887.]

[July 8, 1887.

ACT

To make provision with respect to manufacturing, keeping, selling, carrying, and importing Explosive Substances. ⁽¹⁾

Preamble.

WHEREAS it is expedient to make provision with respect to manufacturing, keeping, selling, carrying, and importing explosive substances: 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.
Meaning of term
"explosive."

1. This Act may be cited as the Explosives Act, 1887.
2. The term "explosive" or "explosives" in this Act—
 - (1) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting-powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
 - (2) Includes fuses, rockets, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

LAW RELATING TO MANUFACTURE OF EXPLOSIVES.

Explosives to be
manufactured only
at factory licensed
for that purpose.

3. The manufacture of explosives shall not, nor shall any process of such manufacture, be carried on except at a factory for explosives licensed for the same under this Act.

Provided that nothing in this section shall apply to the making of a small quantity of explosives for the purpose of chemical experiment and not for practical use or for sale.

If any person manufactures explosives or carries on any process of such manufacture at any place at which he is not allowed by this section so to do, he shall be deemed to manufacture explosives at an unauthorised place.

Penalty for manu-
facture at unau-
thorised place.

Where explosives are manufactured at an unauthorised place—

- (1) All or any part of the explosives or the ingredients thereof which may be found either in or about such place or in the possession or under the control of any person convicted under this section, may be forfeited; and
- (2) The person so manufacturing shall be liable to a penalty not exceeding one hundred pounds a day for every day during which he so manufactures.

LICENSING OF FACTORIES AND MAGAZINES IN CONNECTION WITH
FACTORIES FOR EXPLOSIVES.

Application for
licence for factory
or factory maga-
zine.

4. A factory for explosives or magazine in connection therewith (hereinafter called a factory magazine) shall not be established

¹ See Act 9, 1888 (p. 2545), providing for prohibition of export of explosives in time of war. Extended, as modified, by Proc. 300, 1903, to all Native Territories.

except on the site and in the manner specified in a licence for the same granted under this Act.

The licence shall specify such of the following matters as are applicable namely—

- (a) The boundaries of the land forming the site of the factory or factory magazine and either any belt of land surrounding the site which is to be kept clear, and the buildings and works from which it is to be kept clear, or the distances to be maintained between the factory or factory magazine, or any part thereof, and other buildings and works; and
- (b) The situation, character, and construction of all the mounds, buildings, and works on or connected with the factory or factory magazine, and the distances thereof from each other; and
- (c) The nature of the processes to be carried on in the factory and in each part thereof, and the place at which each process of the manufacture, and each description of work connected with the factory or factory magazine, is to be carried on, and the places therein at which explosives and any ingredients of explosives, and any articles liable to spontaneous ignition, or inflammable or otherwise dangerous, are to be kept; and
- (d) The amount of explosives and of ingredients thereof wholly or partly mixed to be allowed at the same time in any building or machine or any process of the manufacture or within a limited distance from such building or machine, having regard to the situation and construction of such building, and to the distance thereof from any other building or any works; and
- (e) The situation of each factory magazine, and the maximum amount of explosives to be kept in each factory magazine, and
- (f) The maximum number of persons to be employed in each building in the factory; and
- (g) Any special terms which the Governor may deem fit by reason of any special circumstances arising from the locality, the situation or construction of any buildings or works, or the nature of any process, or otherwise.

5. Every application for a licence shall set forth fully the requirements of the applicant in regard to the matters specified in the sub-sections of the preceding section, and upon receipt of any application for a licence the Governor may reject the application, or cause a copy thereof to be transmitted to the local authority, who shall cause notice to be published by the applicant in manner directed by this Act of the application and of the time and place at which they will be prepared to hear the applicant, and any persons objecting to such establishment.

Application for licence and proceedings thereon.

No. 4—1887.

Upon the hearing of the application, or any adjournment thereof, the local authority may dissent altogether from the establishment of such factory or factory magazine on the proposed site, or assent thereto, either absolutely or on any conditions requiring additional restrictions or precautions.

Proceedings where site is within or within limits of the jurisdiction of urban sanitary authority or harbour authority.

6. Where the site of the proposed factory or factory magazine is situate within or within one mile of the limits of the jurisdiction of any urban sanitary authority, or of any harbour authority, the applicant shall serve on such authority, if they are not the local authority, notice of the application and of the time and place of hearing fixed by the local authority.

The said notices shall be published and served by the applicant not less than one month before the hearing.

The local authority shall fix the time and place of hearing as soon as practicable after the application made to them, and the time so fixed shall be as soon as practicable after the expiration of the said month from the publication and service of the notices by the applicant, and their final decision shall be given as soon as practicable after the expiration of the said month.

Assent in case site situate within jurisdiction of more than one local authority.

7. Where the site of the proposed factory or factory magazine is situate partly within the jurisdiction of one local authority and partly within the jurisdiction of another, the assent of both local authorities shall be applied for in manner provided by this Act.

Local authority to report to Colonial Secretary and proceedings thereon, including grant of licence.

8. If on the hearing of the application for the establishment of a factory or factory magazine the local authority assent thereto either absolutely or on conditions submitted to by the applicant, they shall report the result to the Colonial Secretary, with the addition (if the assent was on conditions) of the additional restrictions and precautions required by those conditions.

If the local authority assent on any conditions not submitted to by the applicant, or dissent, the applicant may lodge an appeal with the Colonial Secretary, giving notice of such appeal to the local authority, and requiring them to state in writing their reasons for such conditions or dissent; and the Governor, after considering the reasons (if any) so stated, and after such inquiry, local or other, as he may think necessary, may if the local authority dissented, refuse the licence, or may in either case grant the licence applied for in or with such modifications and additions as he may consider required to meet the reasons (if any) so stated by the local authority.

Confirmation of licence.

9. As soon as the Governor is satisfied that the factory or factory magazine is sufficiently completed to justify the use thereof the said licence shall issue, but until then the licence shall not come into force.

Meaning of factory or factory magazine in licence.

10. The land forming the site bounded as described in the licence shall with every mound, building, and work thereon for whatever purpose, be deemed, for the purposes of this Act, to be the factory or factory magazine referred to in the licence.

REGULATION OF FACTORIES AND FACTORY MAGAZINES FOR
EXPLOSIVES.

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11. In every factory and factory magazine for explosives—

Regulation of factories and factory magazines for explosives

- (1) The factory or factory magazine, or any part thereof, shall not be used for any purpose not in accordance with the licence; and
- (2) The terms of the licence shall be duly observed, and the manufacture or keeping or any process in or work connected with the manufacture or keeping of explosives shall not be carried on except in accordance with those terms; and
- (3) The factory or factory magazine and every part thereof shall be maintained in accordance with the licence; and any material alteration in the factory or factory magazine by enlarging or adding to the site, or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargement, or by making any new work, shall not be made except in pursuance of an amended licence granted under this Act.

In the event of any breach (by any act or default) of this section in any factory or factory magazine—

- (a) All or any part of the explosives or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and
- (b) The occupier shall be liable to a penalty not exceeding in the case of the first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and in addition fifty pounds for every day during which such breach continues.

The occupier of a factory shall not be deemed guilty of a breach of this section for using in a case of emergency, or temporarily, one building or part of a building in which any process of the manufacture is, under the terms of the licence, carried on, for another process of the manufacture, if he do not carry on in such building or part more than one process at the same time, and if the quantity of explosives or ingredients thereof in such building or part do not exceed the quantity allowed to be therein, or any less quantity allowed to be in the building or part of a building in which such other process is usually carried on: and if upon such use being continued after the lapse of twenty-eight days from the first beginning of such use he send notice of such use to the Civil Commissioner of the Division and the said Civil Commissioner do not require the discontinuance of such use.

12. In every factory and factory magazine for explosives the following general rules shall be observed:—

General rules for factories and factory magazines.

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- (1) In a factory every factory magazine shall be used only for the keeping of explosives and receptacles for or tools or implements for work connected with the keeping of such explosives; and
- (2) Every factory magazine and expense magazine in a factory shall have attached thereto a sufficient lightning conductor, unless by reason of the construction by excavation or the position of such magazine or building, or otherwise, the Colonial Secretary considers a conductor unnecessary, and every danger building in a factory shall, if so required by the Colonial Secretary, have attached thereto a sufficient lightning conductor; and
- (3) Charcoal, whether ground or otherwise, and oiled cotton, oiled rags, and oiled waste, and any articles whatever liable to spontaneous ignition, shall not be taken into any danger building, except for the purpose of immediate supply and work or immediate use in such building, and upon the cessation of such work or use shall be forthwith removed; and
- (4) There shall be constantly kept affixed in every danger building, either outside or inside, in such manner as to be easily read, a statement of the quantities of explosives or ingredients allowed to be in the building, and a copy of these rules, and of any other part of this Act required by the Colonial Secretary to be affixed, and of such part of the licence and special rules made under this Act as apply to the building; and with the addition in a factory of the name of the building, or words indicating the purpose for which it is used; and
- (5) All tools and implements used in any repairs to or in a danger building shall be made of safe and suitable material; and
- (6) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching, and otherwise, or by some of such means, for preventing the introduction into any danger building of fire, lucifer matches, or any substance or article likely to cause explosion or fire, but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and
- (7) No person shall smoke in any part of the factory or factory magazine, except in such part (if any) as may be allowed by the special rules; and
- (8) Any carriage, boat, or other receptacle in which explosives, or the wholly or partly mixed ingredients thereof, are conveyed from one building to another in a factory or factory magazine, or from any such building to any place

outside of such factory or factory magazine, shall be safely and suitably constructed and shall contain only the explosives and ingredients, and shall be closed or otherwise properly covered over; and the explosives and ingredients shall be so conveyed with all due diligence, and with such precautions and in such manner as will sufficiently guard against any accidental ignition; and

- (9) A person under the age of sixteen years shall not be employed in or enter any danger building, except in the presence and under the supervision of some grown-up person; and
- (10) In a factory the ingredients in course of manufacture shall be removed with all due diligence from each working building so soon as the process connected with those ingredients which is carried on in such building is completed, and all finished explosives shall with all due diligence either be removed to a factory magazine, or sent away immediately from the factory, and such ingredients and explosives shall be loaded and unloaded with all due diligence; and
- (11) In a factory all ingredients to be made or mixed into explosives shall, before being so made or mixed, be carefully sifted, for the purpose of removing therefrom, as far as practicable, all dangerous foreign matter.

The Governor may, from time to time make, and when made rescind and alter, such other general rules as may appear to him to be necessary.

Governor may make rules as to factories or factory magazines.

In the event of any breach (by any act or default) of the general rules in any factory or factory magazine,—

Penalty for breach of rules.

- (a) All or any part of the explosives or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and
- (b) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

13. Where the occupier of any factory or factory magazine for explosives desires that any alteration should be made in the terms of his licence, or any material alteration made in the factory or factory magazine by enlarging or adding to the site or by externally enlarging or adding to any building, or by altering otherwise than by enlargement, or by making any new work, he may apply for an amending licence.

Alteration of terms of licences and alterations in factories and factory magazines.

If he satisfy the Colonial Secretary that the alteration may be properly permitted, having regard to the safety of the persons employed in the factory or factory magazine, and will not materially either increase the danger to the public from fire or explosion, or

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diminish the distance of any danger building in the factory or factory magazine from any building or work outside and in the neighbourhood of the factory or factory magazine, or increase the amount of explosives allowed to be kept in the factory magazine, or in any building in such magazine, the Colonial Secretary may grant the amending licence of his own authority, but, save as aforesaid, the provisions of this Act with respect to the application for and grant of a new licence shall apply to such amending licence.

Devolution and determination of licence.

14. A factory or factory magazine licence shall not be avoided by any change in the occupier of the factory or factory magazine; but notice of the name, address, and calling of the new occupier shall be sent to the Colonial Secretary within one month after the change, and in default such new occupier shall be liable to a penalty not exceeding twenty shillings for every week during which such default continues.

A factory or factory magazine licence may be revoked by the Governor and such licence shall be determined by a discontinuance of the business carried on in pursuance of any such licence if such discontinuance continues for a period of _____, or if the factory or factory magazine is used for any purpose not authorised by the licence.

Occupiers of factories and factory magazines to take due precautions.

15. The occupier of every factory, and factory magazine for explosives, and every person employed in or about the same, shall take all due precaution for the prevention of accidents by fire or explosion in the same, and for preventing unauthorised persons having access to the factory, or factory magazine, or to the explosives therein, and shall abstain from any act whatever which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work in such factory or factory magazine.

Any breach (by any act or default) of this section in any factory or factory magazine, shall be deemed to be a breach of the general rules applying thereto.

LICENSING OF OTHER MAGAZINES OR STORES FOR KEEPING EXPLOSIVES.

Licensing of magazines or stores, other than factories or factory magazines, for keeping explosives.

16. Explosives shall not be kept at any place except as follows; that is to say,

- (1) Except in the factory licensed for the same under this Act in which they are manufactured; or
- (2) Except in any magazine or store now licensed for the storage of gunpowder, or any other magazine or store for explosives for the keeping of which the Colonial Secretary shall have issued a licence to be renewed or otherwise dealt with at his discretion on the 1st day of January in each year.

Provided that this section shall not apply—

- (1) To gunpowder or blasting powder, percussion caps, or ammunition of any description, or to any other explosive regarding the keeping of which provision is now made

by law, the intent of this section being not to interfere with the existing law in that behalf.

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- (2) To fuses ordinarily known as "safety fuses," or to detonators in case the detonators do not exceed in number ten thousand.
- (3) To a person keeping for his private use and not for sale explosives other than those in the preceding sub-section of the proviso mentioned to an amount not exceeding on the same premises five pounds; or
- (4) To the keeping of any explosives by a carrier or other person for the purpose of conveyance, when the same is being conveyed or kept in accordance with the provisions of this Act with respect to the conveyance of explosives.

Any explosives kept in any place other than as above in this section mentioned shall be deemed to be kept in an unauthorised place.

Where any explosive is kept in an unauthorised place—

- (1) All or any part of the explosives found in such place may be forfeited; and
- (2) The occupier of such place, and also the owner of, or other person guilty of keeping the explosives, shall each be liable to a penalty not exceeding two shillings for every pound so kept.

Penalty for keeping explosives in unauthorised place

SALE OF EXPLOSIVES.

17. Explosives shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place.

Sale of explosives not allowed in public places or to children.

If any explosive is hawked, sold, or exposed for sale in contravention of this section—

- (1) The person hawking, selling, or exposing for sale the same shall be liable to a penalty not exceeding forty shillings; and
- (2) All or any part of the explosive which is so hawked or exposed for sale, or is found in the possession of any person convicted under this section may be forfeited.

Penalty.

Explosives shall not be sold to any child apparently under the age of thirteen years; and any person selling explosives in contravention of this section shall be liable to a penalty not exceeding five pounds.

CONVEYANCE OF EXPLOSIVES.

18. The following general rules shall be observed with respect to the packing (1) of explosives for conveyance:

Conveyance of explosives and general rules as to packing for conveyance.

- (1) The explosives, if not exceeding five pounds in amount, shall be contained in a substantial case, box, or other receptacle, made and closed; and

¹ Additional rules published by Government Notice 1164, 1897. See also codified Government circular instructions (1904) (p. 4179 *et seq.*)

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- (2) The explosives, if exceeding five pounds in amount, shall be contained either in a single package or a double package. A single package shall be a box, barrel, or case of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed. If the explosive is packed in a double package the inner package shall be a substantial case, or other receptacle made and closed, and the outer package shall be a box, barrel, or case of wood or metal or other solid material, and shall be of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed; and
- (3) Every package, whether single or double, when actually used for the package of explosives, shall not be used for any other purpose; and
- (4) On every package there shall be affixed the word "explosives," together with the name of the explosive, in conspicuous characters by means of a brand or securely attached label or other mark.

Penalty.

In the event of any breach (by any act or default) of any general rule in this section, the explosives in respect of which the breach is committed may be forfeited, and the person guilty of such breach shall be liable to a penalty not exceeding twenty pounds.

Rules may be made by Governor.

The Governor may from time to time make, and when made, repeal, alter, and add to, rules for the purpose of rescinding, altering, or adding to the general rules contained in this section.

Bye-laws by harbour authority as to conveyance, loading &c., of explosives

19. (1) Every harbour authority shall, with the sanction of the Governor, make bye-laws for regulating the conveyance, loading, and unloading of explosives within the jurisdiction of the said authority, and in particular for declaring or regulating all or any of the following matters within the jurisdiction of the said authority; namely,

- (1) Determining the notice to be given by ships and boats conveying, loading, or unloading explosives as merchandise within the said jurisdiction; and
- (2) Regulating the navigation and place of mooring of such ships and boats; and
- (3) Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping explosives on board any such ship or boat, and of giving notice by brands, labels, or otherwise, of the nature of the package containing the explosives; and

¹ See Act 36, 1896, § 85, in regard to Harbour Boards of Cape Town, Port Elizabeth and East London (p. 3679). See also § 28, Act 16, 1857 (p. 680).

- (4) Regulating the description, construction, fitting up, and licensing of the ships, boats, or carriages to be used for the conveyance of explosives, and the licensing and dress of the persons having charge thereof; and
- (5) Prohibiting in cases where the loading or unloading of explosives within the jurisdiction of such authority appears to be specially dangerous to the public such loading or unloading, and fixing the places and times at which the explosives are to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one ship, boat, or carriage; and
- (6) Regulating the mode of and the precautions to be observed in conveying any explosives, and in the loading or unloading any ship, boat, or carriage conveying explosives as merchandise, and the time during which explosives may be kept during such conveyance, loading, or unloading; and
- (7) Fixing the times at which lights or fires are to be allowed or not allowed on board such ships or boats, as before mentioned, or at which a constable or officer of the harbour authority is to be on board them; and
- (8) Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just according to the gravity of the offence, and according as it may be a first or second or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offences continues, and forfeiture of all or any part of the explosives in respect of which, or found in the ship, boat, or carriage in respect of which, the breach of bye-law has taken place.

In the event of any breach of a bye-law under this section in the case of any ship, boat, carriage, or explosives whether there has or has not been any conviction for such breach, it shall be lawful for the harbour-master, or other officer named in the bye-laws, or any person acting under the orders of the harbour authority, to cause such ship, boat, carriage, or explosive, at the expense of the owner thereof, to be removed to such place or otherwise dealt with in such manner as may be in conformity with the bye-laws, and all expenses incurred in such removal may be recovered in the same manner as a penalty under this section, and any person resisting such harbour-master or officer or other person in such removal shall be liable to the same penalties as a person is liable to for obstructing the harbour-master in the execution of his duty.

Penalties for
breach of bye-laws
made by harbour
authorities.

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Bye-laws made
by Governor where
no harbour
authority.

On any part of the coast or in any tidal water for which there is no harbour authority, the Governor may make bye-laws under this section for that part of water as if it were a harbour and by such bye-laws define the area within which such bye-laws are to be observed, and the authorities and officers by whom such bye-laws are to be enforced and carried into effect within such area, and every such authority and officer shall for the purposes of this Act, other than making bye-laws or assenting to a site for a new factory or magazine, have the same power within the said area as a harbour authority and an officer of a harbour authority have respectively under this Act in a harbour.

Bye-laws as to
conveyance, load-
ing, &c., of ex-
plosives in case of
Government and
other railways.

20. The Governor may in case of the Government railways, and, in the case of other railways, the railway company or body or the person owning such railway may with the sanction of the Governor make bye-laws for regulating the conveyance, loading, and unloading of explosives on the railway and in particular for declaring and regulating all or any of the following matters in the case of such railway; that is to say:

- (1) Determining the notice to be given of the intention to send explosives for conveyance as merchandise on the railway, and
- (2) Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping explosives for conveyance and of giving notice by brands, labels, or otherwise of the nature of the package containing the explosives; and
- (3) Regulating the description and construction of carriages to be used in the conveyance of explosives; and
- (4) Prohibiting or subjecting to conditions and restrictions the conveyance of explosives with any articles or substances, or in passenger trains, carriages, ships, or boats; and
- (5) Fixing the places and times at which the explosive is to be loaded or unloaded and the quantity to be loaded or unloaded or conveyed at one time, and
- (6) Determining the precautions to be observed in conveying explosives and in loading and unloading the carriages used in such conveyance, and
- (7) Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

Such bye-laws, when confirmed by the Governor, shall apply to the railway, agents, and servants of the company making the same, and to the persons using such railway or the premises connected therewith and occupied by or under the control of such company.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the

Penalties for
breach of railway
bye-laws.

following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the explosive in respect of which, or being in the carriage or train of carriages in respect of which, the breach of bye-law has taken place.

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21. The Governor may from time to time make, and when made, rescind, alter, or add to, bye-laws (1) for regulating the conveyance, loading, and unloading of explosives in any case in which bye-laws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters; that is to say,

Bye-laws as to conveyance, loading, &c., explosives in other cases.

- (1) Regulating the description and construction of carriages to be used in the conveyance of explosives as merchandise, and
- (2) Prohibiting or subjecting to conditions and restrictions the conveyance of any explosive with any articles or substances, or in passenger carriages; and
- (3) Fixing the places and times at which the explosive is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage; and
- (4) Determining the precautions to be observed in conveying explosives, and in loading and unloading the carriages used in such conveyance, and the time during which the explosives may be kept during such conveyance, loading and unloading; and
- (5) Generally for protecting, whether by means similar to those above mentioned or not, persons or property from danger; and
- (6) Adapting, on good cause being shown, the bye-laws in force under this section to the circumstances of any particular locality.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the explosives in respect of which, or being in the carriage in respect of which, the breach of bye-law has taken place.

Penalties for breach of bye-laws made under this Section.

¹ See § 6, Ord. 7, 1834 (p. 182). Government Notice 1107 of 1893, as amended by Government Notices 1163 and 1164, 1897.

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Provisions relating
to importation of
explosives.

For the purpose of any mode of conveyance which is not a conveyance by land this section shall be construed as if ship and boat were included in the term carriage.

22. With respect to the importation from any place out of the Colony of any explosive (other than gunpowder, cartridges made with gunpowder, percussion caps, fireworks, and any explosive prescribed by the Governor by Proclamation), the following provisions shall have effect; that is to say,

- (a) The owner and master of any ship having on board any such explosive shall not permit the same to be unloaded and delivered to any person who does not hold a licence from the local authority to import such explosive.
- (b) Such licence shall be granted by the local authority to any person owning or in occupation of a magazine for the receipt of such explosives, whether duty paid or in bond.
- (c) The licence shall bind the person licensed to comply with the regulations of the local authority or authorities.
- (d) The holder of such licence may cause to be landed, transhipped, or delivered on arrival all explosives consigned to him in any vessel, provided he immediately give notice to the local authority of the quantities and descriptions of such explosives and the place where they are to be stored, transhipped, or delivered.
- (e) Should any case or package containing such explosives be found on the vessel's breaking bulk to be leaky or in any way damaged, such case or package shall not be landed until due authority be obtained by the master of the vessel from the harbour or other local authority.
- (f) In the event of such explosives arriving consigned to unlicensed persons, such person or persons shall not be allowed to receive, land, or in any way dispose of, the said explosives, until they shall have taken out a licence and in all respects complied and engaged to comply with the regulations of the local authority.
- (g) Customs officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article on the importation of which restrictions are for the time being imposed by the law relating to the Customs, and the ship containing the same, and the enactments for the time being in force relating to the Customs or any such article or ship shall apply accordingly.

SPECIALLY DANGEROUS EXPLOSIVES.

Prohibition of
specially dangerous
explosives by pro-
clamation.

23. Notwithstanding anything in this Act the Governor may, from time to time, by Proclamation to be published in the *Gazette*, prohibit, either absolutely, or except in pursuance of a licence of

the Colonial Secretary, or may subject to conditions or restrictions the manufacture, keeping, importation from any place out of the Colony, conveyance, and sale, or any of them, of any explosive which is of so dangerous a character, that, in the judgment of the Governor, it is expedient for the public safety to issue such Proclamation:

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Any explosive manufactured or kept in contravention of any such Proclamation shall be deemed to be manufactured or kept, as the case may be, in an unauthorised place.

Penalty for contravention of proclamation

Any explosive conveyed in contravention of any such Proclamation shall be deemed to be conveyed in contravention of a bye-law made under this Act with respect to the conveyance of explosives.

If any explosive is imported or sold in contravention of any such Proclamation,—

- (1) All or any part of such explosive may be forfeited; and
- (2) The owner or master of the ship in which it was imported shall be liable to a penalty not exceeding ten shillings for every pound of such explosive brought in the ship; and
- (3) The person to whom it was delivered and the person selling the same shall be liable to a penalty not exceeding ten shillings for every pound of such explosive delivered or sold in his possession.

Customs officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article prohibited to be imported by the law relating to the Customs, and the ship containing the same, and the enactments for the time being in force relating to the Customs, and any such article or ship shall apply accordingly.

Powers of Customs Officers.

PROVISIONS IN FAVOUR OF CERTAIN MANUFACTURERS AND DEALERS.

24. The occupier of a factory for any explosive who manufactures a new explosive or new form of explosive similar to the one specified in his licence, shall not be deemed to have manufactured the same in an unauthorised place if he manufacture the same on a small scale, and exclusively for the purpose of trial and not for sale, and he send notice of the same, as soon as he has manufactured it, to the Colonial Secretary, and if he observe the provisions of this Act, so far as they are applicable.

Provision in favour of makers of new explosives for experiment.

25. No gunmaker, gun or ammunition merchant or occupier of a magazine, or store, for any explosive shall be required by this Act to take out a factory licence by reason that in connexion with his magazine, or business premises or store, he fills for sale or otherwise any cartridge for small arms with the said explosive, so that he observe the following regulations; namely,

Provision in favour of gun-makers, &c.

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- (1) There shall not be in the room in which such filling is being carried on more than ten pounds of gunpowder, or the prescribed amount of any other explosive, except it is made up into safety cartridges; and
- (2) Any work unconnected with the making of the cartridges being of a dangerous nature shall not be carried on in the room while such filling is being carried on; and
- (3) There shall not be in the room while such filling is being carried on any fire nor any artificial light, except a light of such construction, position, or character as not to cause any danger of fire or explosion; and
- (4) In the case of a magazine or store, the room in which the filling is carried on shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified in the case of a magazine by the licence, and in the case of a store by any Proclamation relating to stores; and
- (5) The occupier shall give notice in the case of a magazine to the Colonial Secretary, and in the case of a store or business premises to the local authority that he intends to carry on such filling of cartridges as is allowed by this section.

The regulations in this section and any conditions so made by the Colonial Secretary as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine, store, and business premises respectively, and the breach of them shall be punished accordingly.

Provision in favour
of owners of mines,
quarries, &c.

26. The occupier of any magazine or store for any explosive shall not be required by this Act to take out a factory licence by reason that, in connection with such magazine or store, he, by filling cartridges, making charges, drying, shifting, fitting, or otherwise, adapts or prepares the said explosive for use exclusively in his mine or quarry or in some excavation or work carried on by him or under his control, so that he observes the following regulations; namely,

- (1) There shall not be in the workshop in which such adaptation or preparation is carried on more than one hundred pounds of gunpowder, or the prescribed amount of any other explosive; and
- (2) Any work unconnected with such adaptation or preparation shall not be carried on in the said workshop while such adaptation or preparation is being carried on; and
- (3) The said workshop shall be detached from the magazine or store, but in the immediate neighbourhood thereof.
- (4) The occupier shall give notice in the case of a magazine to the Colonial Secretary, and in the case of a store to the local authority, that he intends to carry on such adaptation or preparation as is allowed by this section.

27. A firework factory shall not be deemed to be a factory for explosives for the purposes of this Act if there is not upon the same factory at the same time—

- (a) More than one hundred pounds of any explosive other than manufactured fireworks and coloured fires and stars; or
- (b) More than five hundred pounds of manufactured fireworks, either finished or partly finished; or
- (c) More than twenty-five pounds of coloured fires or stars not made up into manufactured fireworks.

The occupier of such firework factory or of any place for storing or keeping fireworks not exceeding the above limit, shall not be subject to this Act.

28. The Civil Commissioner of the division or any officer authorised by him shall have power to make such examination and enquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose,—

- (1) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work in such factory, magazine, or store, and may make inquiries as to the observance of this Act and all matters and things relating to the safety of the public or of the persons employed in or about such factory, magazine, or store; and
- (2) He may enter, inspect, and examine any premises and every part thereof, in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day; and
- (3) He may require the occupier of any factory, magazine, store, or premises which he is entitled, under this section, to enter, or a person employed by such occupier therein, to give him samples of any explosives or ingredients of an explosive therein, or of any substance therein, the keeping of which is restricted or regulated by this Act, or of any substance therein which he believes to be an explosive, or such ingredients or substance.

The occupier of every such factory, magazine, store, and premises, his agents and servants, shall furnish the means required for every such entry, inspection, examination, and enquiry.

Any person who fails to permit such Civil Commissioner or officer to enter, inspect, examine, or make enquiries in pursuance of this section, or to comply with any requisition in pursuance of this section, or who in any manner obstructs such Civil Commissioner or officer in the execution of his duties under this Act, shall be liable to a penalty not exceeding one hundred pounds for each offence.

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Provision in favour of small firework manufacturers.

Powers of Civil Commissioner or other officer regarding inspection. &c.

Penalty for preventing exercise of powers.

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LOCAL SUPERVISION.

DEFINITION AND POWERS OF LOCAL AUTHORITY.

Definition of local authority.

29. The local authority, for the purposes of this Act, shall be—
- (1) In any municipality or borough the Town Council or Commissioners;
 - (2) In any village under management, the Board of Management;
 - (3) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority to the exclusion of any other local authority; and
 - (4) In any place in which there is no local authority as before in this section defined, the Divisional Council.

GENERAL POWER OF SEARCH.

Search for explosive when in any place in contravention of this Act, or when an offence is being committed with respect to it.

30. Where any of the following officers,—namely, any justice of the peace, field-cornet, or any constable or any officer of the local authority, if such constable or officer is specially authorised either (a) by a warrant of a justice of the peace (which warrant such justice may grant upon reasonable ground being assigned on oath), or (b) (where it appears to a commissioner or other officer of police of equal or superior rank, that the case is one of emergency, and that the delay in obtaining a warrant would be likely to endanger life), by a written order from such commissioner or officer—has reasonable cause to believe that any offence has been or is being committed with respect to an explosive in any place (whether a building or not, or a carriage, boat, or ship), or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place, such officer may enter at any time, and if needs be by force, and as well on Sunday as on other days, the said place, and every part thereof, and examine the same, and search for explosives therein, and take samples of any explosive and ingredient of an explosive therein, and any substance reasonably supposed to be an explosive, or such ingredient which may be found therein.

Penalty for obstructing searching officer.

Any person who, by himself or by others, fails to admit into any place occupied by or under the control of such person any officer demanding to enter in pursuance of this section, or in any way obstructs such officer in the execution of his duty under this section, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place.

Where a constable or officer of the local authority specially authorised by written authority other than a warrant of a justice of the peace, enters and searches as above provided, a special

report in writing of every act done by such constable or officer in pursuance of that authority, and of the grounds on which it is done, shall be forthwith sent by the person by whom or under whose authority it was done to the Civil Commissioner of the division.

31. Where any of the following officers, namely, any justice of the peace, field-cornet, or any constable, or any officer of the local authority, has reasonable cause to believe that any explosive or ingredient of an explosive or substance found by him is liable to be forfeited under this Act, he may seize and detain the same until some court has determined whether the same is or is not so liable to be forfeited, and with respect thereto the following provisions shall have effect:

Seizure and detention of explosives liable to forfeiture.

- (1) The officer seizing may either require the occupier of the place in which it was seized (whether a building or not or a carriage, boat, or ship) to detain the same in such place or in any place under the control of such occupier, or may remove it in such manner and to such place as will in his opinion least endanger the public safety, and there detain it, and may, where the matter appears to him to be urgent and fraught with serious public danger, and he is authorised by an order from the Colonial Secretary, cause the same to be destroyed or otherwise rendered harmless; but before destroying or rendering harmless the same he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive, or having the same under his control at the time of the seizure; and any such occupier who, by himself or by others, fails to keep the same when he is required in pursuance of this section to detain it, and any such occupier or other person who, except with the authority of the officer seizing the same, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with the same while so detained, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place:
- (2) The proceedings before a court for determining whether the same is or is not liable to forfeiture shall be commenced as soon as practicable after the seizure; and
- (3) The receptacles containing the same may be seized, detained, and removed in like manner as the contents thereof; and
- (4) The officer seizing the same may use for the purposes of the removal and detention thereof any ship, boat, or carriage in which the same was seized, and any tug,

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tender, engine, tackle, beasts, and accoutrements, belonging to or drawing or provided for drawing such ship, boat, or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined in case of dispute, by the Civil Commissioner, and to be recovered in like manner as penalties under this Act; and

- (5) The same shall, so far as practicable, be kept and conveyed in accordance with this Act, and with all due precaution to prevent accident, but the person seizing, removing, detaining, keeping, or conveying the same shall not be liable to any penalty, punishment, or forfeiture under this or any other Act, or to any damages, for keeping or conveying the same, so that he use all such due precautions as aforesaid; and
- (6) The officer seizing the same, or dealing with the same in pursuance of this section, shall not be liable to damages or otherwise in respect of such seizure or dealing, or any act incidental to or consequential thereon, unless it is proved that he made such seizure without reasonable cause, or that he caused damage to the article seized by some wilful neglect or default.

Inspection of wharf carriage, boat, &c., with explosives *in transitu*.

32. Any of the following officers, namely, any justice of the peace, field-cornet, or any officer of police, and any officer appointed by the local authority, may, for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading, and importation of an explosive are complied with, enter, inspect, and examine at any time, and as well on Sundays as on other days the wharf, carriage, ship, or boat of any carrier or other person who conveys goods for hire or of the occupier of any factory, magazine, or store, or of the importer of any explosive, on or in which wharf, carriage, ship, or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier, or importer.

Seizure for offence against this Act.

Any such officer, if he find any offence being committed under this Act in any such wharf, carriage, ship, or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive, as if it were liable to forfeiture.

Special power of officer in cases of emergency.

Any officer above mentioned in this section, who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading, or unloading any explosive, and that the case is one of emergency, and that the delay in obtaining

a warrant day be likely to endanger life, may stop, and enter, inspect, and examine, such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger, in like manner as if such explosive were liable to forfeiture.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorised by a search warrant, and any person failing to admit or obstructing such officer shall be liable to the same penalty.

LEGAL PROCEEDINGS.

33. Where any offence under this Act for which the occupier of any factory, magazine, store, or registered premises is liable to a penalty or forfeiture has in fact been committed by some other person, such other person shall be liable to a penalty not exceeding twenty pounds.

Exemption of occupier from penalty upon proof of another being real offender.

Where such occupier is charged with an offence so committed by some other person, the occupier shall be exempt from any penalty and forfeiture upon proving that he had supplied proper means and issued proper orders for the observance and used due diligence to enforce the observance of this Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender be alive, that he has taken all practicable means in his power to prosecute such offender to conviction.

Where any officer of the law or an officer of the local authority, is satisfied, before instituting a proceeding for any offence under this Act against an occupier, that such occupier, if such proceeding were instituted against him, would under the foregoing provisions of this section, upon taking all practicable means in his power to prosecute the actual offender to conviction, be exempt from any penalty and forfeiture, and the occupier gives all facilities in his power proceeding against and convicting the person whom the inspector, officer, or local authority believes actually to have committed the offence, the inspector, officer or local authority shall proceed against that person in the first instance without proceeding against the occupier.

Where any offence under this Act for which any warehouseman, carrier, occupier of a wharf or dock, or owner or master of any ship, boat, or carriage, is liable to a penalty or forfeiture, has in fact been committed by some other person, this section shall apply in like manner as if the warehouseman, carrier, occupier of a wharf or dock, owner, or master were such an occupier as above in this section mentioned.

34. Where a carrier or owner or master of a ship or boat is prevented from complying with this Act, by the wilful act, neglect, or default of the consignor or consignee of the explosive, or other person or by the improper refusal of the consignee or

Exemption of carrier and owner and master of ship where other person is in fault.

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other person to accept delivery of the explosive, such consignor, consignee, or other person who is guilty of such wilful act, neglect, default, or refusal shall be liable to the same penalty to which the carrier, owner, or master is liable for a breach of this Act, and his conviction shall exempt the carrier, owner, or master from any penalty or forfeiture under this Act.

Supplemental provisions as to forfeiture of explosive.

35. Where a court before whom a person is convicted of an offence against this Act has power to forfeit any explosive owned by or found in the possession or under the control of such person, the court may, if it think it just and expedient, in lieu of forfeiting such explosive, impose upon such person, in addition to any other penalty or punishment, a penalty not exceeding such sum as appears to the Court to be the value of the explosive so liable to be forfeited.

Where any explosive, or ingredient of an explosive, is alleged to be liable under this Act to be forfeited, any indictment, information, or complaint may be laid against the owner of such explosive or ingredient, for the purpose only of enforcing such forfeiture, and where the owner is unknown, or cannot be found, a court may cause a notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such explosive will be forfeited, and at such time and place the court, after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive or ingredient to be forfeited.

Definition of harbour and tidal waters.

36. For all the purposes of this Act—

- (1) Any harbour, tidal water, or inland water which runs between or abuts on or forms the boundary of the jurisdiction of two or more divisions shall be deemed to be wholly within the jurisdiction of each of such courts; and
- (2) Any tidal water not included in the foregoing descriptions, and within the territorial jurisdiction of and adjacent to or surrounding any part of the shore of the Colony, and any pier, jetty, mole, or work extending into the same, shall be deemed to form part of the shore to which such water or part of the sea is adjacent, or which it surrounds.

Prosecution of offences.

37. Every offence under this Act may be prosecuted and every penalty under this Act may be recovered, and all explosives and ingredients liable to be forfeited under this Act may be forfeited either on indictment or before a Court of Resident Magistrate.

Provided that the penalty imposed by a Court of Resident Magistrate shall not exceed one hundred pounds exclusive of costs, and exclusive of any forfeiture or penalty in lieu of forfeiture, and the term of imprisonment imposed by any such court shall not exceed one month.

Ship may be seized by distress.

38. Where the owner or master of a ship or boat is adjudged to pay a penalty for an offence committed with or in relation to

such ship or boat, the court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship or boat and her tackle.

39. Any explosive or ingredient forfeited in pursuance of this Act may be sold, destroyed, or otherwise disposed of, in such manner as the court declaring the forfeiture or the Colonial Secretary may direct.

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Provisions re-
garding disposal of
forfeited explosives

The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

The provisions of this Act with respect to an explosive, or ingredient of an explosive, seized in pursuance of this Act, and to the officer seizing, removing, detaining, keeping, or conveying, or otherwise dealing with the same, shall apply to any explosive and ingredient declared by any court to be forfeited, and to the officer removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of the same.

The court declaring the forfeiture, or the Colonial Secretary directing the sale or other disposal of any forfeited explosive or ingredient, and the receptacles thereof, may require the owner of such explosive or ingredient to permit the use of any ship, boat, or carriage, containing such explosive or ingredient for the purpose of such sale or disposal, upon payment of a reasonable compensation for the same, to be determined in case of dispute by the Civil Commissioner of the division; and where the explosive or ingredient is directed to be destroyed, the owner and the person having possession of such explosive or ingredient, and the owner and master of the ship, boat, or carriage containing the same, or some or one of them, shall destroy the same accordingly, and if the court or Colonial Secretary so order, the ship, boat, or carriage may be detained until the same is so destroyed; and if the Colonial Secretary is satisfied that default has been made in complying with any such direction by him or by a court, and that the detention of the ship, boat, or carriage will not secure the safety of the public, and that it is impracticable, having regard to the safety of the public or of the persons employed in such destruction, to effect the same without using such ship, boat, or carriage, or otherwise dealing with such ship, boat, or carriage, in like manner as if it were a receptacle for an explosive forfeited under this Act, the Colonial Secretary may direct such ship, boat, and carriage, or any of them, to be, and the same may accordingly be, so used or dealt with.

EXEMPTIONS AND SAVINGS.

40. This Act shall not apply—

- (1) To any factory, magazine, store, premises, wharf, place, or explosive under the control of a department of the

What factories,
&c., exempt from
provisions of this
Act.

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Government or otherwise held for the service of the Crown, or to the manufacture, keeping, or importation of such explosive; or

- (2) To any of Her Majesty's ships, boats, or carriages; or
- (3) To the keeping or making up, or adapting for use of any explosive issued by or by the authority of, the Governor for the use of any volunteer corps or administrative regiment; or
- (4) To the conveyance of any explosive under the control of the Governor, or to the conveyance of any explosive otherwise held for the service of the Crown:

Provided that every person who enters without permission or otherwise trespasses upon any fortification, battery, factory, magazine, or storehouse or the land immediately adjoining thereto in the occupation of the Crown or a department of the Government, or if it adjoin such a storehouse in the occupation of the officer or person in whom such storehouse is vested, and any person found committing any act tending to cause explosion or fire in or about such fortification, battery, factory, magazine, or storehouse, shall be liable to the like penalty, and may be removed and arrested in like manner as if this section had not been enacted and this Act applied to such fortification, battery, factory, magazine, or storehouse, as above in this section mentioned.

41. This Act shall not apply

- (1) To the keeping of any rockets for use in any apparatus for saving life; or
- (2) To the keeping of any explosive kept for the purpose of signalling at or near a station on the sea coast.

42. Nothing in this Act shall render liable to any penalty or forfeiture the owner or master of any ship or boat, or any carrier or warehouseman, or the person having charge of any carriage, for any act done in breach of this Act, if he prove that by reason of stress of weather, inevitable accident, or other emergency, the doing of such act was, under the circumstances, necessary and proper.

43. This Act shall not, save as is herein expressly provided, exempt any person from any action or suit in respect of any nuisance, tort, or otherwise, which might, but for the provisions of this Act, have been brought against him.

44. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament.

DEFINITIONS.

45. The Governor may, by Proclamation declare that any substance which appears to him to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall

This Act not to apply to keeping of rockets for certain purposes.

Nor to ship-master, &c., in certain cases.

This Act not to exempt from liability to civil action.

Nor to derogate from powers otherwise conferred.

Governor may declare substance to be an explosive under this Act.

be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the Proclamation) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

46. Any person who carries on any of the following processes, namely, the process of dividing into its component parts or otherwise breaking up or unmaking any explosive, or making fit for use any damaged explosive, or the process of re-making, altering, or repairing any explosive, shall be subject to the provisions of this Act, as if he manufactured an explosive, and the expression "manufacture" shall in this Act be construed accordingly.

No. 5—1887.

Who to be deemed
a manufacturer of
explosives.

No. 5—1887.]

[July 8, 1887.]

ACT

To Extend the Powers given to Harbour Boards and others under the "Ports and Harbour Regulations Act, 1877."⁽¹⁾

WHEREAS it is desirable that powers should be given to make regulations for the due and proper Navigation of Tidal Rivers and Bar Harbours, and to inflict penalties for the breach of such regulations: 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 powers given by the "Ports and Harbour Regulations Act, (1) 1877," it shall be lawful for the commissioners of any Harbour Board, or where no such body exists for the Governor, from time to time to make all such regulations as may seem fit and proper for the due and proper management of the navigation of tidal rivers, bar harbours, and the entrance to such harbours, and for the preservation from injury of any works, buoys, dredgers, tugs, or other property connected therewith, and from time to time to alter and amend any such regulations: Provided that no such regulations made by any such commissioners as aforesaid shall be of any force unless and until the same shall be approved of by the Governor: And provided also that before such regulations shall be submitted to the Governor for confirmation the same shall be published in the *Gazette* for six weeks, so as to enable the public to submit to the Governor any objection to such regulations.

Harbour Boards
or Governor to
make regulations
for navigation of
tidal rivers and bar
harbours.

2. It shall be lawful for such regulations to provide that persons contravening any of the same may on conviction be sentenced

Penalties for con-
travening such re-
gulations.

¹ No. 2 (p. 1435). See also Act 36, 1896 (p. 3670) in regard to ports of Cape Town, Port Elizabeth and East London.

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by the Resident Magistrate of the district to pay a fine not exceeding ten pounds 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 levied shall be paid into the Public Treasury.

Persons injuring harbour, &c., property to be liable to civil action for damage done.

3. Every person convicted under the provisions of the last preceding section shall, in addition to the penalties he may thereby incur, be further liable to pay and make good the damage he has caused to any of the works or property mentioned in the first section of this Act, and the amount of such damage may be sued for in any competent court by the commissioners of the Harbour Board, or where no such body exists, by the Commissioner of Crown Lands and Public Works.

Regulations under this Act to be published in *Gazette*.

4. All regulations which shall be made as in the first section of this Act provided, shall be published in the *Gazette*, and shall thereafter have the force of the law.

Short title.

5. This Act may be cited as the "Ports and Harbours Navigation Regulations Act, 1887."

No. 6—1887.]

[July 8, 1887.]

ACT

To provide for the Taxation of Costs relating to Private Bills in Parliament.

Preamble.

WHEREAS it is expedient to make provision for taxing the costs and expenses to be charged by Parliamentary Agents and others in respect of Private Bills in Parliament, and of preparing, bringing in and carrying through, or in opposing the same in the Legislative Council and the House of Assembly, or in either of them: 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.

1. For the purpose of this Act the following words and expressions shall, unless it be otherwise specially provided, have the following meanings assigned to them—that is to say:—

- (a) The expression "Private Bill" shall mean and include the several Bills to which the Standing Orders of the Legislative Council and the House of Assembly relating to Private Bills are respectively applicable.
- (b) The expression "Taxing Officer" shall mean the Taxing officer of the Legislative Council or of the House of Assembly, according as the costs to be taxed by such officer relate to proceedings had or taken in the Legislative Council or the House of Assembly.
- (c) The word "Committee" shall mean a Committee of the Legislative Council or of the House of Assembly,

according as the proceedings in respect of which costs may be incurred be had or taken in the Legislative Council or the House of Assembly.

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- (d) The expression "the Promoters" shall mean and include all persons whose names appear in any Petition or Bill as promoting the same.
- (e) The expression "the Petitioner" shall mean any person who may present a petition against a Private Bill or against any provision or statement therein.

2. The President of the Legislative Council shall appoint a fit person to be the Taxing Officer of the Legislative Council, who shall hold his office during the pleasure of the President and execute the duties of his office conformably with such directions as he may from time to time receive from the President.

Taxing Officer
for Legislative
Council.

3. The Speaker of the House of Assembly shall appoint a fit person to be the Taxing Officer of the House of Assembly, who shall hold his office during the pleasure of the Speaker, and execute the duties of his office conformably with such directions as he may from time to time receive from the Speaker.

Taxing Officer for
House of Assembly.

4. The President and the Speaker may from time to time prepare and alter tables of such charges as it shall appear to them respectively that Parliamentary Agents and others may justly make with reference to the several matters comprised therein, and such charges shall be the utmost charges to be allowed upon the taxation of any bill of costs in respect of the several matters therein specified.

Preparation of
list of charges.

5. When the Committee on Private Bill shall decide that the preamble is not proved, or shall insert in such Bill any provision for the protection of any petitioner, or strike out or alter any provision of such Bill for the protection of such petitioner, and further unanimously report, with respect to any or all of the petitioners against the Bill, that such petitioner or petitioners has or have been unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the Bill, such petitioner or petitioners shall be entitled to recover from the promoters of such Bill his or their costs in relation thereto, or such portion thereof as the Committee may think fit, such costs to be taxed by the Taxing Officer, or the Committee may award such a sum for costs as they shall think fit, with the consent of the parties affected.

When Committee
report "Preamble
not proved," oppo-
nents to be entitled
to recover costs.

6. When the Committee on a Private Bill shall decide that the preamble is proved, and further unanimously report that the promoters of the Bill have been vexatiously subjected to expense in the promotion of the said Bill by the opposition of any petitioner or petitioners against the same, then the promoters shall be entitled to recover from the petitioners, or such of them as the Committee shall think fit, such portion of their costs of the promotion of the Bill as the Committee may think fit, such costs to be

When Committee
report unanimo-
usly "oppo-sition un-
founded," promo-
ters to be entitled
to recover costs.

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taxed by the Taxing Officer, or such a sum for costs as the Committee shall name, with the consent of the parties affected; and in their Report to the House the Committee shall state what portion of the costs, or what sum for costs, they shall so think fit to award, together with the names of the parties liable to pay the same, and the names of the parties entitled to receive the same: Provided always that no landowner who *bonâ fide* at his own sole risk and charge opposes a Bill which proposes to take any portion of the said petitioner's property for the purposes of the Bill, shall be liable to any costs in respect of his opposition to such Bill.

Taxing officer to tax bills on application of the party chargeable or others.

7. If any person on whom any demand shall be made by any parliamentary agent or other person for any costs, charges or expenses in respect of any proceedings in the Legislative Council or the House of Assembly, or both, relating to any Private Bill and the preparing or bringing the same in or carrying the same through, or in opposing the same, or if any parliamentary agent or other person who feels aggrieved by the non-payment of any such costs, charges, or expenses, makes application to the taxing officer for the taxation of such costs, charges or expenses, the said taxing officer on receiving a due copy of the bill of such costs, charges, and expenses which has been duly delivered to the party charged therewith, shall in due course proceed to tax and allow the same.

If either party neglects to attend taxation to be made *ex parte*.

8. If either party to such taxation, having due notice thereof, neglects to attend such taxation, the taxing officer may proceed to tax and settle such bill of costs *ex parte*; and if pending such taxation any action or other proceeding is commenced for the recovery of the amount of such costs, the court or judge before whom the same is brought shall stay all proceedings thereon, until the amount thereof has been duly certified by the President of the Legislative Council or the Speaker of the House of Assembly, as hereinafter provided.

Taxing officer to report to President or Speaker.

9. In all cases of taxation under this Act, the taxing officer shall report his taxation to the President or the Speaker, as the case may be, and in such report shall state the amount fairly chargeable in respect of such costs, charges and expenses, together with the amount of costs and fees payable in respect of such taxation.

President or Speaker may require further report if either party object to taxation.

10. If either party to the taxation, within twenty-one days after such report has been made, shall deposit with the President or Speaker, as the case may be, a petition complaining of such report or any part thereof, the President or Speaker may, if he think fit, refer the same together with such report to the taxing officer and may require a further report in relation thereto, and on receiving such further report may direct the taxing officer to amend his first report: And if no such petition shall be deposited, or as soon as the matter complained of shall

have been finally adjusted, the President or Speaker shall, upon application made to him deliver to any party concerned therein a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs and charges, and as to the amount due on the same and on the costs and fees payable for such taxation in all proceedings at law, and such amounts shall be recoverable in any competent court upon the production of such certificate.

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11. For the purpose of any such taxation as is provided for in this Act, the taxing officer may examine upon oath any party to such taxation, and any witnesses in relation thereto, and may receive affidavits sworn before himself or any justice of the peace relative to such costs, charges or expenses, and any person who on such examination upon oath or in any such affidavit shall wilfully or corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Taxing officer may examine parties and others on oath.

12. The taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation.

Taxing officer may call for books and papers, &c.

13. It shall be lawful for the taxing officer to demand and receive for any taxation such fees as the President of the Legislative Council and the Speaker of the House of Assembly respectively, may from time to time authorise and direct, and to award the costs of taxation against either party to such taxation, or in such proportion against either party as he may think fit, and all such fees as aforesaid shall be paid by revenue stamps, to be affixed on such bills of costs, and such stamps shall be duly cancelled by such taxing officer.

What fees to be taken by taxing officer.

14. This Act may be cited as the "Parliamentary Costs Taxation Act, 1887."

Short title.

No. 7—1887.]

[July 15, 1887.

ACT

To prevent the Manufacture or Issue of Counterfeit Postage Stamps of the United Kingdom of Great Britain and Ireland or of any Foreign Country or of any British Colony or Possession other than the Colony of the Cape of Good Hope.

WHEREAS it is expedient to prevent the manufacture or issue within this Colony of Counterfeit Postage Stamps of the United Kingdom of Great Britain and Ireland or of any Foreign Country or of any British Colony or Possession other than this Colony (in regard to which provision already exists): Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent

Preamble.

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

Offences and penalties.

1. If any person shall

- (1) Forge, alter or imitate, or assist in forging, altering or imitating any postage stamp of the United Kingdom of Great Britain and Ireland or of any Foreign Country or of any British Colony or Possession other than this Colony, or shall use, offer, utter or dispose of any forgery or imitation of any such stamp, knowing it to be forged or with a fraudulent intent; or
- (2) Engrave or in any wise make upon any plate or material whatever any such postage stamp; or
- (3) 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, figures, marks, lines or devices peculiar to paper provided for or used for any such postage stamp; or make or procure 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 paper in the substance of which shall appear visible any words, letters, figures, marks, lines or devices peculiar to paper provided for any such postage stamp, and intended to imitate or pass for the same;

he shall on conviction be liable to imprisonment, with or without hard labour, for any period not exceeding one year.

Interpretation clause.

2. For the purposes of this Act the words "postage stamp" shall be taken to mean any stamp for denoting any rate of postage of the said United Kingdom or of any of Her Majesty's Colonies or Possessions other than this Colony, or of any Foreign Country.

Law regarding Postage Stamps of this Colony not affected.

3. Nothing herein contained shall be taken to affect the law of this Colony regarding postage stamps of this Colony or any crime or offence relating thereto.

Short title.

4. This Act may be cited as the "British and Foreign Post Offices Protection Act, 1887."

No. 8—1887.]

[July 22, 1887.]

Act to Transfer and Convey the Rights, Powers and Privileges conferred and the Duties and Obligations imposed on "The Green Point and Sea Point Railway Company (Limited)," by Act No. 31 of 1884 to "The Cape Town and Suburban Railway Company (Limited)," and to amend certain portion of the said Act, and to provide for a necessary deviation in the direction of the Line of the said Railway.

[Repealed by Act 23, 1889.]

No. 9—1887.]

[July 22, 1887.]

ACT

To Reduce the Excise Duty on Spirits.

WHEREAS it is expedient to reduce the Excise Duty now payable on spirits: Be it enacted by 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 "Excise Spirit Duty Act, 1884," and the "Excise Spirit Duty Amendment Act, 1885," are hereby repealed.

Acts 15 of 1884 and 20 of 1885 repealed.

2. From and after the taking effect of this Act there shall be payable to the Colonial Revenue upon every gallon of spirits distilled or manufactured from materials other than wine, grape juice, grapes, husks of grapes, or raisins, the produce of this Colony, an excise duty at the rate of four shillings ⁽¹⁾ per gallon, if the spirits do not exceed the strength of proof, with a proportionate increase in case the spirit be of greater strength: Provided that upon every gallon of spirits which having been distilled or manufactured within the Colony, shall be in an approved warehouse, and shall be on and after the passing of this Act taken out for consumption, the above mentioned duties shall be respectively charged on every gallon of the strength of proof, and so in proportion for any greater or less degree of strength, or for any greater or less quantity.

Duty on spirits distilled from other materials than wine, &c.

3. This Act may be cited as "The Excise Duty Act, 1887," and shall be read as one with the "Excise Spirits Act, 1884."

Short title.

No. 10—1887.]

[July 22, 1887.]

ACT

To authorise the Municipality of Aliwal North to raise a Sum of Money not exceeding £2,500 for the Repayment of certain Advances made by the Standard Bank of South Africa, and for the completion of an Irrigation Furrow to the Mineral Springs.

WHEREAS the Council of the Municipality of Aliwal North duly elected under the provisions of Act No. 45 of 1882, and acting under the provisions of that Act, did from time to time borrow and take up from the Standard Bank of South Africa certain sums of money amounting in the whole to Seventeen Hundred and Fifty Pounds Sterling, which sum was applied partly to the suppression of Small Pox and partly to the construction of Public Works and other Municipal purposes in the interests generally of the said Municipality.

Preamble.

And whereas it has become necessary that the said sum of £1,750 or so much thereof as may be due to the said Bank shall

¹ Printed as amended by Act 5, 1898 (p. 3851). By Act 36, 1904 (p. 4765), the duty has been raised to ten shillings per gallon.

No. 10—1887.

be repaid, and whereas the said Council is further desirous of completing the construction of the Main Irrigation Furrow from the Township of Aliwal North to the Mineral Springs within the limits of the said Municipality, and that in order to obtain funds for the repayment of the said sum and for the completion of the said Irrigation Furrow, the Council elected or hereafter to be elected under the provisions of the aforesaid Act should be authorised and empowered to raise by debentures on the security of the said Municipality a sum not exceeding £2,500 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 empowered to raise a loan not exceeding £2,500.

1. It shall be lawful for the Council of the Municipality of Aliwal North now or hereafter duly elected under the provisions of the Act No. 45 of 1882, or any other Act under which the said Municipality may hereafter be constituted, 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 companies, such sum not exceeding in all the sums of Two Thousand and Five Hundred Pounds Sterling as shall be necessary for repaying the amount advanced as aforesaid by the Standard Bank of South Africa Limited, and for the other purposes aforesaid. Provided the sum so borrowed shall be applied exclusively first to the repayment of the sum advanced by the Standard Bank of South Africa aforesaid and the balance after such repayment to be applied to the continuation and completion of the Main Irrigation Furrow from the Township of Aliwal North to the Mineral Springs within the limits of the said Municipality, and for the purpose of securing the principal and interest of the sum so borrowed to mortgage or charge by debentures or otherwise 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 rates of the said Municipality. Provided it shall be lawful to apply to the payment of the interest or principal or to both of the said debt, any funds or moneys coming to the said Council from any source whatsoever and not specially appropriated or required for any other object.

How such loan is to be applied.

2. Any loan obtained by the said Council for the purposes of the 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.

A loan under this Act to be a just debt under Public Bodies Debts Act, 1867.

3. The necessary costs, charges and expenses incurred in obtaining the passing of this Act shall be paid out of the ordinary revenue of the Council.

How costs of this Act to be paid.

4. This Act may be cited as “The Aliwal North Municipality Loan Act, 1887.”

Short title.

No. 11—1887.]

[July 26, 1887.

No. 14—1887.

Act to amend the "Divisional Councils Act, 1865."
[Superseded by Act 40, 1889 § 36 sub §§ *c* and *d*.]

No. 12—1887.]

[July 26, 1887.

Act to Alter and Amend a certain Section in the "Dog Tax Amendment Act, 1885."
[Repealed by Act 40, 1889.]

No. 13—1887.]

[July 26, 1887.

Act to Continue for another Year the Fourth Section of "The Vineyards Protection Act Amendment Act, 1886."
[Lapsed.]

No. 14—1887.]

[July 26, 1887.

ACT (1)

To make better Provision for the Registration of persons entitled to the Electoral Franchise under the Constitution Ordinance.

WHEREAS it is desirable to make better provision than at present exists for the proper and complete registration of persons entitled to vote at the election of members of the Legislative Council and the House of Assembly, and for the exclusion of unqualified persons from the lists of registered voters: 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. This Act shall take effect from the first day of September 1887.

Taking effect of the Act.

2. So much of every Act, Ordinance or other statutory enactment having the force of law, which shall be in conflict with the provisions of this Act, is hereby repealed.

Repeal of existing conflicting laws.

3. From the day of the taking effect of this Act, all existing rolls or lists of persons qualified to vote at the election of members of either House of the Legislature (except in the Electoral Division of (2) Cape Town), shall cease to have any effect and be null and void.

Existing lists of voters to be abolished.

4. [Repealed by Act 48, 1899, §§ 5-9 of latter Act being substituted.]

¹ Amended by Acts 9, 1892 (p. 2972); 19, 1898 (p. 3909); 48, 1899 (p. 4232); 5, 1902 (p. 4358).

See also § 28, Act 25, 1894 (p. 3379), as to Voters' lists for Glen Grey. The provisions of this Act as amended by the Franchise and Ballot Act (p. 2972), applied to the Electoral Division of Cape Town by § 1, Act 48, 1899 (p. 4232).

² As to Cape Town, which includes Robben Island, see § 1 and 8, Act 48, 1899 (p. 4234).

No. 14—1887.

5. [Repealed by Act 48, 1899, §§ 5-9 of latter Act being substituted Page 4233.]

Such lists to be posted in public place.

6. Upon the completion of such lists, within the time to be named by the Governor in the notice for that purpose, it shall be further the duty of the Registering Officer to post and affix the same on the door of, or in some conspicuous place near to his office or dwelling-house or in some other public place or places within the field-cornetcy for which such list is framed there to remain for general information during not less than five weeks: (1) And if any person shall during such space of five weeks wilfully tear down, cover over, deface or obliterate, either wholly or in part, any such list or any such other list or notice as may be hereinafter mentioned such person shall upon conviction be liable to be imprisoned with or without hard labour for any period not less than one month and not exceeding three months.

Penalty for tearing down, &c., any such list.

7-12. [Repealed by § 8 Act 9, 1892, and §§ 10-27 of that Act substituted. See § 9.]

Costs may be awarded.

13. It shall be lawful for the Civil Commissioner, 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 Civil Commissioner 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 Resident Magistrate of the district.

List settled by the Civil Commissioner to be final.

14. As soon as the Civil Commissioner aforesaid shall, in manner aforesaid, have revised and amended the voters' list aforesaid, he shall cause to be made out the said list as so revised and amended in the form in Schedule B to this Act, and such list

¹ Printed as amended by § 10, Act 9, 1892 (p. 2974). See also that section for form of notice.

shall be and remain the list of registered voters for such Electoral Division, until a fresh list shall have been framed in manner as hereinafter provided.

No. 14—1887.

15. Should any Electoral Division comprise within it more Fiscal Divisions than one, then the duties hereinbefore mentioned shall be performed by the Civil Commissioner of every such Fiscal Division, save and except that every such lastmentioned Civil Commissioner shall, after having revised and amended the voters' list for his division in the manner aforesaid, transmit to the Civil Commissioner of every Electoral Division of which such Fiscal Division or any portion of such Fiscal Division forms part, a list, certified under his hand to be correct, of all persons in such Fiscal Division registered as voters for such Electoral Division; and the Civil Commissioner of every such Electoral Division shall thereupon proceed to frame the list for such Electoral Division, in accordance with the last preceding section.

How if electoral division comprises more than one fiscal division.

16. *The provisions of this Act shall be acted upon and carried into effect in every second year from and after the year one thousand eight hundred and eighty-seven (2) in manner and form as hereinbefore described in regard to that year.*

17. No person shall be entitled to be registered as a voter by reason of his sharing in any communal (1) or tribal occupation of lands or buildings unless he shall be in actual occupation for the period required by the eighth section of the Constitution Ordinance, of a house or other building, whether situated or not situated on land held on tribal or communal tenure, which house or building separately or together with land occupied therewith held upon other than tribal or communal tenure shall be of the value of seventy (3) five pounds sterling.

Communal or tribal occupation of land not to qualify for registration.

18. This Act may be cited as the "Parliamentary Voters' Registration Act, 1887."

Short title.

¹ See § 26, Act 25, 1894 (p. 3379).

² Repealed by § 5, Act 48, 1899 (p. 4233). See also § 4, Act 5, 1902 (p. 4358).

³ Printed as amended by Act 9, 1892, § 4, sub-§ (c) (p. 2973).

No. 14 · 1887.

Schedule A.

SCHEDULE A.

ELECTORAL LIST.

List of persons appearing to be qualified to vote at the Election of Members of the Legislative Council and House of Assembly in the Field-cornetcy of _____ in the Division of _____

A.B.,
Registering Officer.

Dated this _____ day of _____

Christian Name (if any) and Surname in full.	Trade, Profession, or other Description.	Qualification.	Situation of Property in respect of which qualification exists.
A.B.	Farmer	Householder	
C.D.	Storekeeper	Householder	
E.F.	Clerk	Salary	
G.H.	Farm Labourer	Wages	

Schedule B.

SCHEDULE B.

ELECTORAL DIVISION OF _____

Electoral Roll of Persons qualified to vote for the Election of Members of the Legislative Council and House of Assembly for the Electoral Division of _____, of which I am the Returning Officer.

Dated this _____ day of _____

A.B.,
Civil Commissioner and Returning Officer.

Christian Name (if any), and Surname in full.	Trade, Profession, or other Description.	Qualification.	Situation of Property in respect of which qualification exists.
A.B.	Farmer	Householder	
C.D.	Storekeeper	Householder	
E.F.	Clerk	Salary	
G.H.	Farm Labourer	Wages	

Schedule C.

SCHEDULE C.

FORM OF NOTICE.

Electoral Division of

Notice is hereby given to the inhabitants of the several field-cornetcies of this division, that the Registering Officers will now commence, in accordance

with the provisions of the Parliamentary Voters' Registration Act, 1887, to make out in and for each field-cornetcy a Provisional List of all persons entitled to vote at Parliamentary Elections.

In order to secure the most complete List possible, and to prevent danger of exclusion of qualified persons from the List, all persons claiming to vote at Parliamentary Elections are invited either to send in their claims to the respective Registering Officers, or to ascertain whether their names have been placed upon the Provisional list on or before the date fixed for the completion of such List.

The Registering Officers for the several field-cornetcies of this division are those named at the foot hereof.

Dated this _____ day of _____, 188 .
(Signed) _____ A.B.,
Civil Commissioner.

Electoral Division of

	FIELD-CORNETCY.	REGISTERING OFFICER.	RESIDENCE.
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

The _____ Date for completion of List.
day of _____ 188
(Signed) _____ A.B.,
Civil Commissioner.

No. 15—1887.]

[July 29, 1887.

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 manner of disposal of the Crown Lands of this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The Act No. 5 of 1870, entitled "An Act to amend in certain respects the Act No. 19 of 1864, entitled 'An Act to provide for the Leasing of Crown Lands and other purposes,'" and the Act No. 14 of 1878, entitled "An Act for regulating the manner in which the Crown Lands of the Colony shall be disposed of," and the Act No. 10 of 1881, entitled "An Act for the Conversion of Lease Lands into grants under the Crown Lands Act No. 14 of 1878," and the sixteenth, seventeenth and eighteenth sections of the Act No. 37 of 1882, entitled "An Act to consolidate and amend the Agricultural Lands Acts," are hereby repealed, save

Repeal of repugnant laws.

¹ See Acts 16, 1890 (p. 2813); 14, 1891 (p. 2859); 26, 1891 (p. 2902); 23, 1892 (p. 3031); 30, 1893 (p. 3281); 40, 1895 (p. 3566); 18, 1896, Bechuanaland (p. 3601); § 58, Act 36, 1896, Harbour Boards (p. 3673); 18, 1897 (p. 3735); 26, 1899 (p. 4128); 46, 1899 (p. 4230); 10, 1902 (p. 4373); 21, 1905 (p. 4848). Extended by Proclamation No. 215 of 1887 to Griqualand East; by Proclamation No. 220 of 1887 to Tembuland; by Proclamation No. 24 of 1888 to Port St. John's; and by Proclamation No. 26 of 1888 to Transkei.

No. 15—1887.

and except in so far as the provisions of the said Acts shall have repealed previous Statutes, or shall relate to the lands disposed of prior to the taking effect of this Act, or to the disposal of lands for which proceedings are pending at the time of the taking effect of this Act; all of which lands shall be dealt with as if this Act had not been passed.

Crown lands to be sold by public auction.

2. (1) From and after the taking effect of this Act, all Crown Lands within this Colony shall, except as is hereinafter provided, be disposed of by public auction in the following manner:—

Two months notice of sale to be given.

(a) The auction shall be held at such time and place as the Governor shall appoint.

(b) A notice of every auction shall be published in the *Gazette*, and in some newspaper published in or near to the division in which the land is situated, at least once in each week for a period not less than two months before the day appointed for holding such auction, and shall be posted at the office of the Civil Commissioner or Resident Magistrate of such division, and also at the residence of the Field-cornet in whose ward such land is situated. Such notice shall describe the position and extent of the said land and shall state a minimum or upset price, (to be fixed by the Commissioner of Crown Lands and Public Works after reference to the Divisional Council of the division) below which such land shall not be sold, and shall also state the amount of expenses of title deeds, survey, and erection of beacons to be paid by the purchaser: Provided that it shall not be necessary to state the said expenses of survey, erection of beacons and title deeds in every such notice of sale, but only in such notices or advertisements as shall be published a month prior to the date appointed for the auction.

How payment to be made by purchaser.

(c) (2) The highest bidder who shall have offered not less than the minimum or upset price shall be declared the purchaser, and every such purchaser shall have the option of paying either the whole or a part of the purchase money on the day of sale: Provided

(i) That if no payment be made on the day of sale, one-tenth of the purchase price shall be paid at six, and one-tenth at twelve months from the day of sale.

(ii) That if less than one-tenth of the purchase price be paid on the day of sale, the balance of such one-tenth shall be paid at the expiration of six months, and the remaining one-tenth at the expiration of twelve months from the day of sale.

(iii) That if the amount paid on the day of sale be one-tenth or any sum between one-tenth and one-fifth of

¹ See § 5, Act 26, 1891.

² See § 6, Act 40, 1895.

the purchase price, the balance of one-fifth of the purchase price shall be paid at the expiration of twelve months from the day of sale.

No. 15—1887.

- (d) Interest on the instalments mentioned in sub-section (c) shall be paid at the rate of four per centum per annum; and the payment of the instalments, together with the interest thereon, shall be secured on the day of sale by two good and sufficient sureties to the satisfaction of the Civil Commissioner, which sureties shall bind themselves in regard to such payment as sureties *in solidum* and co-principal debtors, renouncing the exceptions of excussion and division.

Payment of interest and instalments to be secured.

- (e) The expenses of survey, erection of beacons, and of the title deed, shall be paid to the Civil Commissioner or other duly authorised person in that behalf on the day of sale.

Survey expenses.

- (f) If the purchaser shall fail to fulfil the obligations mentioned in sub-sections (d) and (e) the land shall be declared not sold and shall be again immediately put up to auction.

How if purchaser fail to fulfil his obligations.

- (g) The purchaser shall be bound to pass a mortgage (1) bond bearing interest at the rate of four per centum per annum in favour of the Government for four-fifths of the purchase price, unless he shall have paid on the day of sale more than one-fifth thereof, in which case the amount of the bond shall be for the balance of the purchase price, the purchaser having the right to pay off the amount of the bond, or any portion thereof, not being less than fifty pounds at any time.

Purchaser to pass mortgage bond.

- (h) The said mortgage bond shall be passed within thirteen months from the date of sale, failing which, a fine of one shilling will be imposed for every day thereafter during which such failure continues, up to eighteen months from the date of sale, after which should such failure still continue the balance of the purchase money with interest thereon and the amount of the fine, if any so imposed, shall forthwith become due and payable and shall be recoverable in any competent court of law without further notice, and such court shall decree that upon failure for one month after the date of judgment to pay the said purchase money, interest and fines for which judgment shall have been given, the sale shall become null and void and payments already made in respect thereof shall be forfeited to the Government. (2)

3. The land shall be sold subject to such special servitudes, conditions, and stipulations as may be set forth in the conditions of sale.

Special servitudes

¹ See § 1 *et seq.*, Act 16, 1890.

² Printed as amended by § 4, Act 40, 1895.

No. 15—1887.

Conditions of sale.

4. The said conditions of sale, together with the description of the situation and extent of the land, and such special servitudes, conditions and regulations as may be annexed thereto, shall be printed in the English and Dutch languages and affixed at some convenient place at or near the place of sale; and before putting up any lot the auctioneer shall read, or cause to be read, in both these languages, the terms, conditions, stipulations, and servitudes on or under which the said land shall be sold, and shall also exhibit a plan showing the extent and position of the said land in relation to adjacent or neighbouring lands.

General conditions of sale.

5. (1) The said lands shall in addition to any special servitudes, conditions and stipulations as aforesaid be sold subject to the following general conditions, viz.:

Roads preserved.

(a) All roads and thoroughfares being or existing on the land, described in the plan or diagram of the same, shall remain free and uninterrupted: unless the same be closed or altered by competent authority.

Roads of necessity.

(b) If at any time it should appear to the Governor upon petition of any adjacent or neighbouring proprietor that such adjacent or neighbouring proprietor requires a way or road of necessity to or from the land of such adjacent or neighbouring proprietor, the owner of land purchased under this Act, upon which such road is required, shall be bound to grant such way or road of necessity, and to point out the direction and width thereof: Provided that in case of a dispute or difference regarding such road, or its sufficiency, the direction and width of the road shall be decided upon by the Divisional Council of the division in which the land is situated: Provided further that the said owner shall not be bound to allow such road or thoroughfare across land which shall at the time be in a state of cultivation or improvement, and that compensation for the right of way and any damage done shall be paid for by the person or persons for whose benefit and upon whose application the said road is made according to determination by arbitration.

Right of Governor to make roads, &c.

(c) The Governor shall at all times have the right to make roads, railways, dams, aqueducts, drains, and to conduct telegraphs over the land for the benefit of the public, and to take materials for these purposes, also to establish convenient outspans for the use of travellers, on payment to the proprietors of such sum of money as compensation as may be determined by arbitration: Provided that the arbitrators may set off against the loss or damage caused to the proprietor, the benefit, instant or prospective, which he shall or may derive in consequence of the construction of any of the said works.

¹See § 18, Act 40, 1895 (p. 3569) and 46, 1899 (p. 4230).

- (d) The Governor 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 determined by arbitration. No. 15--1887.
Right of resumption for public purposes.
- (e) All rights to gold, silver, and precious stones found or discovered at any time on or in lands under this Act, shall be reserved to the Crown together with a right of ingress to and egress from any mines or works undertaken for mining or prospecting purposes by any person or persons authorised by the Commissioner. The further right shall be reserved to the Crown to resume proprietorship of any portion of such lands and of the water supply thereof as may be required for the convenient working of mines or works for gold, silver, or precious stones, on payment of such sums of money in compensation as may be mutually agreed upon by the parties concerned, or failing such agreement, as may be determined by arbitration. Rights to precious stones and minerals
6. Grants or reserves of land may be made by the Governor for special public purposes, but 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. Grants for special purposes with concurrence of Parliament.
7. The Governor may with the like concurrence reserve and set apart Grants for trading stations, &c.
- (a) Trading stations within native locations or elsewhere on Crown land and sell or grant the same on perpetual quitrent to traders who may be entitled thereto by previous occupation or otherwise.
- (b) Land required as sites for fishing stations and watering places on Crown land along the coast or on the banks of tidal rivers, and may dispose by sale or lease, on such terms as may be found expedient, of any part of such lands, or extend any existing leases on the terms and conditions upon which such lands may have been let, prior to the passing of this Act, and confirm any existing occupation, duly authorised, on such terms and conditions as may be deemed by him to be equitable or expedient.
8. The Commissioner may dispose of islands and rocks containing sea-fowls' eggs, seals, or deposits of guano, by lease after public tender on such terms and conditions as he may deem expedient. Disposal of islands and rocks.
9. The Governor may dispose of Crown land irrigable from public dams or reservoirs by sale or lease on such terms and conditions as he may deem expedient with the concurrence mentioned in section six. Lands irrigable from public dams.
10. Grants or reserves may be made by the Governor for the benefit of the inhabitants of any municipality of any Crown lands Grants to Municipalities.

No. 15—1887.

within the limits of the said municipality, provided that the lands so granted, or the proceeds thereof, shall not be used for or on account of the ordinary expenditure of such municipality, but shall be applied for the use and benefit of the said inhabitants in such manner and upon such works or improvements as the Governor may approve.

Grants for defence purposes.

11. Grants or reserves of Crown land required for purposes of defence may be made by the Governor for such purposes of defence.

What lands shall not be deemed Crown land for purposes of this Act, subject to notice and proof of claim.

12. 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 or beacons of the said adjacent land, land occupied *bonâ fide* and beneficially without title deed at the date of the extension of the colonial limits beyond it, 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 not be considered or treated as 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 satisfying such claim, by grant of the land or compensation out of the purchase money when the said land shall have been sold or otherwise, as shall appear equitable: Provided, always, that due notice of the nature of the claim, and reasonable proof that it can be substantiated, be received at the office of the Commissioner in sufficient time to admit of the withdrawal of the lot from sale, and that the claimant use reasonable diligence to lay the proofs in support thereof before the person or persons to whom the question may be referred by the Governor.

Disposal of lands not sold at auction by lease.

13. As often as any land shall be put up for sale under the provisions of this Act, and the land so put up shall fail to obtain a purchaser at the upset price placed thereon, it shall be lawful for any person within one year of the date of such sale to make application in writing for the purchase of such land, subject to the rights of the lessee, if any, and if the applicant shall fulfil the conditions required by this Act, the Commissioner may accept the said applicant as a purchaser in the same manner as if he had become a purchaser at public auction under this Act at a price not less than the upset price at which the said land was offered for sale. (1)

Provisions as to lands lying between private farms.

14. 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 Surveyor-General, stating the position of such Crown land,

¹ Printed as amended by Act 26, 1891.

and the extent thereof so far as the same shall be known to such applicant, and may request the Surveyor-General, after making all such inquiries into the facts as he shall deem necessary, to certify to the Commissioner that such piece or portion of Crown land should, in the opinion of the said Surveyor-General, be dealt with under the provisions of this section.

No. 15—1887.

15. As often as the Surveyor-General shall certify to the Commissioner that any piece or portion of Crown land should, in the opinion of the Surveyor-General, be dealt with under the provisions of the last preceding section, and the Commissioner shall have sanctioned its being so dealt with, the Surveyor-General shall cause to be published in the *Gazette* a notice stating the name of the applicant, 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 the Commissioner upon some day to be mentioned in such notice, not being sooner than three months from the day on which such notice was published in the *Gazette*, and a copy of such notice shall be posted at the office of the Civil Commissioner or Resident Magistrate of the district as soon as may be after such publication in the *Gazette* but not later than two months before the day specified in such notice, for the consideration of the application.

Proceedings in case of application under last section.

16. All persons having or alleging to have an interest in the matter of such application may, in writing, send in to the Surveyor-General, on or before the day specified in such notice, such statement or representations as they shall think fit, either in favour of or against the application made, and the Surveyor-General, after considering all such statements and representations, and after calling for such proofs from any person who shall have made any such statement or representation, as the Surveyor-General shall deem necessary for the just and proper decision of the case, shall report to the Commissioner whether in his opinion the application in question shall 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, and the Surveyor-General shall conform to such instructions as the Commissioner after considering the report aforesaid and the circumstances of the case, shall issue in regard to such piece or portion of land.

Liberty to persons to support or oppose application.

17. In every case in which any piece or portion of Crown lands shall be allotted to any owner of land under the provisions of the last three preceding sections, the price of such land shall be what the Commissioner shall consider fair and equitable, and such owner shall forthwith pay in cash to the Civil Commissioner or other duly authorised person in that behalf the expense of survey, erection of beacons and title deed: Provided that in case such

Expenses of survey in cases under last three sections.

No. 15—1887.

owner shall be dissatisfied with the price put upon the said land by the Commissioner, such owner may require that the question in dispute shall be referred to arbitration. When the purchase amount has been determined it shall be settled in the manner provided in the second section.

Terms on which lessees under Act No. 19 of 1864 may purchase the leased lands.

18. (1) It shall be lawful for the lessees of Crown land leased under the provisions of the Act No. 19 of 1864, or the Ordinance No. 3 of 1874 of Griqualand West, (2) at any time during the continuance of their respective leases, to purchase the property in the lands held by them on lease, at such price as shall be fixed by the Commissioner, after consultation with the Divisional Council of the division in which such land is situated: Provided that the said price shall in no case be less than a sum which reckoned as a principal sum would after the rate of six pounds sterling per hundred pounds, produce an amount of interest equal to the rent reserved on such lease: Provided, however, that if the price demanded by the Commissioner shall be greater than such principal sum, and the lessee shall decline to purchase at such price, such lessee may require that the amount of the purchase price shall be determined by arbitration in manner hereinbefore provided for.

Such purchasers to be treated as if purchasers under 2nd section of this Act.

19. Every purchaser of land under the last preceding section shall from and after the date upon which the purchase price of the land shall be determined be deemed and taken to be a purchaser of Crown land, within the meaning of the second section of this Act, as though he had been a purchaser by public auction, and all the provisions of the said section shall, *mutatis mutandis*, apply to every purchase effected under the last preceding section: Provided, however, that every such purchaser shall continue to be bound to the payment of his rent, which shall be taken to be paid on account of such purchase price, and to the satisfaction of the conditions of his lease until he shall receive a title deed to the land in question; and provided that every title deed granted to such a purchaser shall be granted subject to the special servitudes, conditions, and stipulations of his lease, which shall be endorsed upon or registered with his said title deed, and subject also to the general conditions prescribed in the fifth section of this Act.

Improvements not to be considered.

20. In fixing the value of land purchased by any lessee as aforesaid, the value of the improvements existing on the said land and made by the said lessee shall not be taken into consideration.

Power of subletting.

21. It shall be lawful for any lessee of land under and by virtue of the Act No. 19 of 1864, or the Ordinance No. 3 of 1874 of Griqualand West, (2) who shall so desire to sublet the whole or any portion of the land leased: Provided that the existing lease shall not be affected, and that the lessee under the said lease shall

¹ See Act 37, 1889.

² Printed as amended by Act No. 14, 1891.

continue to be liable to pay rent, and to fulfil all the other conditions set forth in the lease.

No. 16—1887.

22. In regard to any land which shall be held under the provisions of "The Lease Lands Conversion Act, 1881," the second section of that Act shall be read and construed as if the words "regulating the redemption of quitrent" were omitted.

Land held under Act No. 10, 1881.

23. When any lot of land shall be forfeited under the fifteenth section of "The Agricultural Lands Act, 1882," the Surveyor-General shall cause the improvements thereon to be valued, and the land shall be again disposed of, either under the provisions of that Act, or offered for sale by public auction under the provisions of the present Act.

Disposal of land forfeited under section 15. Act No. 37, 1882.

The amount at which the improvements shall have been valued shall, at such time as the Surveyor-General shall determine, be paid in the former case by the new allottee, and in the latter by the purchaser at public auction. And, after deducting from such amount the expenses incident to the forfeiture and re-allotment or sale of the land, the balance shall be handed to the original licensee or his legal representative.

24. In lieu of the eighteenth section of "The Agricultural Lands Act, 1882," the following shall be substituted:

Provision in lieu of section 18 of "The Agricultural Lands Act, 1882."

At the expiration of any licence and on the fulfilment of the terms and conditions of such licence, the licensee shall obtain a title deed on quit-rent tenure at an annual quit-rent equal to the yearly licence-fee and subject to all the conditions stated in the fifth section of this Act.

25. In all matters which are under the provisions of this Act to be determined by arbitration, one arbitrator shall be appointed by the proprietor of the land and one by the Governor with power to such arbitrators to appoint a third as umpire.

Arbitrators.

26. In the interpretation of this Act the term "The Commissioner" shall mean "the Commissioner of Crown Lands and Public Works," and the term "Civil Commissioner" shall mean "The Civil Commissioner of the Division in which the land is situated."

Interpretation Clause.

27. This Act may be cited as the "Crown Lands Disposal Act, 1887."

Short title.

No. 16—1887.]

[Not yet promulgated.]

ACT

To Amend the Laws relating to Customs Duties.

WHEREAS it is expedient to amend in certain respects the law relating to Customs Duties: Be it enacted by the Governor of the Cape of Good Hope, with the consent and advice of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

No. 19—1887.
 Repeal of repugnant laws.

1. The fourth section of the "Customs Rebate Act, ⁽¹⁾ 1884," and so much of "The Customs Tariff Amendment Act, ⁽¹⁾ 1884," and of any other law as may be repugnant to or inconsistent with the provisions of this Act are hereby repealed.

What goods imported overland liable to duty.

2. No Customs Duties shall be payable in respect of the importation into the Colony across the Inland Border thereof of any articles grown or produced in South Africa other than the following, namely: spirits, coffee, sugar, molasses, and any other article that may hereafter be excepted by proclamation of the Governor.

Duty on spirits produced in South Africa.

3. The Customs Duty payable on the importation into the Colony across the Inland Border thereof of any spirits produced or manufactured in South Africa shall be equivalent to the Excise Duty payable at the time of such importation on spirits liable to such last mentioned ⁽²⁾ duty when produced or manufactured in the Colony.

Short title.

4. This Act may be cited as "The Customs Duties Amendment Act, 1887."

No. 17—1887.]

[July 29, 1887.]

Act to amend "The Scab Act, 1886."
 [Repealed by Act No. 20, 1894.]

No. 18—1887.]

[July 29, 1887.]

Act to Exempt Machinery imported for Manufacturing Purposes from the Liability of Customs Duties.
 [Repealed by Act No. 1, 1889.]

No. 19—1887.]

[August 5, 1887.]

ACT

To Repeal the Tariff relating to Pound Fees numbered 10 in the Second Schedule of Griqualand West Ordinance No. 20 of 1874.

Preamble.

WHEREAS it is desirable to repeal so much of the Griqualand West Ordinance No. 20 of 1874 as relates to pound fees: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Tariff 10 of Ordinance No. 20, 1874 (Griqualand West) repealed.

1. The tariff relating to pound fees, numbered 10 in the second Schedule to the Ordinance in the Preamble of this Act mentioned, is hereby repealed.

Pound fees payable.

2. The fees and charges prescribed by the several laws relating to pounds and trespasses, subject to the power therein contained to

¹ Repealed by Act 1, 1889.

² See Act 36, 1904 (p. 4765). N.B.—Until promulgated Act 16, 1887, has no effect.

alter or amend the same, shall be payable in the districts formerly constituting the Province of Griqualand West.

No. 20—1887.

3. This Act shall come into operation on the first day of January next, and may be cited as "The Griqualand West Pound Fees Act, 1887."

Short title.

No. 20—1887.]

[August 5, 1887.]

ACT

To Incorporate the Saint Andrew's College Council, Graham's Town, to provide for the appointment of Trustees, and for other purposes.

WHEREAS there has been founded and is established in Graham's Town a certain educational institution styled Saint Andrew's College: and whereas the control, direction and general management of the said College and its affairs is now vested in a certain Council consisting of nine members: and whereas certain of the property held for the use and purposes of the said College is now vested in trustees who are not members of the said Council, whereby complications and difficulties have arisen impeding the efficient control, direction and management of the said College: and whereas it is expedient to provide for the incorporation of the said Council by Act of Parliament, and for the appointment, now and from time to time as occasion may require, of trustees being members of the said Council for the time being to hold all such property as aforesaid and to represent the said College and Council in legal proceedings: and whereas a certain deed has been duly entered into by and between the members of the said Council and the above first named trustees, whereby *inter alia* provisions are made for the constitution of the said Council and the appointment of trustees and the rights, powers, and duties of such Council and such trustees:

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 general direction and management of the said College shall be vested in a Council as provided by a certain deed entered into between the members of the Council and the trustees of the College property, dated the twenty-third and twenty-ninth December, one thousand eight hundred and eighty-six, and the said Council for the time being of the said College shall, for the purposes of this Act, be a corporation under the name or style of "The Council of Saint Andrew's College," and shall have perpetual succession, and shall be capable of doing all matters and things incidental or appertaining to a person or body corporate.

Management of
College to be vested
in a Council.

No. 20—1887.

Trust Deed to be filed with Registrar of Deeds.

Alterations in or additions to Trust Deed to be filed.

Returns of new appointment to Council or of Trustees to be filed.

Extracts from Trust Deed under signature of Registrar of Deeds to be received in evidence.

Property shall be vested in Trustees.

Property to be transferred to Trustees.

Trustees to sell, mortgage or lease property.

Transfers to be effected free of duty.

2. A copy of the said deed, duly authenticated by the Secretary of the said Council, shall within one month after the passing of this Act be filed in the office of the Registrar of Deeds of this Colony.

3. A copy, authenticated as aforesaid, of all alteration in or additions to the said deed which may at any time be made in conformity with the provisions therein contained, shall within three months thereafter be filed in the said office.

4. Whenever and as often as any person shall be appointed a member of the said Council, or a trustee, of the said College, in the place of any present or future member or trustee, a return duly authenticated as last aforesaid, of such appointment shall within three months thereafter be filed in the said office.

5. A copy of or extract from the copy of the said deed and of any alterations therein or additions thereto which may have been made and filed as aforesaid, and a copy of or extract from any such returns as aforesaid, which may have been made and filed as aforesaid, purporting to be certified under the hand of the Registrar of Deeds, shall in all proceedings, civil or criminal, be received in evidence as *prima facie* proof of all the matters contained or recited in such certified copy or extract, and of the authority and appointment of the person or persons named therein, whether as member of Council, trustee or otherwise, and of the fact of their being such at the date of such certificate, and such certified copy or extract shall be received in evidence without any proof of the handwriting of the said Registrar or his appointment.

6. All property of every sort and description, both movable or immovable, and wherever situate, belonging to the said College or to which the said College shall hereafter become entitled, and all claims for money payable thereto, shall be vested in and become the property of trustees for the time being of the said College appointed by the said Council, and being members thereof, in trust for the use and benefit of the said College. And all property belonging to the said College standing registered in the name of persons, whether as trustees or otherwise, other than the trustees for the time being of the said College, appointed by the said Council, as aforesaid, shall be transferred from such persons to such trustees as last aforesaid, and the said trustees for the time being of the said College shall have the power, when authorised thereto by the said Council, of purchasing and holding property, movable and immovable, and of selling, mortgaging, transferring or leasing, or otherwise disposing of, any such property, and generally of dealing with the same as if they were the owners thereof, but subject to the authorisation as aforesaid. And all transfers effected as aforesaid by the trustees or other persons in whose names the said lands are at present registered, shall be free of any transfer dues, which, but for this provision, might be payable thereon, and be legally claimable by the Government of this Colony.

7. All actions, suits and legal proceedings of any kind whatsoever, both civil and criminal, and against any person or persons, corporate bodies or others to be brought for or on behalf of the said Council, shall be brought and maintained in the names of the trustees for the time being of the said Council; and all actions, suits and legal proceedings of any kind whatsoever, both civil and criminal, to be brought by any person or persons, corporate bodies or others, against the said Council, shall be brought and maintained against such trustees for the time being, as aforesaid, as the nominal defendants or respondents for and on behalf of the said Council. And no action, suit, or proceeding as aforesaid, shall abate, discontinue, or be rendered ineffectual by reason of the death, removal, or resignation of the said trustees, or any one of them, but in any such event or events, and as often as the same may occur, the name or names of the trustees for the time being shall be substituted in the subsequent proceedings. No proceeding contemplated by this section, whether civil or criminal, shall be brought by the said trustees unless the sanction of the said Council shall have been first obtained thereto.

8. This Act may be cited for all purposes as the "Saint Andrew's College Council, Graham's Town, Incorporation Act, 1887."

No. 21—1887.

Actions to be brought and defended by Trustees.

No action to abate by reason of death, removal, or resignation of Trustee.

Council's sanction necessary.

Short title.

No. 21—1887.]

[August 5, 1887.

ACT

To Authorise the Construction and Working of a Passenger and Parcels Tramway within the Boundaries of the Municipality of Beaconsfield.

WHEREAS the inhabitants of the Municipality of Beaconsfield are desirous of obtaining a passenger and parcels tramway within certain parts of the Municipality: and whereas it is expedient and desirable that the same be constructed and worked: and whereas certain persons are prepared to lay down, construct, work and maintain such tramways, and have applied to the Council of the said Municipality of Beaconsfield for permission so to do: Now, therefore, 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 council of the said Municipality shall have full power and authority to grant leave, concession, and permission to any person, or company of persons, association, or body corporate, to construct, lay down, work, maintain and run, tramways for passenger and parcels traffic on streets and roads within the said Municipality, to which the inhabitants of the said municipality have or may lawfully acquire a common right, to be drawn or propelled by horse, steam or other motive power; provided that

Council may grant leave to persons to construct, &c., tramways.

No. 21—1887.

Speed limited.

Council may require securities from constructor.

Council may frame bye-laws for control of tramway traffic.

Bye-laws to be in accordance with Act No. 45, 1882.

Bye-laws may impose certain penalties.

Contractor not deprived of his civil remedy by action.

Bye-laws may be in accordance with those of cognate Acts.

the speed thereon shall not exceed twelve miles per hour, upon such terms, conditions, stipulations and securities, as the council of the said Municipality shall deem best for the interests of the ratepayers of the said Municipality, and such permission, leave and concession shall be binding on their successors in office.

2. The said Council shall have power and authority from time to time to make, alter, amend and revoke bye-laws or regulations, and to fix fines and penalties for all or any of the following purposes; (provided that all and singular the provisions of the Municipal Act 45 of 1882, relating to bye-laws and regulations and fines and penalties thereunder shall apply to the said bye-laws and fines and penalties made under and by virtue of this Act) and the powers conferred in this Act shall be in addition to the powers conferred by the aforesaid Municipal Act, namely:

- (1) To fix the fares and tolls for passengers and parcels;
- (2) For preventing obstruction or hindrances to the said tramway traffic and removal of any such obstructions or hindrances;
- (3) For imposing penalties for wilful obstruction of and interference with servants and officers connected with the tramway in execution of their lawful duty;
- (4) For imposing penalties for the wilful removing or altering of any portion of the said tramway or works;
- (5) For the public exhibition and protection of tables of tolls and fares;
- (6) For the wilful proceeding in any carriage beyond the distance charged for and for the attempting to avoid payment of fare or refusing to pay same;
- (7) For the refusal to quit any carriage or car at end of journey;
- (8) For wilfully injuring any carriage or property of the tramway;
- (9) For retaining goods and articles carried by the tramway owners until charges duly paid:

Provided that any such person, company or body corporate, shall, notwithstanding any such bye-law, be entitled to recover in any of the Courts of this province such charges, fares and damages as they may be entitled to. Such bye-laws and regulations may be in accordance with the powers granted in that behalf in the "Port Elizabeth Tramway Company Act, (1) 1879," the "City Tramways Company (Limited) Incorporation Act, (2) 1881," and in accordance with the powers which shall be granted from time to time hereafter by Parliament for protection and regulation of tramways in other portions of this Colony. And all proceedings for the contravention or non-observance of such bye-laws may be prosecuted by the said council.

¹ No. 30.

² No. 24.

3. No municipal toll of any kind shall be chargeable upon any tramway, carriage, car or engine. No. 22—1887.
4. The Additional Resident Magistrate of Kimberley at Beaconsfield shall have jurisdiction under any bye-law of the said Municipality, relating to all traffic on the said streets, road and tramways for every offence against any such bye-law committed within the said Municipality. No Municipal toll chargeable. Beaconsfield Magistrate to have jurisdiction.
5. This Act shall be deemed to be a public Act, and shall be judicially noticed as such without being special pleaded. Public Act.
6. Nothing in this Act shall be deemed to give the council of the said Municipality greater rights within any proclaimed mining area or of taking land, than they would otherwise possess without this Act. No extended power with regard to land.
7. This Act may be cited as the "Beaconsfield Tramway Act, 1887." Short title.

No. 22—1887.]

[August 5, 1887.]

ACT

To Repeal Section 132 of Ordinance No. 6 of 1843, and Section 37 of Ordinance No. 105, and to make other Provision in lieu thereof.

WHEREAS it is expedient to amend the law relating to the publication of certain notices by the Master of the Supreme Court: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and of the House of Assembly thereof, as follows:— Preamble.

1. The 132nd Section of Ordinance No. 6 of 1843 is hereby repealed, and the following substituted in lieu thereof: Section 132, Ordinance No. 6, 1843, repealed.

"The Master of the Supreme Court shall, as soon as may be after the 31st day of March and the 30th day of September in each year, cause to be published in the *Gazette* two lists, showing respectively Master to publish certain lists every six months.

(1) The name and residence of every uncertificated insolvent whose estate shall have been placed under sequestration during the preceding six months and in whose estate the account and plan of distribution shall not have been confirmed, together with the date of the order for the sequestration of the estate of such insolvent:

(2) The name and residence of every uncertificated insolvent in whose estate the account and plan of distribution shall have been confirmed during the preceding six months together with the date of the decree confirming the same:

And the cost of publishing such lists as well as of inserting all such notices required by the said Ordinance to be given by the

BB

No. 23—1887.

said Master by advertisement in the *Gazette*, shall be defrayed by Government.”

Section 37, Ordinance No. 105, repealed.

Master to publish annually list of moneys belonging to absent or unknown heirs.

2. (1) The 37th Section of the Ordinance No. 105 is hereby repealed, and the following substituted in lieu thereof:—“The Master of the Supreme Court shall in the month of April in each year cause to be drawn up a full and exact account of the amount of all estates or property which shall be entered in the wards' book and shall belong to any persons unknown, or not residing and not having any known legal representative in this Colony, with a statement of the names and designation of the persons so far as known who are supposed to be interested therein, and shall cause the same to be inserted in the *Gazette* of this Colony, and shall forthwith deliver two or more copies thereof to the Attorney-General who may cause the name or any portion thereof, to be published in such manner as shall be deemed most expedient in any country or countries to which any person or persons interested in such estates or property may be supposed to belong; and in the said advertisements all persons shall be required to submit their claims to the Master of the Supreme Court and the expenses of such advertisements shall be bore proportionately by the estates to which they relate.”

No. 23—1887.]

[August 5, 1887.

ACT

To Prohibit the Payment of the Wages of Artificers and Labourers in Goods, or otherwise than in the Current Coin of the Colony.

Preamble.

WHEREAS it is desirable to prohibit the payment of wages to artificers and labourers employed in and about diamond mining areas in this Colony, otherwise than in the current coin of the Colony, and also to prohibit the sale of goods under certain circumstances and conditions to such artificers and labourers at shops, stores, or otherwise within mining compounds, or in or near any buildings or places wherein or whereat such artificers and labourers may be detained for diamond mining 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:—

Wages of artificers or labourers payable only in current coin.

If otherwise contract null and void.

1. In all contracts to be hereafter made for the hiring of any artificer or labourer employed in or about diamond mining areas in this Colony, the wages of such persons shall be made payable in the current coin of the Colony and not otherwise; and if in any such contract the whole or part of such wages shall be made payable in any manner other than the current coin aforesaid, such contract shall be illegal, null and void.

¹ See § 10, Act 27, 1895 (p. 3520).

2. If in any contract hereafter to be made between any artificer or labourer as aforesaid and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom the whole or any part of the wages due or to become due to any such artificer or labourer shall be laid out or expended, such contract shall be illegal, null and void.

3. The entire amount of the wages earned by and payable to any such artificer or labourer as aforesaid, shall be actually paid to him in the current coin of the Colony, and every payment made to him by his employer, of or in respect of such wages by the delivery to him of goods, or otherwise than in the current coin aforesaid, shall be illegal, null and void.

4. Every such artificer and labourer as aforesaid shall be entitled to recover from his employer, in any manner by law provided, the whole or so much of his wages as shall not have been actually paid to him in the current coin of this Colony; and in any action, suit or other proceeding brought by such artificer or labourer, the defendant shall not be allowed to make any set-off or to claim any reduction of the plaintiff's demand by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff, as or on account of his wages, or by reason, or in respect of any goods, wares, or merchandise sold, delivered, or supplied to the plaintiff at any shop or warehouse kept or belonging to the defendant, or in the profits of which the defendant shall have any share or interest.

5. No employer of any such artificer or labourer as aforesaid shall have or be entitled to maintain any suit or action against such artificer or labourer, for or in respect of any goods, wares or merchandise delivered or supplied on account of wages, or for or in respect of any goods, wares or merchandise sold, delivered, or supplied to such artificer or labourer at any shop kept by or belonging to the said employer or in the profits of which he should have any share or interest.

6. When artificers or labourers employed as aforesaid are located or resident in any buildings or within any compound or place wherein or whereat they may be detained under any restrictions for the prevention of theft of diamonds or otherwise, it shall not be competent under any circumstances for the employers of such artificers or labourers or for any one acting for such employer or under any agreement with him, to sell any goods, wares, or merchandise other than those that shall be reasonably necessary for the use and well-being of such artificers or labourers during the period they may be detained under such restrictions.

7. All goods, wares, or merchandise that may be sold within any compound or building, as provided in the preceding section, shall without exception be purchased in the electoral division of

No. 23—1887.

Labour contract declared illegal if it contains any clause stipulating where, how or with whom any portion of wages shall be expended.

Payment of labourers' wages by the delivery of goods or otherwise than in current coin illegal.

When whole or part of wages have not been paid in current coin, artificer or labourer is entitled to recover same by action at law.

No "set off" or reduction to the demand of plaintiff to be allowed on account of goods, &c., supplied.

Employer cannot maintain action against artificer or labourer in respect to any goods, &c., supplied, on account of wages to said artificer or labourer at any shop in which employer has share or interest.

Employer of artificers or labourers employed on compounds may not sell to them.

Goods to be purchased in Kimberley.

No. 24—1887.

Kimberley, and no employer shall derive any benefit directly or indirectly from such purchase.

Inspection by
Government Officer

8. (1) An officer appointed by the Governor shall at all times have access to the premises of the employer, and it shall be his duty to report any contravention of this Act to the Civil Commissioner of the district.

Magistrates' Courts
to have jurisdiction
in cases of contra-
vention of this Act.

9. The Courts of the Resident Magistrates, or Additional Resident Magistrates, shall have jurisdiction in cases of prosecution for contravention of this Act, and shall have the power to inflict the several penalties in the next section mentioned.

Penalties.

10. Every employer or other person who shall contravene the provisions of this Act, shall, for the first offence, be liable to a fine not exceeding five pounds, or to be imprisoned for any time not exceeding one month, and for the second and each subsequent offence to a fine not exceeding ten pounds, or to be imprisoned with or without hard labour for a period not exceeding two months.

Short title.

11. This Act may be cited as the "Labourers' Wages Regulation Act, 1887."

No. 24—1887.] (2)

[August 5, 1887.

ACT

To Amend the Law for the Disposal of Derelict Lands.

Preamble.

WHEREAS it is expedient to amend the law relating to the disposal of Derelict Lands: 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:—

Sections 1 and 2
of Act No. 3, 1879,
amended.

1. The first and second Sections of the Derelict Lands Act No. 3 of 1879 and the fourth Section of Act No. 28 of 1881, shall be read as if the words "ten years" therein appearing were omitted therefrom and the words "five years" inserted in lieu of the words so omitted.

Short title.

2. This Act may be cited as the "Derelict Lands Act Amendment Act, 1887."

¹ See § 7, Act 34, 1888 (p. 2624).

² See Act 15, 1895 (p. 3453). Extended by Proclamation No. 73 of 1888 to Griqualand East; by 16, 1896, to Tembuland, Transkei and Port St. John's, and by 33, 1897, to Pondoland.

No. 25—1887.]

[September 2, 1887.]

ACT

To Repeal the “Excise Beer Duty Act, 1884,” and the “Excise Beer Duty Amendment Act, 1885.”

[Repealed by Act 36, 1904 (p. 4765), the Excise Beer Duty Acts 11, 1884 (p. 2185 and 27, 1885 (p. 2294a) re-enacted.]

No. 26—1887.]

[August 5, 1887.]

ACT

To Explain and Amend the Act No. 3 of 1882 as Amended by the Act No. 11 of 1886, being the Imvani and Indwe Railway and Coal Mining Act, 1882.

[Not printed. See note to Act 3, 1882, p. 1805.] [p. 2480.]

No. 27—1887.]

[August 5, 1887.

ACT

To Provide for Measures of Relief in respect to Lands held on Perpetual Quitrent under Act No. 14 of 1878 and Act No. 10 of 1881.

WHEREAS it is desirable in certain cases to provide for the resumption of land purchased at public auction, under the provisions of Act No. 14 of 1878, or held under the provisions of Act No. 10 of 1881, and in certain other cases to give relief in cases of arrear and excessive quitrents: 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 any person holding land either under the provisions of Act No. 14 of 1878, or by conversion under Act No. 10 of 1881 of his lease, held under Act No. 19 of 1864, shall desire to surrender his land, it shall be lawful for the Governor, if he shall deem fit, to accept such surrender and to cause the title to such land to be cancelled, on condition that the quitrent due up to the date of such acceptance be paid or payment thereof secured by two good and sufficient sureties, to the satisfaction of the Treasurer of the Colony: provided, however, that when any such person shall satisfy the Governor of his inability either to pay such quitrent or to secure its payment as aforesaid, it shall be lawful for the Governor to remit such quitrent or to grant such relief in regard to such payment as may to him seem expedient.

Conditions under which holders of quitrent lands under Act No. 14 of 1878, and Act No. 10 of 1881 may surrender their titles, &c

2. In case any holder of land under the provisions of Act No. 14 of 1878, or of Act No. 10 of 1881, as aforesaid, shall be in arrear with the payment of his quitrent for two or more years, it shall be lawful for the Commissioner of Crown Lands and Public Works to give notice to such holder of the intention of the Governor to resume possession of such land and to cancel the title thereof, and if the quitrent in arrear, as aforesaid, shall remain unpaid for a period of three months from the date of such notice it shall be lawful for the Governor to cause the title deed to such land to be cancelled and to resume possession of the land.

In case such holder shall be in arrear of quitrent for 2 years, Government may resume possession.

3. When any holder of land under Act No. 14 of 1878 or Act No. 10 of 1881, shall have been prevented by drought or some other cause or causes beyond his control from paying his quitrent for one year or more, he may apply to the Treasurer of the Colony for relief in regard to the payment of his arrear quitrent, and thereupon it shall be lawful for the said Treasurer to treat the arrear quitrent as a capital sum to be paid by the said holder in five equal instalments, in five successive years, provided that at the option of the said holder, any instalment may be paid by him at any earlier time.

Relief in case holder unable to pay quitrent through drought, &c.

Payment of arrears by instalments.

No. 27—1887.

When holders may apply for reduction of quitrents, and proceedings to be taken in regard to such applications.

4. (1) Any holder of land not being land situated within the Transkeian Territories under the provisions of Act No. 14 of 1878, or by conversion under Act No. 10 of 1881, as aforesaid, not being in arrear with payment of quitrent, or being in arrear shall have obtained relief under section three of this Act, who shall consider the annual quitrent payable by him to be in excess of the true annual value of such land may at any time within twelve months from the date of the promulgation of this Act apply for reduction of such quitrent to the Commissioner of Crown Lands and Public Works, who shall thereupon direct such application to be investigated by a land board, to be appointed by the Governor from time to time as occasion may arise, in manner hereinafter provided, and it shall be the duty of such land board to inquire into and investigate the circumstances of such case, and if upon such investigation it shall appear to the said land board that good and sufficient reason has been shown why the relief sought for should be granted, so to report to the Commissioner of Crown Lands and Public Works, and to state what amount of quitrent would represent in its opinion the true annual value of such land, not taking any account of improvements made upon such land by the holder or his predecessors in title, and upon such report it shall be lawful for the Governor to reduce the quitrent set forth in the original title and to substitute in its stead the amount determined upon by the said land board, from and after the day when quitrent next becomes due and payable; provided always that no application under this section for relief shall be entertained unless the person applying shall have deposited at the office of the Civil Commissioner of the division in which such land is situate, the sum of twenty-five pounds sterling out of which shall be defrayed such expenses as in the opinion of the Commissioner of Crown Lands and Public Works may necessarily be incurred for the purposes of personal inspection of the land in question by the said board or any member thereof, and any balance of the said deposit, not being required for the said purposes of personal inspection shall be refunded to the said depositor, but any disbursement made for the said purposes over and above the said deposit shall be made good by the said depositor.

When application made in regard to one only of two or more adjacent lots, the value of the latter to be considered as affecting that of the former.

5. If any person holding two or more adjacent lots of land shall have made application for relief under the last preceding section of this Act, in respect to one lot only, it shall be the duty of the said land board, in determining the annual value of such lot, to take account not only of its absolute value, but also, of the relative value when taken as part of the whole block of the said two or more lots held by one and the same applicant.

Composition of Board of Enquiry and its powers.

6. The said land board shall consist of three members, to wit: The Civil Commissioner of the division in which the said

¹ See Acts 36, 1888 (p. 2626) and 37, 1889 (p. 2701).

land is situate, who shall be the chairman of the said board, and two other members, one to be a member of and to be chosen by the Divisional Council of the division in which the land is situate, and the other being a land-owner in such division, holding by title other than by this Act is dealt with, to be provided by the Governor, and the said board shall have power to call witnesses, to take evidence on oath, make personal inspection of any land the subject of investigation, and to incur, subject to the approval of the Commissioner of Crown Lands and Public Works, all such expenditure as may be necessarily required for the purposes of its investigations and proceedings under this Act.

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7. The provisions of the first, second and third sections of this Act shall apply to all lands situated within the Transkeian Territories, and which are or shall be held by a title issued either under the provisions of the aforesaid Acts, or by competent authority, and containing terms, conditions, and stipulations similar to those subject to and upon which lands have been granted under the provisions of Act No. 14 of 1878.

Application of Act to Transkeian Territories.

8. Any holder of land within the said territories under such title as is referred to in the seventh section may, subject to the provisions of the eleventh section, make application to the land board therein provided for the district wherein such land is situated, and may request a remission of payment of arrear quitrent due and unpaid in respect of such land, and may also request either that the amount of quitrent payable under his existing title shall for the future be reduced or that a new title to the said land shall be issued to him in lieu of his existing title.

Holders of land in said territories may apply to same board.

9. Every such application shall be duly considered by the land board to which it is addressed, and the said land board shall after all proper and possible inquiry and investigation into the circumstances of the case, report thereon to the Commissioner of Crown Lands and Public Works, and in such report shall include such recommendations as may appear just and reasonable with regard to the relief prayed, and if it shall recommend the issue of a new title in any case, then it shall also include an estimate of the capitalised value of the land in respect of which a new title is requested and recommended; and in accordance with the report, recommendation and estimate of such land board, the Governor may remit the payment of the whole, or a portion of such arrear quitrent as aforesaid, and may either reduce the quitrent payable for the future under such applicant's existing title, or issue a new title to such applicant in respect of such land.

How such applications shall be treated.

10. Every new title issued to land under the provisions of the ninth section shall be in like manner subject to the law which, for the time being, regulates the disposal of Crown lands by public auction as though the applicant had on the day on which such new title is granted, been, and become a purchaser of Crown lands sold by public auction in this Colony at a price equal to the value

Issue of title.

No. 28—1887.

of the said land, estimated as aforesaid by he said land board; provided, however, that no fees, charges, or expenses shall be payable by such applicant receiving such new title, save only the amount which would have been payable by way of Stamp Duty in respect of the issue to him of title to Crown land purchased at such price by public auction.

Composition of Board of Enquiry.

11. Every such application as is referred to in the seventh, eighth, ninth, and tenth sections shall be made to a land board constituted of the Resident Magistrate of the district in which such land is situated and of such person as the Governor shall appoint by proclamation, and no such application shall be received or entertained after the lapse of twelve months from the date to be fixed by a notice in the *Gazette* calling upon persons desiring to make applications to such land board within the period of twelve months from the date specified so to do, which notice shall also be published in one or more newspapers circulating in such territories, and shall be posted or fixed in a convenient place at or near the offices of the Resident Magistrate, and of every Field-cornet in the district; and the said land board shall thereupon appoint a convenient time and place for the purposes of the enquiry and investigation contemplated in the ninth section, and may adjourn its sittings from time to time as occasion may require.

Improvements not to be taken into account by land board.

12. No improvements made by the holder of such title as is referred to in the seventh section, upon the land the subject of such inquiry and investigation, shall be taken into account by such land board recommending any reduction of quitrent, or estimating the value of such land, but the provisions of the fifth section shall be taken to apply, *mutatis mutandis*, to every such inquiry and investigation, and for the purposes of every report, recommendation or estimate made by such land board.

Short title.

13. This Act may be cited as "The Quitrents Relief Act of 1887."

No. 28—1887.]

[August 5, 1887.

ACT

To Repeal the Act No. 2 of 1886, and to make provision for the payment of Annual Salaries to the Officers mentioned in the Seventh (1) Section of Act No. 1 of 1872, known as "The Constitution Ordinance Amendment Act, 1872." (2)

Preamble.

WHEREAS it is expedient to repeal the Act No. 2 of 1886, and to make other provision than is therein contained for the payment of annual salaries to the officers mentioned in the seventh Section of the Act No. 1 of 1872: Be it enacted by the Governor

¹ Should be third section.² See Act 14, 1893, § 4 (p. 3154).

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. 30—1887.

1. From and after the passing of this Act the Act No. 2 of 1886 shall be and the same is hereby repealed, and the second section of the Act No. 32 of 1879 shall be and the same is hereby revived.

Act No. 2 of 1886 repealed, and Act No. 32 of 1879, Section 2, revived.

2. For and in respect of the year ending the thirtieth day of June, eighteen hundred and eighty-eight, and every subsequent year, there shall be paid to the several officers mentioned in the seventh (1) section of the Act No. 1 of 1872, the same sum by way of annual salary, which would have been by law payable to them if the Act No. 2 of 1886 had not been passed.

Salaries of Ministers fixed.

No. 29—1887.]

(August 5, 1887.

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1888.

[Spent.]

No. 30—1887.)

(August 9, 1887.

ACT

To Provide for the Representation in the Parliament of this Colony of persons in the Transkeian Territories. (2)

WHEREAS it is expedient to make provision for the representation in Parliament of the inhabitants of the Transkeian Territories: 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 words "Transkeian Territories" mean for the purposes of this Act, the following Territories:—The Transkei (including Gcalekaland), Tembuland (including Emigrant Tembuland and Bomvanaland), and Griqualand East (including the Territory of the St. John's River).

Meaning of "Transkeian Territories."

2. The Eastern (3) Electoral Province of this Colony shall include the said Transkeian Territories in addition to the Electoral Divisions mentioned in sub-section 7 of section 2 of Act No. 18 of 1874.

Transkeian territories to be included in Eastern Electoral Province.

3. Within the said Transkeian Territories there shall be two Electoral Divisions of the Colony of the Cape of Good Hope, and each of such (3) divisions shall be entitled to return one member to the House of Assembly of the Colony.

Registered voters to elect one member.

¹ Should be third Section.

² Extended by Proclamation No. 154 to all Native Territories.

³ See § 8, Act 19, 1898 (p. 3907), and the Schedule thereto. The two electoral divisions return each two members now, and the Electoral Province one additional member, Act 5, 1904 (p. 4638).

No. 30—1887.

How electoral divisions to be created.

Election of representatives in same manner, *mutatis mutandis*, as other members of Assembly.

Law of Colony as to elections to apply.

Officer appointed by the Governor substituted for Civil Commissioner.

When Act to take effect, and short title.

4. One of such divisions shall be styled the Electoral Division of Tembuland, and shall consist of the Transkei (including Gealekaland) and Tembuland (including Emigrant Tembuland and Bomvanaland). The other shall be styled the Electoral Division of Griqualand East and shall consist of Griqualand East and the territory of Port St. John's.

5. As soon as may be, after the completion of the lists of registered voters as hereinafter provided, the members to be returned for the said Electoral Divisions shall be elected; and for the purposes of such election the said Electoral Divisions shall be treated and considered as if members had been previously returned for the same to the said House of Assembly and their seats had become vacant by death or resignation, and the fact of the occurrence of such vacancy had been duly notified to the Governor; and the like proceeding shall, *mutatis mutandis*, be taken to fill the said seats as would take place if the said Electoral Divisions had been immediately upon the issue of the said proclamation, Electoral Divisions 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 House of Assembly.

6. All and singular the provisions of the law of this Colony for the time being, relative to the registration and qualification or disqualification of voters, the making out of lists of voters and the proceedings thereon, the nomination, election and qualification or disqualification of members of the Legislative Council and the House of Assembly, the taking of polls and the procedure relating to Parliamentary Elections generally, as well as the provisions of the law of this Colony relating to election petitions and corrupt practices at elections shall, where not repugnant to or inconsistent with the provisions of this Act, apply to the said new Electoral Divisions: Provided always that for the purposes of such nominations, elections, returns, registration of voters, and other matters and things relating to Parliamentary elections, such person as the Governor may from time to time appoint within the said territories, shall be substituted for the Civil Commissioner where there is no Civil Commissioner, and he shall be the returning officer, and the several Resident Magistrates within the said division shall be substituted for field-cornets where there are no field-cornets, and every Resident Magistrate's district, or portion thereof, where there shall be no field-cornet as aforesaid, shall thereupon be considered to be a field-cornet for the purposes aforesaid.

7. This Act shall take effect on the first day of September, 1887, and may be cited as the "Transkeian Territories Representation Act, 1887."

No. 31—1887.]

(August 9, 1887.)

ACT

To Increase the Powers of the “Borough Council of Kimberley.”

WHEREAS certain powers were conferred on the Borough Council of Kimberley by the Act No. 11 of 1883 and by Act No. 30 of 1884: And whereas it is found desirable to increase those powers and to authorise and enable the said Council.

Preamble.

- (a) To make further and better provision for the protection and saving of property from fire and to recover from the owners of property all expenses incurred in saving life or property from fire or in extinguishing fires.
- (b) To authorise the said Borough Council to assess and value for rating purposes from time to time as they may think fit all or any immovable property in the said Borough and to levy a rate thereon.
- (c) To authorise the Borough Council of Kimberley to grant leave to any person or persons to make, alter or keep in repair roads, streets, tramways, drains and such like works, and to make rules and regulations thereto relating.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

I.

1. In addition to the powers conferred on the said Council by the Act No. 30 of 1884 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 those purposes.

Powers of Council increased with regard to precautions against fire.

2. The Council may 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.

Council to organise Fire Brigade.

3. 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 implement 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

Regulations for the Fire Brigade.

No. 31—1887.

How to be approved of.

Powers of the Superintendent of the Fire Brigade.

such bye-laws shall be made, approved of, and confirmed in manner directed by the Act No. 11 of 1883.

4. 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 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.

Police constables to render assistance to the Fire Brigade.

5. All police constables shall be authorised and required 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 at 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.

Persons acting under order of the Superintendent indemnified against necessary damage.

6. 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 upon sufficient necessity to property in the execution of their duties.

Charge for services of the Brigade fixed at £25 and £15.

7. In every case of fire the Council shall be authorised to charge on every shop, store, warehouse, station, hotel, engine-house, shaft manufactory, timber or stoneyard, carpenter's shop or block of offices in which fire breaks out, a sum not exceeding fifteen pounds sterling for the services of the Fire Brigade and the use of the fire engines and appliances, and also the cost of the water supplied from any hydrant, water pipe or other waterworks or water carts the property or under the control of the Borough Council during the time such water shall be playing upon the said premises or upon the neighbouring premises to prevent the extension of the fire, and also the amount of any damage or loss which may happen or occur to any municipal property by reason of the efforts to extinguish or limit such fire, and on every dwelling-house or other building not above specified in which fire breaks out the Council shall be authorised to charge a sum not exceeding ten pounds sterling for the services of the Fire Brigade and the use of the fire engines any appliances, and also the cost of the water supplied from the municipal hydrants or fire engines during the time that such water shall be playing upon the said dwelling-house or other building or

upon the neighbouring premises to prevent the extension of the fire, and also the amount of any damage or loss which may happen or be occasioned by any municipal property by reason of the efforts to extinguish or limit such fire.

No. 31—1887.

8. The amount charged as aforesaid shall be paid by the owner of such property, and shall be recoverable by action in the name of the Council in the Court of the Resident Magistrate or any court of law having jurisdiction.

By whom such charges are payable.

9. 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 building in order to prevent the spread of the fire, or otherwise in saving or attempting to save buildings or property adjacent to a fire, the said Council shall be entitled to recover the amounts so expended in equitable proportions, whether the said buildings or property be ultimately saved or not.

Those interested in goods, buildings, &c., adjacent to fire to pay share of expense.

10. 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 fourteen days' notice of such apportionment, unless within such fourteen days they shall intimate to the Town Clerk their objections to the same, and agree to submit the whole apportionment of expenses to arbitration.

How an equitable distribution of expenses is to be decided upon.

11. Should any of such owners object to the distribution as arranged by the Town Clerk, or dispute their liability to contribute to such expenses, the whole matter shall be referred to arbitration, and for the purposes of any arbitration the provisions of the Lands and Arbitration Clauses Act, 1882, are hereby incorporated.

Arbitrators in the event of distribution being objected to.

12. 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 of property, whether movable or immovable under this Act, including the charges mentioned in section seven 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.

Damage by Fire Brigade in execution of their duties to be deemed a loss or damage by fire.

13. The cost of all water drawn from all tanks, cisterns, pipes or other supplies of water belonging to or the property of the Kimberley Waterworks Company (Limited) for the purposes of section four of this Act shall be borne and paid for by the Council of Kimberley, and all damage done and caused to the property of the said Kimberley Waterworks Company (Limited) by the Fire Brigade in the execution of their duties or in the removal or attempted removal of goods, or in operations to save property, shall be borne and

Charges for water and damages by Fire Brigade to be borne by Council.

No. 31—1887.

paid by the said Council, anything in the sixth section of this Act notwithstanding, save and except where the said damage to goods which have been removed or attempted to be removed, or the property which has been saved or attempted to be saved from fire is insured, and the amount of the policy is sufficient to pay for the said damage.

Pension or gratuity to officer in case of injury.

14. Should the Superintendent or any of the officers or men of the Fire Brigade, or any police constable, or other person acting under the orders of such Superintendent or other officer in charge of the Fire Brigade, be injured or lose his life in the discharge of his duty, the said Council shall have the right to pay to him or to his widow or children, if any, or part to his widow, or part to his children, if any, as they may desire, such sum of money by way of gratuity or by way of annual pension as they may think proper.

II.

Whereas doubts have arisen as to the power and authority of the said Borough Council to assess immovable property within the said Borough for rating purposes excepting once in every three years, and whereas it is desirable that such doubts should be set at rest and that the said Borough Council should have the right to make such assessment whenever it may be deemed necessary.

Now therefore be it enacted :

New buildings to be valued; additions or alterations to be re-valued.

15. In case any new building shall be erected within the Borough during any such period of three years, or in case of any addition to or alteration of any building then already rated, or in case of any leasing or capitalising or otherwise dealing with any land within the said Borough increasing or altering the value thereof, the Council shall proceed to have the same valued or re-valued as the case may be, in the same manner as is herein or in the Kimberley Borough Act, 1883, or in the Kimberley Borough Amendment Act, 1884, provided for 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. Provided that if during any such period any building shall be removed or destroyed or altered so that its value shall be depreciated, then and in such case the owner or occupier of such building or of the land in which it is placed shall be entitled to call upon the Council to remove the said building from the assessment roll, or to re-value the same, as the case may be, and thereupon the said Council shall take the necessary steps to carry out the same.

Interpretation clause.

16. In the several clauses of this Act the word "Council" shall mean the Borough Council of Kimberley, the words "Mayor," "Council" and "Town Clerk," shall respectively mean the Mayor, Council and Town Clerk of the said Borough Council.

III.

Council empowered to grant leave to make, alter, repair roads, &c.

17. Subject to the limitation placed upon the powers of the Borough Council of Kimberley within Mining Areas in Section

3 of Act 30 of 1884, the said Council shall be, and hereby is authorised and empowered to grant leave to any person or persons to make, alter, and keep in repair roads, tramways, streets, thoroughfares, dams, ditches, sewers, drains, bridges, and other like works: Provided that the granting of such leave shall not affect the private rights of the owners of land within the said Borough.

18. The said Council shall have power and authority from time to time to make, alter, amend, or revoke Bye-laws or Regulations, and to fix and impose fines and penalties for all or any of the following purposes (providing that all and singular the provisions of the Kimberley Borough Act of 1883, and the Kimberley Borough Amendment Act of 1884, relating to Bye-laws and Regulations, and the fines and penalties themselves shall apply to the said Bye-laws, and fines and penalties made under and by virtue of this Act), and the powers conferred in this Act shall be in addition to the powers conferred by the aforesaid Municipal Act, viz.:—(1) To fix the mode of propulsion of tramways, and the rate of speed at which such tramways may travel. (2) To fix the maximum fares for passengers and parcels. (3) For preventing obstructions or hindrances to any tramway or other traffic and removal of any such obstructions or hindrances and to fix and impose fines or penalties for any breach of such regulations. (4) For imposing penalties for wilful obstruction of and interference with servants and officers connected with any tramway in the execution of their lawful duty. (5) For imposing penalties for the wilful removing or altering of any portion of any tramway or other works. (6) For the public exhibition and protection of notice boards and tables of fares. (7) To impose fines and penalties for the wilful proceeding in any tramway, carriage, cart, or other vehicle beyond the distance charged for, and for attempting to avoid payment of fare, or refusing to pay same. (8) To impose fines and penalties for the refusal to quit any tramway carriage, or cart or other vehicle at the end of the journey. (9) To impose fines and penalties for wilfully injuring any carriage the property of any tramway. (10) To impose fines and penalties for the retaining of any goods and articles carried by any tramway carriage, cart, or other vehicle the charges whereof shall have been duly paid; provided that any such persons, company or body corporate, the owners of such tramway carriage, cart, or other vehicle, shall, notwithstanding any such bye-law, be entitled to recover in any of the courts of this Colony such charges, fares, and damages as they may be entitled to. And all proceedings in consequence of the breach or non-observance of such bye-laws, shall be prosecuted by the said Council.

19. The Resident Magistrate of Kimberley, or the Additional Resident Magistrate of Kimberley, or Police Magistrate of Kimberley, shall have jurisdiction under any Bye-laws of the said Municipality relating to all traffic on any streets, roads and tramways, for any offence against any Bye-law committed within the said Municipality. All charges, fines and penalties imposed

No. 31—1887.

Council to have power to make, alter, amend or revoke bye-laws or regulations.

Council's powers increased in regard to tramways and their management.

Power to impose certain penalties.

Jurisdiction in respect of bye-laws under last section.

No. 34—1887.
How fines and penalties applied.

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.

No extended rights in acquisition of land granted.

20. Nothing in this Act shall be deemed to give the Council of the said Municipality greater rights of taking land than they would otherwise possess without this Act.

Short title.

21. This Act may be cited as an Act to increase the powers of the Kimberley Borough Council, 1887.

No. 32—1887.]

[August 9, 1887.

Act to Repeal a certain Section in the "Roads Act, 1877," and to substitute another in lieu of it.

[Repealed by Act 40, 1889.]

No. 33—1887.]

[August 9, 1887.

Act for applying a Sum not exceeding Thirty-one Thousand Five Hundred and Ninety-seven Pounds Eight Shillings and Eightpence Sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 34—1887.]

[August 9, 1887.

ACT

To Repeal the Table Mountain Water Supply Company Act, 1882, and to vest in and confer upon the Wynberg Municipal Council certain rights, powers, and privileges for the purpose of securing a Supply of Water for the use of the Inhabitants of the Wynberg and certain other Municipalities.

Preamble.

WHEREAS it is desirable that the inhabitants of Wynberg, resident within the limits of the Wynberg Municipality, should be supplied with good water; and whereas it appears from surveys made and measurements taken, that a considerable portion of the water flowing from and down Table Mountain and its slopes could be utilised for that purpose; and whereas a certain Company, styled the Table Mountain Water Supply Company (Limited) was incorporated by the Act No. 47 of 1882, and certain rights and powers were vested in and conferred upon the said Company and the provisional committee thereof; and whereas the said Company has not been formed and the waterworks contemplated by the said Act have not been constructed, but the provisional

committee aforesaid disposed of and sold to the Town Council of Cape Town certain plans, surveys, reports and estimates prepared for the purposes of the said Act; and whereas it is expedient to repeal the said Act and to vest in and confer upon the said Council certain rights, powers and privileges in order to enable it the better to carry out a scheme for the supply of good water for the use of the inhabitants resident within the limits of the Wynberg Municipality and subject to the provisions of this Act, also within the Municipalities of Claremont and Rondebosch; and whereas it is expedient to authorise and empower the said Council to borrow a sum of money not exceeding £16,000 to be applied to carrying out the purposes of this 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:—

1. The Act No. 47 of 1882 shall be and is hereby repealed.

2. The general management of all matters connected with or relating or incidental to the construction, maintenance and working of the waterworks constructed by the said Council under the provisions of this Act, and also the right to and property in all and singular the materials, stock, land, and everything appertaining to the said waterworks, shall be vested in the said Council subject to the provisions of section twenty-three of this Act.

3. The said Council shall be empowered to take, impound, divert, appropriate and convey from the Back or Hout Bay River and its tributaries in the Cape Division, and from surface area, the drainage from which shall flow into the said Back or Hout Bay River or any of its tributaries or into Hout Bay, such a supply of water as they may require for the purposes of this Act. And for the purpose of enabling them to do so, it shall and may be lawful for the Governor to grant to the said Council in full and free property, on such conditions as may be agreed upon, all Government land draining into Hout Bay, or which may form part of the drainage area from whence or over which it is intended that such water shall be so taken, impounded, diverted, appropriated and conveyed: Provided that if such taking, impounding, diversion, appropriation, or conveyance shall deprive any person of any right of or to any water now or hereafter vested in him, or in any way interfere with or lessen any such right, such person shall be entitled to compensation: 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 right of or to any water for the interference with or lessening of which by the works hereby authorised he shall be entitled to claim any compensation.

4. No right, power, or privilege by this Act vested in or conferred upon the said Council shall be construed or taken to be so vested or conferred in derogation of or from any right, power,

No. 34—188

Act No. 47 of 1882 repealed.
Management of waterworks and all right and property in materials, stock, &c., vested in council.

Powers of acquisition, diversion, &c., of water.

Compensation.

Rights, &c., vested in Town Council of Cape Town by any

No. 34—1887.

Act of present Session recognised, subject to provision for arbitration in case of dispute.

or privilege which may in the present session of Parliament be by Act of Parliament vested in or conferred upon the Town Council of Cape Town with regard to the taking, impounding, diverting, appropriating, or conveying of any of the water in the last section mentioned, but the said Council and the said Town Council may each severally exercise and enjoy every such right, power or privilege so vested in or conferred upon it; provided that if any dispute or difference shall at any time arise between the said Council and the Town Council with regard to the scope, exercise, or enjoyment of any such right, power, or privilege so vested in or conferred upon either, such dispute or difference shall, unless the same shall be terminated by mutual arrangement, be decided by a reference to arbitrators, who shall decide the same as shall to them appear just, fair and reasonable.

Council's power of construction and maintenance.

5. The said Council is hereby empowered to construct and make, or cause to be constructed and made, beyond as well as within the limits of the Wynberg Municipality, all such work 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, wells or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works for securing an adequate supply of water for the purposes of this Act.

Powers of entry on and taking of Crown Lands, Glebe Lands, Orange Kloof and private lands; powers of purchase, hire and agreement.

6. 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 for church purposes, commonly called Glebe lands, or any land set apart as commonage lands for the Wynberg Municipality, and also to enter upon, occupy, enclose, take and use the farm Orange Kloof, and any land the private property of any person or persons whomsoever, which may be required for the construction of maintenance of any of the works aforesaid, for the obtaining of the necessary drainage area or for any of the purposes of this Act, and may enter into agreements for the purchase or hire of such farm or private land, or may take, carry away, or use for the purposes of the said works any stone, clay, gravel, or other material requisite for carrying out the said works, and may break up or excavate any land for the purpose of laying down, repairing, inspecting, maintaining, or removing any reservoir or reservoirs, pipe or pipes, or other works, and may either compensate the owners of such private lands and the said farm, or enter into any contract relative to obtaining such farm, lands or materials, or for laying down any pipe or pipes, or other works, upon such terms and conditions as may be or have been mutually agreed upon.

Powers to take lands for protection of sources of supply.

7. The said Council is hereby empowered to acquire, occupy, or take possession of, and use any such land as aforesaid, or any

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other land which may be required for the purpose of protecting or developing the sources of the Back or Hout Bay River or its tributaries, subject to the right of the owner of any private land to claim compensation.

8. The said Council is hereby empowered, beyond as well as within the limits of the Wynberg Municipality, to lay down and construct pipes, conduits, or any other appliances for the conveyance of water, across, or along any public road, street, or thoroughfare, or under, across, or along any ground set apart in the diagram or conditions of sale of land as a public road, street, or thoroughfare, without making or becoming liable to make any compensation; provided that if the said Council shall in any way disturb the surface or otherwise interfere with the free and accustomed use of any such road, street, thoroughfare or ground, the said Council shall so soon as may be make provision either to restore such road, street, thoroughfare, or ground to its former condition, or for the safe, free, and convenient use thereof by all persons entitled to such use.

Powers to lay down pipes, &c., along public ways, subject to restoration of convenient access.

9. It shall at all times be lawful for the said Council and its engineers, contractors, or workmen, and with carts or carriages, to have free access and right of way to, over and along the works constructed or to be constructed, 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 aiding, repairing, re-laying, or supervising the said works, or for any other purpose whatsoever incidental to carrying out the purposes of this Act.

Rights of access.

10. Whenever compensation shall be claimed from the said Council under and by virtue of any of the provisions of this Act by any person, the amount of such compensation shall, in the absence of agreement, be determined by arbitration, and with regard to every such arbitration, and also to the arbitration contemplated in sections four and eleven of this Act, the provisions of the Lands and Arbitration Clauses Act, 1882, shall, *mutatis mutandis*, apply.

Compensation and disputes settled by arbitration under provisions of Lands and Arbitrations Clauses Act, 1882.

11. If by any Act of Parliament passed during the present Session of Parliament, any such rights, powers, and privileges shall be vested in or conferred upon the Town Council of Cape Town as are referred to or contemplated in Section four of this Act, it shall be lawful for either the said Wynberg Municipal Council or the said Town Council to claim from the other a contribution to all and every sum paid by either by way of compensation, either under Section three of this Act or under the provisions of any such Act so passed as aforesaid, in respect of any right of or to any water interfered with or disturbed, and in the absence of agreement, the amount of such contribution shall be determined by arbitration; provided that notice shall be given by either the said Wynberg Municipal Council or the said Town Council, as the case may be, to the other, of every claim for compensation made

Provisions for mutual compensation by Wynberg Council and Town Council.

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against the Council giving notice in respect of which compensation such other shall be liable to a contribution under the provisions of this Section, and also notice of all proceedings before the arbitrators assessing the amount of such compensation, and such other shall be entitled to call and examine witnesses and to be heard before such arbitrators; provided, further, that no claim for contribution shall be made against the said Town Council towards any sum paid by the said Wynberg Municipal Council in respect of any right of or to any water interfered with or disturbed solely by the taking, diverting, or appropriating by the Wynberg Municipal Council of the water of the stream commonly known as the "Disa Stream" and its tributaries; and provided, lastly, that no claim for contribution shall be made against the said Wynberg Municipal Council towards any sum paid by the said Town Council in respect of any rights of or to any water interfered with or disturbed solely by the taking, diverting, or appropriating by the said Town Council of water at or above the point on its course at which the Town Council may be authorised by any Act in the present Session of Parliament to take water from the Back or Hout Bay River and its tributaries.

Penalties for injuring Council's property and works.

12. Any person who shall wilfully injure, damage, obstruct or interrupt any building, erection, conduit, reservoir, dam or 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 or any of them, shall upon conviction be liable for each offence to a fine 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 such fine and such imprisonment; providing that nothing in this section contained shall be held or taken to exempt such person from any civil or criminal liability for any of the aforesaid acts to which he would have been subject if this Act had not been passed, but no person shall be prosecuted criminally, both under this Act and any other law, for or in regard to one and the same act.

Penalties for defiling water.

13. 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 be liable to a fine not exceeding five pounds sterling, and in default of the payment of such fine, to be imprisoned with or without hard labour for any period not exceeding twenty-one days.

14. The offences defined in the two last preceding sections of this Act may be prosecuted in the Court of Resident Magistrate, either at Cape Town or at Wynberg.

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Offences how prosecuted.

15. All water secured or obtained by the said Council under the provisions of this Act shall be conducted to, flow into, and be collected and stored in a reservoir or reservoirs, hereinafter called the service reservoir, situated near the Rifle Butts, on or near the Hen and Chickens Hill, or other suitable site or sites, for the purpose of being thence distributed or divided in pursuance of the provisions of this Act.

Provision for service reservoir.

16. The said Council is hereby empowered from time to time to frame and publish a tariff of charges by which the supply of water by private or other water leadings, for domestic, irrigating, industrial, or other purposes, shall be regulated within the limits of the Wynberg Municipality, and the payment for such supply shall be in accordance with such tariff, and the said Council may specially agree with any person or body corporate for the supply of water upon such special terms as it may deem suitable.

Tariff of charges.

17. The said Council may authorise any person for the purpose of inspection and repair to enter upon any premises supplied with water by the said Council, between the hours of ten a.m. and four p.m., and to cut off the supply to any such premises after twenty-four hours' notice in writing shall have been given of the intention to do so; provided, however, that such supply shall not, under this section, be cut off for any period longer than may be actually required, for the purpose of detecting waste or making necessary repairs.

Right to enter and cut off supply in order to effect inspection and repair.

18. If any person shall, for one week after lawful demand, fail to pay any sum due for water supplied under the provisions of this Act, the said Council is hereby empowered to enter upon the premises to which the water not paid for has been supplied, and to cut off the supply until the sum due be paid.

Right to cut off supply upon default of payment for water.

19. The cost of the house connection with shut-off cocks and suitable house fittings, and of all repairs shall be borne by the persons to whom the water is supplied; but the materials for the same shall be purchased from or approved by the said Council, and shall be laid down by the workmen or contractors of the said Council, or under the control of any person approved of by the said Council: Provided, always, that where the water is supplied by meter the work up to and including the meter shall be done by the servants of the said Council, and the work and fittings on the consumer's side of the meter may be done by the consumer in such way as he may deem fit, subject to any regulations and by-laws framed by the said Council.

Cost of house connection and repairs borne by consumer.

20. Within twelve weeks from the date of the passing of this Act, the Municipal Councils of Claremont and Rondebosch (hereinafter called the said other Councils), or either of them, being thereto duly authorised in manner provided in the next

Claremont and Rondebosch Municipalities may give notice of intention to claim share of water.

No. 34—1887.

succeeding section, may give notice in writing to the Clerk of the said Council of the intention of such other Council giving such notice to claim a share of the water supply secured and obtained, or to be secured and obtained, by the said Council under and by virtue of the provisions of this Act.

Such notice to be lawful only after resolution of ratepayers.

21. It shall be lawful for both or either of the said other Councils to give such notice as is referred to in the last section if, and only if, it shall be therein duly authorised by a resolution passed by a majority of ratepayers present at a duly convened meeting of ratepayers of the Municipality represented by such Council; and such meeting shall be deemed to be duly convened by a notice of not less than fourteen days given by advertisement in the *Gazette* and two or more newspapers circulating in such municipality, which notice shall set forth the object of the meeting; provided, however, that at any such meeting any twenty ratepayers may by writing under their hands, delivered to the Chairman of the meeting or Clerk of the Municipality, demand a poll, and thereupon the provisions of section one hundred and forty-seven and the three succeeding sections of "The Municipal Act, 1882," shall *mutatis mutandis* apply to the taking of such poll and the voting for or against the proposed resolution.

Rights and liabilities of Council giving notice under section 20.

22. Upon due notice being given by both or either of the said other Councils within the time specified in section twenty of this Act, each such other Council giving such notice shall be and become entitled to claim from the said Council the share hereinafter provided of all water secured and obtained or to be secured and obtained under the provisions of this Act, and conducted to, flowing into, stored or collected in the before-mentioned service reservoir, and shall be and from time to time become indebted to the said Council in a proportionate and corresponding share of all costs, charges, and expenses either borne and incurred or hereafter to be borne or incurred by the said Council in and about

- (1) Promoting and attaining the passing of this Act,
- (2) Carrying out all or any of the provisions or purposes of this Act,

save and except only all costs, charges, and expenses borne or incurred by the said Council in distributing water within the limits of Wynberg Municipality from the aforesaid service reservoir; provided that the shares hereinbefore referred to of the water and of the costs, charges, and expenses above specified shall be in the case of the Municipal Councils of Claremont and Rondebosch respectively two-eighths three-eighths of all such water and all such costs, charges and expenses.

Right of other Council to proportionate share of common property of waterworks.

23. Upon such notice as aforesaid being duly given, such other Council shall further be invested with a right to and property in the proportionate and corresponding share mentioned in the provision to the last preceding section share of all and singular the materials, stock, land and everything appertaining to the said

waterworks referred to in section two of this Act, exclusive, however, of all such materials, stock, land or appurtenances as may now or hereafter be vested in or acquired by the Wynberg Municipal Council for the purpose of effecting a distribution of water from the aforesaid service reservoir among the inhabitants of Wynberg Municipality.

24. The said Council or either or both of the said other Councils are hereby authorised and empowered to make all such arrangements and enter into all such agreements as they or any two of them may deem expedient or necessary to make or enter into between themselves for the purpose of securing and granting the passage of water by pipes or other appliances from any point within or upon the boundary of any one of the three Municipalities to any point upon or within the boundary of any other; provided that no such arrangement or agreement shall in any way interfere with any existing rights of any private person or body corporate.

25. Upon giving such notice as aforesaid each of the said other Councils shall *mutatis mutandis* have all the rights, powers, and privileges with respect to the distribution and disposal of water within the limits of the Municipality which it represents which are by this Act vested in or conferred upon the said Council within the limits of the Wynberg Municipality.

26. The said Council is hereby authorised and empowered to take up on loan by debenture or otherwise for the purposes of this Act a sum or sums not exceeding in all Sixteen Thousand Pounds sterling, which sum or sums when borrowed, and every other pecuniary liability incurred by the said Council under the provisions of this Act, shall be deemed and taken to be a debt or debts within the meaning of the Public Bodies Debts Act, 1867.

27. In order to provide a fund for the payment of all sums borrowed under the provisions of this Act, and for the gradual extinction of the debt thereby incurred there shall be set apart by the said Council out of any moneys which may be at its disposal an annual sum equal to the interest on the amount of the debt remaining unpaid, and a further sum of not less than One Pound sterling per centum on the capital sum so borrowed, and such sum of not less than One Pound per centum 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 thereof remains unpaid and unextinguished.

28. The said Council shall keep or cause to be kept a separate and distinct account of all moneys borrowed and all revenue received under this Act and of all moneys expended or set apart in pursuance of the provisions of this Act, and such an account shall, until all sums borrowed under this Act shall have been repaid and the aforesaid debt as incurred extinguished, be annually prepared up to the 30th of June of each year, and shall be

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Powers to agree as to passage of water from one municipality to another.

Right, &c., within the other municipalities conferred *mutatis mutandis* upon the other Councils.

Borrowing power to limit of £16,000.

Public Bodies Debts Act, 1867, to apply.

Fund for payment of borrowed moneys.

Accounts to be kept of revenue and expenditure.

No. 35—1887.

Costs, &c., of obtaining Act may be paid out of moneys borrowed.

Short title.

deposited and lie in the Municipal Office for inspection at all reasonable times by any ratepayer of the Wynberg Municipality.

29. The costs, charges, and expenses of obtaining the passing of this Act may be paid by the said Council out of the moneys borrowed under the provisions of this Act.

30. This Act may be cited for all purposes as “The Wynberg Water Supply Act, 1887.”

No. 35—1887.]

[August 9, 1887.]

ACT (1)

To Provide Cape Town with a further Supply of Water and to provide for the Raising of the Sum of £25,000 for that purpose.

Preamble.

WHEREAS it is expedient and necessary that measures be forthwith taken to provide the City of Cape Town and the shipping calling at the Port of Table Bay with a further supply of good water: and whereas surveys have been made and measurements taken by which it is shown that a considerable portion of the water now flowing from Table Mountain and its slopes into Hout Bay can be utilised for the benefit of Cape Town: and whereas it is enacted by the 67th and 68th sections of Act No. 44 of 1882, amongst other things that the said Town Council shall be entitled to take and use any land within the limits of the Municipality of Cape Town, or within the limits of the Cape Division, or to dig out and carry away any materials, or to appropriate or make use of any springs, streams, or other supplies of water belonging respectively to any person or persons upon any lands within the limits of the said Municipality or of the Cape Division, who shall not be bound by law to allow the Town Council to do so, and to treat and agree with any such person or persons for the purchase of the same, or for the payment of consequential damages, and in case of difference to settle such amount of recompense or compensation under the provisions of the Lands and Arbitration Clauses Act of 1882: And whereas certain rights and privileges were granted to the Table Mountain Water Supply Company by Act No. 47 of 1882, incorporating the said company for the purpose of collecting, impounding, storing and distributing the supply of water furnished by those parts of Table Mountain which at present discharge their water in Hout Bay, and constructing and maintaining the necessary waterworks and supplying with water the villages of Wynberg, Claremont, Newlands, Rondebosch, Mowbray, Papendorp, New Brighton, and the City of Cape Town (the provisions whereof have not been carried into effect), which Act it has become necessary to repeal: And whereas it is also necessary in order to obtain the said further supply of water that the Town Council of Cape Town

¹ See also Acts 26, 1893, 9, 1894, 15, 1894, 25, 1897 and 28, 1902. So much of this Act as is inconsistent with Act 28, 1902, is repealed.

should be authorised to borrow on Municipal Debentures for this specific purpose, a sum not exceeding Twenty-five Thousand Pounds Sterling :

No. 35—1887.

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 “Table Mountain Water Supply Company Act, 1882,” shall be and the same is hereby repealed.

Provisions of Act No. 47 of 1882 repealed.

2. The Town Council of Cape Town shall be and are hereby empowered to take, intercept, dam, impound, divert, appropriate all the water of the upper source and the tributaries of Hout Bay River known as the Back Stream from above the point indicated on the quitrent place “Orange Kloof,” marked R on a certain plan with drawings lodged with the Clerk of the House of Assembly, and from said point R to convey the water by a tunnel or other channel to the western slope of the mountain facing Camps Bay to the point indicated and marked B on the said plan, or as near thereto as most convenient and practicable, and from point B or some other convenient and practicable site to convey the water along the western slopes of Table Mountain by channels or pipes to a tank or reservoir to be constructed at or near the Upper Block House on the Kloof Neck as shown by the letter C on the said plan, and from thence to the Molteno Reservoir, Cape Town : Provided that nothing herein or in the next section contained shall be deemed to authorise or empower the said Town Council in any way whatever to interfere with the free flow of all water which would naturally fall into the stream commonly called the Disa Stream or any of its tributaries or into the Back or Hout Bay River or any of its tributaries below the said point R.

What waters Town Council empowered to take, impound, &c.

Disa stream intercepted.

3. The said Town Council is hereby empowered to construct or cause to be constructed all such dams, reservoirs, tunnels, aqueducts and such other works on Table Mountain as shall be necessary from time to time, to dam, impound, store, divert, appropriate, take and convey the said water of the springs, streams, and other sources of water supply for the purposes of this Act, and to lay down all necessary pipes to carry said water to its ultimate destination for the purpose of securing a further supply of water for the use of the City of Cape Town and the shipping of Table Bay.

Town Council empowered to construct works and buildings necessary for this Act.

4. For the purpose of this Act the Town Council are hereby empowered to enter upon, occupy, enclose, take and use any land belonging to Her Majesty the Queen, commonly called “Crown lands,” and also to enter upon, occupy, enclose, and take possession of, appropriate and use any land the private property of any person or persons whomsoever, or any municipality, with the waters thereof, which may be required for the purposes of this Act, and may agree as hereinafter provided for the purchase or hire of such private lands and water, and may take and use for the purpose of this Act any stone or other material for carrying out the said works, and may excavate or tunnel any land for the

Town Council empowered to take and use Crown lands and other lands.

No. 35—1887.

purposes of constructing and maintaining any reservoir or reservoirs or for leading out water and laying down pipes or other necessary works.

How claims for compensation to be settled.

5. Any person or persons from whom any water, land or right of way, or any stone, gravel or other material may be required to be taken shall be bound to send in to the Town Clerk of the Cape Town Municipality, at his office, Town House, Cape Town, his, her, or their claim or claims for the purchase amount, hire, recompense or compensation which he, she, or they may claim to be entitled to for such stone, gravel, or other material, water, right of water, land, or right of way required or taken or which shall be required or taken for the purposes of this Act within six 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 of the City Engineer and Superintendent of Water Works of the Cape Town Municipality during the hours of 9 a.m. and 3 p.m. on all business days during the period aforesaid, for the inspection of any person or persons who shall be interested therein, after which period of six months no further claim or claims or any claim which shall not have been sent in, in the manner hereinbefore provided for, shall be recognised, nor shall such claimants be entitled to recover the amount of their claim or claims, or any portion thereof, from the said Town Council by any means or proceedings whatever. And in case the said Town Council shall not consent or agree to pay the amount of such claim or claims, then the amount to be paid by the Town Council shall be determined by arbitration, as in manner provided by the terms of Act No. 6 or 1882.

In case of disagreement claims to be settled by arbitration.

Curator or guardian in case property of minor, &c., being taken authorised to treat with Town Council for purchase or hire thereof.

6. In case the said Town Council shall require to take or use any land or water 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 Town Council for the purchase or hire of the land or materials required, and to execute any contract which may be needful for carrying out any agreement which may be made, and in case of non-agreement, to refer the matter in difference to arbitration as in the last preceding section mentioned. But all moneys which shall by agreement or by arbitration be payable by the said Town Council for or on account of any land or materials in this section mentioned, shall be paid by the said Town Council 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 interest in any such land aforesaid, in which a minor or other such person

as aforesaid under guardianship or curatorship shall be also interested in remainder or expectancy then the whole value of the land or materials as fixed by contract or 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 as therein administered: Subject, however, at all times to such orders as the Supreme Court as aforesaid may upon motion of any person having an interest, see fit to make in regard to such money.

7. 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 or 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 Town 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 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.

8. Any person who shall bathe or wash himself in any dam or reservoir belonging to the said Town Council, or in any stream flowing into such dam or reservoir, by means of any watercourse constructed by the said Town 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 anything whatsoever, shall for every offence on being convicted thereof forfeit for the use of the said Town 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.

9. It shall be lawful and competent for the Town Council on the security of the town rates to borrow a sum of money not

No. 35—1887.

Penalty for wilful injury, &c. to building, conduit, reservoir, &c.

Penalty on persons polluting waters of Council.

Town Council empowered to borrow £25,000.

No. 37—1887.

exceeding twenty-five thousand pounds for the purpose of carrying out the provisions of this Act.

Short title.

10. This Act may be cited as the "Cape Town Municipality Additional Water Supply Act, 1887."

No. 36—1887.]

[August 9, 1887.

ACT

To make better Provision with regard to Returning Officers at Municipal and other Elections.

Preamble.

WHEREAS it is expedient to make provisions to meet any difficulty which may arise in case the Returning Officer at any municipal or other election should be a candidate at such election, or unable or unwilling to act as such Returning Officer: 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:—

Governor may, in certain cases, appoint Returning Officer.

1. In case the person directed by any Act or law to fill the office of Returning Officer at any election shall be a candidate at such election, or unwilling or unable through illness, absence, or otherwise, to act as such Returning Officer, it shall and may be lawful for the Governor, on application of not less than twenty-five of the persons qualified to vote at such election, to appoint some other person to be Returning Officer for the purposes of such election.

No. 37—1887.]

[August 9, 1887.

ACT

To give Additional Powers to the Commissioners for the Management of the Docks and Breakwater of Table Bay.

[Repealed by Act 36, 1896.]

No. 38—1887.]

[August 9, 1887.

ACT

To Amend and Explain the Law relating to Stamp Duties and Licences. (1)

WHEREAS it is expedient to amend and explain in certain respects the law relating to Stamp Duties and Licences: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

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, or licences granted previously to the commencement of this Act.

Repeal of repugnant laws.

2. All and singular the stamp duties and licences set forth in the second schedule hereto, shall from and after the thirty-first day of December, 1887, become due and payable for and in respect of the several 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, and the provisions of the 6th section of Act No. 13 of 1870 shall *mutatis mutandis* apply to all persons who should, under the provisions of this Act, or the Schedule II. hereof take out and possess a licence.

Stamp duties and licences in schedule 2 established.

Extended by Proclamation No 22 of 1888 to Port St. John's. See Act 3, 1864 (p. 905), and footnotes thereto.

- No. 38—1887.
Definition of terms.
3. For the purposes of this Act and all other Acts relating to Stamp Duties or Licences the following terms shall, unless the context otherwise requires, have the meaning herein assigned to them, namely:—
- Auctioneer. “Auctioneer” means any person who sells any article or thing at any public sale where the highest bidder, whether the bidding be by the rise or by the fall, becomes the purchaser.
- Pawnbroker. “Pawnbroker” means any person who carries on the trade or business of taking movable property in pawn or pledge.
- Dealer in gunpowder. “Dealer in gunpowder” means any person who sells gunpowder, explosives, and explosive substances.
- General dealer. “General (1) dealer” means any person who carries on the trade or business of selling, or offering or exposing for sale, barter or exchange any goods, wares or merchandise, not being the growth, produce, or manufacture of South Africa.
- Importer. “Importer” (1) means every person who imports any goods other than the produce of South Africa for the purpose of trade or barter: Provided that such importation shall be of the value of at least one thousand two hundred pounds sterling during the year ending the 31st day of December.
- Agent of a foreign firm. “Agent” of a foreign firm” means any person other than an importer, who sells or offers for sale by sample or otherwise goods of a firm whose place of business is not in this Colony; but shall not include a person who sells or offers for sale goods consigned to him by a foreign firm.
- Broker. “Broker” means every person (other than an importer or an agent for a foreign firm) who shall in this Colony carry on the trade or business of making bargains and contracts between other persons in matters of trade, commerce, and navigation, for a remuneration commonly called a brokerage.
4. Under the provisions of this Act no licensed hawker as such, no licensed dealer in intoxicating liquor as such, no licensed apothecary, chemist or druggist as such, no licensed baker as such, no licensed butcher as such, and no licensed buyer of ostrich feathers who shall sell such feathers, shall be bound and required to take out a licence as a general dealer, and no licensed apothecary, chemist or druggist shall be bound or required to take out a licence as an importer of such goods as are now customarily used or sold in the ordinary course of business of an apothecary, chemist or druggist; and nothing in the last preceding section contained shall be taken to authorise any person to do any act or thing for the performance of which any special licence is by law required without having first obtained such special licence: nor shall anything in this Act contained be taken to affect the provisions of any of the following laws, namely: Ordinance No. 44 of 1828, Ordinance No. 92 of 1832, Section 8 of Ordinance

Certain persons exempt from taking out certain licences and certain existing laws not to be affected by this Act.

¹ Sale of tonic bitters containing spirits under a general dealer's or importer's licence forbidden. See § 10, Act 28, 1898 (p.3959).

No. 11 of 1846, Section 21 of Ordinance No. 16 ⁽¹⁾ of 1847, Ordinance No. 6 of 1848, Act No. 10 of 1869, and Act No. 11 of 1871.

5. The licence for "manufacturing jams, preserves, and confectionery for purposes of trade or sale," shall not be required to be taken out by any person who does not propose to apply for a rebate of Customs duty under the provisions of the eighth section of tariff 15 of schedule 2 of Act No. 20 of 1884.

6. The holder of any licence for the sale of wines and spirits or of any licence for dealing by retail in any place not being within a municipality or not being within any town or village under the Village Management Act ⁽²⁾ of 1881 may without any other licence sell meat or bread to supply travellers.

7. Every broker who shall execute, grant, deliver, or in any way make use of any broker's note, whether bought or sold, not written on duly stamped paper, shall be liable to a fine not exceeding ten pounds sterling.

8. It shall be lawful for the Governor to direct, in such cases as he may deem fit, that when two or more receipts for the payment of money, required by law to be stamped, are given on one and the same document, one or more stamps representing in value the total amount of stamp duty payable in respect of the receipts so given may be affixed to such document, in lieu of a separate stamp for each receipt.

9. All "ostrich feather buyers' licence" then current shall cease and determine upon the 31st day of December, 1887, and in case of licences issued for a longer period there shall be refunded to the licensees a proportionate amount of the sums paid for such licences. All "ostrich feathers buyers' licences" issued at any time after the 31st day of December, 1887, shall expire on the 31st day of December then next. If any such licence is issued on or after the 1st day of July in any year there shall be payable only one-half of the appointed sum.

10. All "wholesale licences" under Acts Nos. 28 of 1883 and 44 of 1885 then current shall cease and determine on the 31st day of March, 1888, and in case of licences issued for a longer period there shall be refunded to the licensees a proportionate amount of the sum paid. All such wholesale licences issued at any time after the 31st day of March, 1888, shall expire on the 31st day of March then next. If any such licence is issued on or after the 1st day of October in any year there shall be payable only one-half of the appointed sum.

11. Every insurance company, society, or association, not being such a Joint Stock Company as is described in Section 1 of Tariff 17 ⁽³⁾ of the Schedule to Act No. 3 of 1864, as amended by Act No. 20 of 1884, and not being such a mutual assurance com-

No. 38 1887.

Licence for manufacturing jams, &c., not necessary where no rebate of customs duty is applied for.

Liquor licence or retail licence covers sale of bread and meat to travellers outside municipalities, &c.

Penalty for broker using unstamped note.

When more than one receipt for money is given stamps denoting total amount payable may be affixed in lieu of separate stamp for each receipt.

All ostrich feather buyers licences to be annual in future

All wholesale wine and spirit licences to be annual in future.

Licences of Insurance Companies regulated.

¹ Repealed by Act 15, 1892.

² No. 29.

³ Tariff 17 repealed by this Act and Act 43, 1898 (p. 4016).

No. 38—1887.

pany as is referred to in section ten of the said tariff, and not now existing and carrying on business in this Colony, shall, before commencing business, take out a licence for the then current year ending the thirty-first day of December, on which licence the sum of thirty pounds sterling shall be payable; and each such company, society, or association, in respect of the second and every subsequent year during the whole or any part of which it shall carry on business, and also every such company, society, or association, which shall either now be in existence and carrying on business in this Colony, or shall be in existence, but shall have ceased to carry on or discontinued business in this Colony, in respect of every year after the 31st day of December, 1887, may commence, continue, or carry on such business, as the case may be, upon taking out a licence on which there shall be payable the sum of sixpence for every pound sterling or fraction of a pound sterling on the premiums received in this Colony, by such company, society, or association, during the preceding year ending the thirty-first day of December: Provided that, when the amount so calculated payable in respect of any such licence shall not amount to thirty pounds, the sum of thirty pounds and not less shall be payable in respect of every second or subsequent year, or year after the thirty-first day of December, 1887, as the case may be; and provided, further, that in no case shall a greater sum than five hundred pounds sterling be payable for the licence for any one year; and provided, further, that no such assurance company as is referred to in the tenth section of Tariff⁽¹⁾ Seventeen of the Schedule to Act No. 3 of 1864, shall in any case in any one year, be bound or obliged to pay any sum by way of licence, exceeding the sum of Five Hundred Pounds sterling.

Return to be rendered for purpose of determining amount of licence to be paid by Insurance Company.

12. For the purpose of ascertaining the amount of licence duty chargeable for the second and every subsequent year under the provisions of the last preceding section, every insurance company, society, and association shall, by its manager, secretary, or agent, make a return in writing, in such form as the Governor may prescribe, setting forth the amount of premiums received by such company, society, or association at its head office and at all its branch offices, in the Colony during the year ending the 31st day of December preceding such return, and such return shall be made to the officer appointed by the Governor in that behalf on or before the 15th January in each year. Any company, society, or association making a false return, or neglecting or refusing to make a return, shall be liable to a penalty not exceeding one hundred pounds, and such penalty shall be recoverable from the manager, secretary, or agent of any such company, society, or association in any competent court: Provided that the affixing of any sign-board or door-plate at the place of business of the said manager, secretary, or agent of any such company, society,

¹ See Act 43, 1898 (p. 4016).

association, or the issue of any advertisement in a public print, or of any prospectus advertising business for such company, society, or association shall be considered sufficient proof that business is being carried out by the said manager, secretary, or agent on behalf of such company, society, or association: Provided also that any company, society, or association which shall tender the sum of five hundred pounds for its licence for any one year shall not be required to make any such return in respect of that year.

13. Notwithstanding anything contained in the Act No. 3 of 1864, as amended by this Act, no Steam Navigation Company shall be bound or required to take out any licence for or in respect of its carrying trade between this Colony and any place beyond seas, or between any ports of this Colony.

14. Every Assurance Company, whose head office or place of business is or shall not be situated within this Colony, either now established or carrying on business or hereafter becoming established and commencing to carry on business, within this Colony, managed or represented either by a board, secretary, manager or agent, and which either before the passing of this Act has carried on or thereafter shall commence to carry on the business of Fire, Marine, Accident or Life Assurance in this Colony, if such company shall after the passing of this Act continue or commence to carry on such business in the Colony, shall be and is hereby required to deposit, on or before the first day of January in the year succeeding that in which it shall so continue or commence to carry on such business, with the Treasurer-General of this Colony, to his satisfaction, securities to the value of ten thousand pounds sterling; provided, however, that the income derived from such securities may be received by the depositor.

15. Any company may, on giving due notice to the Treasurer-General, withdraw from his custody any securities so deposited, on depositing with him securities of an equal value, and any substituted securities shall for all purposes be treated as securities originally deposited.

16. The Distributor of Stamps and Licences shall not issue any licence to any company, such as is described in section 13, until he has received a certificate under the hand of the Treasurer-General that the provisions of the said section 13 and section 14 of this Act have been complied with by the company applying for such licence.

17. This Act shall be read as one with the existing Stamp Acts, and may be cited as "The Stamps Acts Amendment Act, 1887."

No. 38—1887.

Steam Navigation Companies exempted from licence.

Deposits of £10,000 required from English, Colonial, or Foreign Companies.

Provision for substitution of securities.

Certificate of Treasurer-General required before issue of licence.

Short title.

No. 38—1887.

Schedule I.

SCHEDULE I.

ENACTMENTS REPEALED.

No. and Year.	Title.	Extent of Repeal.
Act No. 3 of 1864	“The Stamp Act, 1864”	Section 22, Tariff 6, and Sections 5, 7 and 9 of Tariff 17 of the Schedule.
Act No. 20 of 1884	“The Stamp and Office Fees Act, 1884”	In Tariff 15 of Schedule 2, the items “For Dealing by Wholesale, £15,” “For Dealing by Retail,” £3,” and Section 7.
Act No. 28 of 1883	“The Liquor Licensing Act, 1883”	In the Second Schedule the words “to endure for one year from the date of issue thereof,” occurring between the words “For a Wholesale Licence,” and the words “Thirty Pounds.”

Schedule II.

SCHEDULE II.

TARIFF OF LICENCES.

Annual.

For every General Dealer	... ..	£3 0 0
” ” Importer (over and above his licence as a General Dealer, Auctioneer, Pawnbroker, or Dealer in Gunpowder, or any other licence he may hold)	... ..	12 0 0
” ” Agent of a Foreign Firm	... ..	25 0 0
” ” Licensed Retailer of Wines and Spirits, not being licensed as a General Dealer, for the sale of Aerated Waters and Tobacco and Cigars	... ..	1 10 0
” ” Dealer in Aerated Waters, not being licensed as a General Dealer or as a Retailer of Wines and Spirits.	... ..	1 10 0

1. All of the above licences 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 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.

2. A General Dealer's Licence shall cover all sales heretofore covered by Wholesale and Retail Licences.

3. Every bought and every sold note executed, granted, delivered, or made use of by any broker shall be written on paper duly stamped with a stamp of the value of threepence.

No. 39—1887.

No. 39—1887.]

[August 9, 1887.

ACT

To Exempt Native Registered Voters from the operation of certain disqualifying Acts of Parliament. (1)

WHEREAS it is expedient to exempt every native voter, duly registered as such for the election of members for the Parliament of this Colony, from the operation of certain laws, save in so far as the said laws, or any of them, would have operation in respect of any registered voter of European nationality or extraction: 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 first day of September, 1887, no person whatsoever be his nationality, tribe, or colour, and whether he be or be not a native, Kafir, Fingo, Basuto, Hottentot, Bushman, or the like, shall, after he shall have been and so long as he shall remain duly registered under the law of this Colony for the time being as a voter at any Parliamentary election for the return of any member for any constituency to the Parliament of this Colony, be in any other way, or to any greater extent, subject to the operation of any laws including the laws mentioned in the Schedule A to this Act, than any such duly registered voter of European nationality or extraction may or might be: provided that any native voter, whose name shall appear on any list framed by any registering officer, may, either personally or by an agent authorised in writing, appear at the time and place duly fixed by such registering officer in accordance with the law for the reception and hearing of claims and objections to such list and hand in a written objection in the form set forth in the Schedule B to this Act, upon receiving and hearing which objection such registering officer shall, on being satisfied of the identity of the person raising such objection, withdraw and erase the name of such person from such list, and no such person, whose name shall have been erased, shall be deemed to be exempt from the operation of the laws aforesaid merely by reason that his name shall have been at first placed upon the list framed by such registering officer.

Native registered voters subject to the same laws as voters of European race.

But any such voter may claim to be removed from provisional list of voters.

¹ See Acts 11, 1895, § 5, sub § 30 (p. 3446); and 30, 1895 (p. 3530), § 19; Act 5, 1899: 8, 1905, § 3 (p. 4815).

No native employed in any proclaimed area (mining or other works) can claim exemption provided by this Act. See § 19, Act 5, 1899 (p. 4037).

No. 39—1887.

Natives, holding certain educational or religious qualification subject to the same laws as persons of European race.

2. No Native, Kafir, Fingo, Basuto, Hottentot, Bushman or the like, who holds a certificate from the Educational Department of qualification as an elementary teacher, or who holds an inspector's certificate that he has reached the fourth standard of instruction as required in aided schools or any higher educational certificate, or who is an Undergraduate or Graduate of the University of the Cape of Good Hope, or who is a Minister of the Gospel, duly admitted as such into any Christian Church, shall be in any other way, or to any greater extent, subject to the operation of any of the laws mentioned in the Schedule A to this Act than if such Native, Kafir, Fingo, Basuto, Hottentot, Bushman, or the like, were of European nationality or extraction.

Hut tax not affected.

3. Nothing in this Act contained shall be deemed to exempt any registered voter from any liability to pay hut tax, imposed upon him by virtue of the provisions of Act No. 37 of 1884 or of any other law of this Colony.

All persons in a native location equally subject to the operation of all the provisions of the Native Locations Act.

4. Every person, whether he be or be not a ⁽¹⁾ Kafir, Fingo, Basuto, Hottentot, Bushman, or the like, who shall reside or dwell in, or inhabit, any hut or dwelling within the local limits of any Native (1) Location as defined in the second or seventh sections of the "Native Locations Act, 1884," shall be equally subject to the operation of all the provisions of the said Act as though he were an occupier of such hut or dwelling and were of any nationality referred to in the second or seventh sections.

Native registered voter may claim certificate of registration.

5. Every native duly registered upon any completed list as such voter as aforesaid shall, upon applying either in person or by an agent authorised in writing to the registering officer at the time and place when such list is finally settled and completed, or thereafter to the Civil Commissioner or other proper officer having custody of such completed list, be entitled to claim a certificate in the form prescribed in the Schedule C to this Act, which certificate shall in law be deemed and taken to prove itself on production in any legal proceedings as a certificate signed by the registering officer, Civil Commissioner, or other proper officer purporting to sign the same, who shall transmit to the Colonial Office, there to be preserved and kept as of record, a counterpart of every such certificate signed by him.

Offence of personation to make objection or obtain certificate.

6. Any person who shall personate without authority any other person provisionally placed on any such list as aforesaid in making any such objection as is referred to in the proviso to the first section of this Act, and any person who shall personate without authority any registered voter in applying for the certificate provided for in the fourth section of this Act, shall upon conviction before the Resident Magistrate of the division or district in which the offence shall have been committed, be liable to a fine not exceeding ten pounds, and in default of payment to imprisonment

Penalty.

¹ Provisions of the Native Reserves Location Acts 40, 1902, and 8, 1905 (pp. 4513 and 4816) do not apply to Natives exempted under this Act. See § 3, Act 8, 1905 (p. 4815).

with or without hard labour for any period not exceeding two months; and any registered voter who shall transfer any certificate held by him under the provisions of the fourth section, and also any person other than the person therein named, who shall use or attempt to use for any purpose any such certificate as applicable to himself, shall be liable upon conviction to the penalties hereinbefore set forth.

No. 39—1887
 Offence of transferring certificate or using other person's certificate.

7. This Act may be cited for all purposes as "The Native Registered Voters Relief Act, 1887."

Short title.

SCHEDULE A.

Schedule A.

Act No. 17 of 1864.
 Act No. 18 of 1864.
 Ordinance No. 10 of 1864 (Kaffrarian).
 Act No. 22 of 1867.
 Act No. 28 of 1883.
 Act No. 37 of 1884.

SCHEDULE B.

Schedule B.

To the Registering Officer appointed to make out the list of voters in the field-cornetcy [or town] of [fill in name] in the division of [fill in name].

Please take notice that I, being a native, object to have my name inserted in the list of voters in the above field-cornetcy [or town].

(Signed) A.B., of (here give the place of residence).

SCHEDULE C.

Schedule C.

I hereby certify that A.B., of [here state place of residence of registered voter] has been and is this day duly registered as a voter at any parliamentary election in the field-cornetcy [or town] of [fill in name] in the division of [fill in name].

Place (Signed) C.D., [Registering
 Date Officer, Civil Commissioner, or other
 proper officer, as the case may be].

No. 40—1887.]

[August 9, 1887.

Act to Amend in certain respects the Act No. 4 of 1883, commonly called the "Public Health Act, 1883."

[Repealed by Act 40, 1889.]

No. 41—1887.]

[August 9, 1887.]

ACT

To Authorise the Proclamation of a certain Main Road.

Preamble.

WHEREAS it is expedient to authorise the proclamation of a certain road 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:—

Governor empowered to proclaim a certain main road.

1. Notwithstanding anything to the contrary contained in the second section of the "Roads Act, (1) 1887," 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 generally described and set forth in the second section of this Act to be a Main Road, within the meaning of the "Public Roads Act (2) 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 a point on the road between Port Alfred and Kei Mouth, declared to be a Main Road by Proclamation No. 139, bearing date the 21st day of August, 1885, at or near the boundary between the Divisions of East London and Komgha, west of Mooiplaats; thence northwards until it touches the Main Road from King William's Town to the Great Kei Bridge, at a point east of the Village of Komgha.

No. 42—1887.]

[August 9, 1887.]

ACT

To Prohibit the Supply of Intoxicating Liquor to Her Majesty's Ships and Vessels without proper consent.

Preamble.

WHEREAS it is expedient to prohibit all persons from bringing or supplying intoxicating liquor on board of any of Her Majesty's ship or vessels: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Intoxicating liquor not to be brought on board Her Majesty's ships without Commander's consent.

1. No person, whether he be or be not licensed under the law of this Colony to deal in intoxicating liquors, shall bring or supply, or attempt to bring or supply, on board any of Her Majesty's ships or vessels lying in any port or harbour of this

¹ No. 11 repealed by Act 40, 1889.

² No. 9 repealed by Act 40, 1889.

Colony or in any water subject to the territorial jurisdiction of any Court in this Colony, any intoxicating liquor whatsoever, unless such person shall first have had and obtained the consent of the officer for the time being in command of such ship or vessel, and it shall be lawful for any Officer in Her Majesty's Naval service, or Warrant or Petty Officer of Her Majesty's Navy, or Non-commissioned Officer of Marines with or without Seamen or Persons under his command, and also for any constable, policeman, or peace officer in the service of the Colonial Government, to search any (1) boat or vessel hovering about or approaching, or which may have hovered about or approached any such ship or vessel as aforesaid, and, if upon such search any intoxicating liquor be found in or on board of such boat or vessel and there shall be reasonable grounds for suspecting that such intoxicating liquor was intended to be brought or supplied on board any such ship or vessel as aforesaid, to arrest all or any of the persons found in or on board of such boat or vessel, and convey him or them, as speedily as circumstances may permit, before the Resident Magistrate having jurisdiction in respect of any offence committed on board any ship or vessel lying in such port or harbour or other territorial water, and every person who shall bring or supply, or attempt to bring or supply, any intoxicating liquor on board any such ship or vessel as aforesaid may be summoned to appear before such Resident Magistrate to answer a charge of contravening the provisions of this section of this Act.

2. When any person shall be brought before any such Resident Magistrate either under arrest or upon summons under the provisions of the last preceding section of this Act, such person shall be dealt with by such Resident Magistrate and every officer of the law within the local jurisdiction of such Resident Magistrate precisely as though such person were arrested or summoned, as the case may be, for an offence committed on land within the jurisdiction of such Resident Magistrate: Provided that every Resident Magistrate shall have jurisdiction to try every such person for the offence of contravening the provisions of the last preceding section of this Act, and to sentence him upon conviction to the penalties prescribed by the seventy-second section of the "Liquor Licensing Act, (1) 1883"; and provided, further, that any intoxicating liquor found upon search under the provisions of the last preceding section of this Act, and which such Resident Magistrate shall declare to have been intended to be brought or supplied upon any such ship or vessel as aforesaid, shall be by such Resident Magistrate declared to be forfeited for the benefit of the Colonial Government, and may be sold or disposed of accordingly.

3. "Intoxicating liquor" in this Act shall have the meaning assigned to it in the "Liquor Licensing Act, (2) 1883."

No. 42—1887.

Right of search of suspected boat or vessel, and right of arrest of persons.

Right of summons.

Procedure before Magistrate, and penalty.

Forfeiture of liquor.

Meaning of "intoxicating liquor."

¹ See § 93, Act 36, 1896 (p. 3681).

² No. 28.

No. 43—1887.]

[August 9, 1887.

ACT

To Provide for the Payment of Retiring Allowances to certain Professors, Lecturers, and Teachers, in Colleges and Schools connected with the Department of Public Education, and to Regulate the Amounts of Good Service Allowances payable to Teachers, and to establish a Teachers' Pension Fund.

Preamble.

WHEREAS it is expedient to fix the conditions on which professors, lecturers and teachers shall become entitled to merit grants or good service allowances, and to regulate the amounts of such grants or allowances; and whereas it is expedient to provide for the continuance of merit grants or good service allowances to professors, lecturers and teachers, who may retire from actual service, and to provide for the establishment of a Teachers' Pension Fund: 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:—

Circumstances under which names of professors, &c., may be placed on good service list.

1. No professor, lecturer, or teacher shall be entitled to be put on the good service list, or to draw a merit grant or good service allowance unless the Superintendent-General of Education is satisfied that such professor, lecturer, or teacher has completed five years' continuous and meritorious service in connection with the department of Public Education, and that the college or school or department conducted by such professor or lecturer or teacher is thoroughly efficient.

Governor may remove such names from such list.

2. It shall be competent for the Governor to remove the name of any professor, lecturer or teacher from the good service list whenever the duties of his office are not performed to the satisfaction of the Superintendent-General of Education, and to restore such name to the said list on the recommendation of the Superintendent-General of Education.

Pensions of Professors & Lecturers.

3. Every professor or lecturer who has completed fifteen years' service in connection with the department of Public Education, and who is on the good service list, and is in receipt of a merit grant not exceeding £100 per annum (as fixed by section 6 of the amended schedule (1882) to the Higher Education Act No. 24 of 1874), shall on his retirement from active service, by reason of his reaching 60 years of age or his being incapacitated by ill-health continue to receive such merit grant annually for the rest of his life, with an addition of 25 per cent. for a service of 15 years and under 20 years, and of 50 per cent. for 20 years' service and upwards.

Pensions of Teachers.

4. Every teacher who has completed fifteen years' service in connection with the department of Public Education, and who is on the good service list and is in receipt of the good service allowance, shall on his retirement by reason of his reaching 60 years

of age or by his being incapacitated by ill-health continue to receive the annual good service allowance for the rest of his life with an addition of 50 per cent. for a service of 15 years and under 20 years; 75 per cent. for a service of 20 years and under 30 years; 100 per cent. for a service of 30 years and upwards.

No. 43--1887.

5. The scale of good service allowances to teachers shall be as laid down in the schedule hereunto annexed; and no change in the scale shall take effect until it shall have been assented to by both Houses of Parliament.

Scale of good service allowances.

6. From the merit grant or good service allowance of every professor, lecturer, or teacher to whom such grant or allowance may be lawfully assigned, there shall be made an annual deduction at the rate of five (£5) per centum on each such merit grant or good service allowance; and all sums so deducted shall be paid into the Colonial Treasury to the credit of a separate account to be called the Teachers' Pension Fund.

Annual deduction to be made from good service allowance.

7. The provisions of the fourth, fifth, sixth, and seventh sections of the Civil Service Pension Fund Act, (1) 1886, shall *mutatis mutandis* apply to the Teachers' Pension Fund.

Sections 4, 5, 6, and 7, of Civil Service Pension Fund Act, to apply *mutatis mutandis*.

8. It shall be lawful for the Governor from time to time to frame bye-laws, fixing the conditions and times of leave of absence of professors, lecturers and teachers with or without salary; and also regulations under which any professor, lecturer, or teacher may appeal to the Superintendent-General of Education in respect of any Inspector's report which may appear to affect or endanger his claim to a merit grant or good service allowance; and, further, the conditions under which any temporary suspension of employment or any other special circumstances beyond the control of the professors, lecturers, and teachers, shall be held not to deprive them of the benefits contemplated by this Act.

Governor may frame bye-laws.

9. No pension under this Act shall be awarded until after the expiry of twelve months from the taking effect of this Act.

Date of taking effect.

10. This Act may be cited for all purposes as "The Teachers' Pension and Fund Act, 1887."

Short title.

SCHEDULE.

Schedule.

SCALE OF GOOD SERVICE ALLOWANCES.

Public Schools.

Class I (Boys) } and Normal College } (Boys).	Principals	{ £25 0 0 after 5 years' service. 37 10 0 „ 10 „ 50 0 0 „ 15 „
	and	
	Vice-Principals	

¹ No. 23.



No. 44—1887.

<i>Public Schools.</i>			
<i>Class I</i> (Boys) Assistants	...	} £15 0 0 after 5 years' service	
<i>Class I</i> (Girls) Principals and Vice-Principals	... ..	
<i>Class II</i> (Boys) Principals	... ..	
<i>Normal Colleges.</i>			
(Boys) Assistants	... ..		22 10 0 „ 10 „
<i>Deaf and Dumb Schools.</i>			
Principals	... ..	30 0 0 „ 15 „	
<i>Training Schools</i> (Native),	} Prin-	cipals.	
<i>Boarding Schools</i> and			
<i>Normal Colleges</i> (Girls)			
<i>Public Schools.</i>			
<i>Class I</i> (Girls) Assistants	...	} £10 0 0 after 5 years' service.	
<i>Class II</i> (Girls)	} Principals...		15 0 0 „ 10 „
<i>Class III</i> (Boys)			20 0 0 „ 15 „
<i>Normal Colleges.</i>			
(Girls) Assistants	... ..	
<i>Mission Schools</i>	Head-Teachers	} £ 6 0 0 after 5 years' service.	
<i>Aborigines Schools</i>	do.		9 0 0 „ 10 „
<i>Approved Infant Schools</i>	do.		12 0 0 „ 15 „

No. 44—1887.]

ACT

[August 9, 1887.]

To Amend and add to the existing Law with regard to Prospecting and Mining for Precious Stones and Minerals.

[Repealed by Acts 31, 1898, and 11, 1899. Pages 2519-2522.]

No. 45—1887.]

[November 1, 1887.

ACT

To Provide for the Annexation to the Colony of the Country known as the Rode Valley. ⁽¹⁾

WHEREAS by resolution passed in both branches of the Legislature it has been declared to be expedient that the country situated between the districts of Mount Ayliff and Mount Frere, East Griqualand, and Eastern Pondoland, commonly called the "Rode Valley," acquired by the Colonial Government by purchase from the Pondo Chief Umquikela, 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 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

Preamble.

¹ Extended by Proclamation No. 199 of 1887.

No. 1—1888.

have passed an Act providing that the said country should become a part of this Colony: And whereas it is expedient that such an Act should be passed: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor may proclaim Rode Valley to be annexed to the Colony, and to form part of Griqualand East.

1. From and after such a 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 under his hand and the public seal of the Colony, fix in that behalf the country in the preamble to this Act mentioned, or so much of the said country as shall be defined in or by any such proclamation, and with the limits and name in any such proclamation signified, shall be annexed to and become a part of that portion of the Colony known as Griqualand East, and be subject to the laws for the time being in force in such portion of the Colony.

Short title.

2. This Act may be cited as the "Rode Valley Annexation Act, 1887."

No. 1—1888.]

[June 29, 1888.

ACT

To prevent unauthorised persons from making Sketches, Drawings, Photographs, Pictures, Paintings, Plans or Models of and to prevent trespass upon Defensive Works and Fortifications and Naval and Military Reserves generally.

Preamble.

WHEREAS it is expedient to make provision for the better protection of Defensive Works and Naval and Military Reserves generally: 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:—

Prohibition of unauthorised Sketching, Drawing, &c., of any Defensive Works, &c.

1. It shall not be lawful for any person to make or to commence to make, any sketch, drawing, photograph, picture, painting, plan, or model of any battery, field-work, fortification, or other defensive work, or of any portion thereof, without having previously obtained the permission in writing of some person appointed for that purpose by the Governor. Such permission shall clearly and expressly state the nature of the sketches, drawings, photographs, paintings, plans or models which may be made by the person to whom such permission is given, and the place or places of which such sketches, drawings, photographs, paintings, plans or models may be made.

Arrest of offender and penalty for contravention of last section.

2. Any person offending against the provisions of the last section may be arrested without warrant by any police constable or Naval or Military policemen, and, upon conviction by the Resident Magistrate of the district, shall be liable to imprisonment

with or without hard labour for any period not exceeding three months, or to a fine not exceeding fifty pounds, with the alternative of imprisonment with or without hard labour for any period not exceeding two months, unless such fine be sooner paid, and all sketches, drawings, photographs, paintings, plans or models, and all apparatus, instruments, tools and materials, found in the possession of the offender shall, at the discretion of the said Resident Magistrate, be liable to forfeiture.

3. If any person shall be found trespassing within or upon any battery, field-work, fortification, defensive work, or any place, whether fortified or not, which is set apart and enclosed for Naval or Military operations (and of the application to which last mentioned place of this Act the Governor shall give his sanction by notice in the *Gazette*), such person shall upon conviction by the Resident Magistrate of the district, be liable to a fine not exceeding ten pounds, with the alternative of imprisonment with or without hard labour for any period not exceeding fourteen days unless such fine be sooner paid; and if such person shall refuse to give his name and address when requested so to do, or shall give a name or address which there is reason to believe is false, he may be arrested without warrant by any police constable or Naval or Military policeman. If the person so trespassing be found to have in his possession any apparatus, instruments, tools or materials with the intention of contravening this Act, he shall in lieu of the penalty in this section provided be liable to the penalties in the second section mentioned, and may be arrested without warrant by any police constable or Naval or Military policeman.

4. Any person found in the immediate vicinity of any battery, field work, fortification or other defensive work as aforesaid, with sketching, drawing, photographic, painting, planning, or modelling materials or apparatus in his possession, with the intention of contravening or evading the provisions of this Act, may be arrested without warrant by any police constable or Naval or Military policeman, and shall be liable upon conviction by the Resident Magistrate of the district, to a fine not exceeding ten 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.

5. This Act may be cited as the "Defensive Works Protection Act, 1888."

No. 1—1888.

Forfeiture of sketches, apparatus &c., in possession of offender.

Penalty for trespass on battery, field works, &c., or on any place notified in *Gazette* as set apart for naval or military operations.

Person in immediate vicinity of defensive works, &c., and in possession of sketching, &c., apparatus with intent to contravene Act, is liable to arrest and punishment.

Penalty.

Short title.

No. 2—1888.]

[June 29, 1888.]

Act to apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the year ending the 30th day of June, 1889.

[Spent.]

No. 3—1888.]

[June 29, 1888.

Act for applying a further Sum not exceeding One Hundred and Five Thousand Nine Hundred and One Pounds Sterling for the Service of the year ending the 30th June, 1888.

[Spent.]

No. 4—1888.]

[July 6, 1888.

ACT

To provide for the Preservation of Copies of Books printed in this Colony and for the Registration of such Books. (1)

Preamble.

WHEREAS it is expedient to provide for the preservation of four copies of every book printed or lithographed in this Colony, and for the registration of such books: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Section 8 of Act No. 2 of 1873 repealed.

“Book” defined.

1. The eighth section of the Copyright Act of 1873 is hereby repealed, and in this Act unless the context otherwise requires the term “book” shall bear the meaning defined in the ninth section of the said Act, but shall not include any publication which consists merely of a price list, sale catalogue, annual report, trade circular or trade advertisement or any volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan intended for private circulation, and not for sale, and of which not more than fifty copies shall be printed.

Four copies of every edition of books published in Colony, to be delivered, free of charge, within one month after delivery, from the press, to officer appointed by the Governor.

2. Four printed or lithographed copies of the whole of every book which shall be printed or lithographed in this Colony after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be produced, and also of any second or subsequent edition which shall be so produced with any additions or alterations, whether the same shall be in letter-press or in the maps, prints or other engravings belonging thereto, and whether the first edition of such book shall have been produced before or after this Act shall come into force, shall, within one calendar month after the day on which any such book shall first be delivered out of the press for issue and notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered free of any charge, claim or demand whatsoever by the printer, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed or lithographed, at such place and to such officer as the Governor shall, by Notice in the *Gazette*, from time to time direct. The publisher or other person employing the printer

Duty of publisher to aid printer in

¹ See Act 18, 1895 (p. 3456), (Foreign Reprints).

shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

3. Such officer shall thereupon give a receipt in writing for the copies so received.

4. One of such copies shall be delivered to the Librarian of the South African Public Library, and another to the Graham's Town Public Library, and the remaining copies shall be disposed of as the Governor shall direct.

5. The officer receiving the said copies shall forthwith proceed to frame a memorandum of the particulars thereof required for registration by the fourth section of the Copyright Act of 1873, and of such other particulars as the Governor may from time to time direct by Notice in the *Gazette*, and shall transmit such memorandum to the Registrar of Deeds, who shall thereupon, without claim of any fee, enter such particulars as aforesaid, in the registry book kept in his office in accordance with the third section of the said Act, and thereupon the provisions of the third, fourth, fifth, seventh, and ninth section of the said Act shall *mutatis mutandis* apply as though the entry in the said registry book had been made under the provisions of the said Act; provided, however, that in any proceedings under the fifth section of the said Act it shall not be necessary to join as a party the officer who shall have framed and transmitted such memorandum as aforesaid.

6. A transcript of the entries registered in the registry book either under this Act or under the Copyright Act of 1873 shall be prepared quarterly by the Registrar of Deeds, and shall be forthwith published in the *Gazette*.

7. Every printer who neglects to deliver four copies of any such book as is referred to in the second section of this Act, or of any second or subsequent edition of any such book, to the officer and in the manner hereinbefore prescribed, commits an offence punishable by a fine not exceeding five pounds.

8. Every publisher or other person, employing any such printer and neglecting to supply him in manner aforesaid with maps, prints or engravings finished and coloured as aforesaid, which may be necessary to enable such printer to comply with the provisions of the said section, commits an offence punishable by a fine not exceeding five pounds.

9. Every book and every edition of such book printed outside this Colony and published ⁽¹⁾ within this Colony shall, for the purposes of this Act, be deemed to have been printed within this Colony, and for the said purposes the publisher within this Colony shall be taken to be also printer, but no such publisher shall be

No. 4—1888.

complying with requirements of section.

Receipt by officers for copies received.

Disposal of copies received.

Officer receiving copies to frame memorandum of particulars, according to section 4 of Act No. 2 of 1873, and instructions from the Governor, and transmit memorandum to Registrar of Deeds to be without fee registered by him, and thereupon provisions of sections 3, 4, 5, 7, 9, to apply *mutatis mutandis* to such registration.

Quarterly publication in *Gazette* of registered entries under this Act and Act No. 2 of 1873.

Penalty for printer's contravention of section 2

Penalty for publisher's contravention of section 2.

Books printed outside the Colony but published in the Colony only deemed to be printed within this Colony.

¹ Printed as amended by § 8, Act 18, 1895.

No. 5—1888.

Jurisdiction of Resident Magistrate.

Regulations by the Governor to be published in the *Gazette*.

Power in the Governor to exclude any class of books from operation of whole or part of Act.
Short title.

liable to conviction under the seventh section of this Act, who shall, within one calendar month from the date of publication within this Colony of such book or edition, duly deliver the four copies prescribed by the second section of this Act.

10. All pecuniary penalties imposed under this Act may be recovered in the Court of the Resident Magistrate for the place where the book in relation to which the offence has been committed has been printed, lithographed, or published.

11. The Governor shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules. All such rules and all repeals and alterations thereof and additions thereto shall be published in the *Gazette*.

12. The Governor may exclude any book or class of books from the operation of the whole or any part or parts of this Act.

13. This Act may be cited as "The Books Registry Act,

No. 5—1888.]

[July 6, 1888.

ACT (1)

To Promote the Cultivation of Oyster Fisheries, and the Discovery of Pearl-bearing Oysters.

Preamble.

WHEREAS it is expedient to make provision for the promotion of the Cultivation of Oyster Fisheries and the discovery of Pearl-bearing Oysters: 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:—

Meaning of "Commissioner."

1. In the construction of this Act the term Commissioner shall mean the Commissioner of Crown Lands and Public Works.

Licence for oyster bed by Commissioner.

2. It shall be lawful for the Commissioner to grant a licence to the owner of any land bordering on the sea, or any estuary, or to any person or persons, with the consent of such owner, to form or plant any oyster bed or laying, whether above or below low-water mark: Provided, always, that the forming and planting of such oyster beds shall not give any exclusive right or title to the occupancy of the shore, except for the purposes aforesaid.

Shore rights protected.

Limits of bed to be defined: conditions and limitations on licence.

3. Every such licence shall, by reference to a map, or otherwise, as to the Commissioner shall seem best, define the position and limits of such oyster bed or laying, and may be made subject to such conditions and limitations, and may be perpetual or terminable, as to the said Commissioner shall seem proper.

Provisions as to notice before licence granted.

4. Previously to the granting of any such licence as aforesaid, the said Commissioner shall cause a notice, stating the application for such licence, to be inserted in the *Gazette*, and in some newspaper circulating in or near the district within which such licence may be applied for; and such notice shall also state the time

¹ Extended to Native Territories by proclamation 184, 1895.

and place (not sooner than three weeks from the date of such notice) when and where the said Commissioner, or any person appointed by him, shall hold an inquiry as to the expediency of granting the same; and every such notice shall be given at least three times in some newspaper circulating in such district, and also posted at or near the office of the Resident Magistrate of the district; and no such licence shall be granted in any place where the said Commissioner shall be of opinion that the public exercise and enjoy *bonâ fide* a substantially profitable fishing for oysters; nor shall any such licence in any way prejudice any previously existing private rights or privileges.

No. 5- 1888.

Limitation in power to grant and in effect of licence.

5. When any such licence shall be granted notice thereof shall be given in like manner as aforesaid in respect to the application for any such licence, and a true copy of every such licence so granted by the said Commissioner, signed by the Assistant Commissioner, shall be lodged with the Resident Magistrate of the district; and a copy of such licence, certified under the hand of such Assistant Commissioner or Resident Magistrate, shall be admitted in evidence in all courts of justice in the same manner as if the said copy was the original licence of which it shall purport to be a copy.

Provisions as to notice of licence when granted.

6. At any time within the period of one month after the granting of such licence it shall be lawful for any person or persons dissatisfied with the same, to apply by way of memorial to the Governor that such licence may be vacated; and notice of every such memorial shall be given to the licensee and to the Commissioner; and the Governor may either confirm or vacate such licence as to him shall appear expedient.

Application to the Governor within one month by person interested to vacate licence.

7. Notwithstanding anything contained in any such licence as aforesaid granted by the Commissioner under the provisions of this Act, the same shall be determinable by a certificate of the Commissioner (which certificate he is hereby empowered to make), certifying to the effect that the Commissioner is not satisfied that the licensee is properly cultivating the oyster ground within the limits of such licence; and on any such certificate being made all rights by such licence conferred shall by virtue of this Act, and of the certificate as aforesaid, be absolutely determined, and all the provisions of the Acts hereinbefore recited and referred to, or of this Act, shall cease to operate in relation to such licence as an oyster fishery or otherwise; and for the purposes of this provision the Commissioner may from time to time with respect to such licence or oyster fishery make such inquiries and examinations, and require from such licensee such information as the Commissioner may think necessary or proper; and the licensee shall afford all facilities for such inquiries and examinations, and give such information accordingly.

Commissioner may terminate licence by certificate, if licensee do not cultivate oyster ground properly.

Powers of enquiry and examination vested in Commissioner.

8. It shall not be lawful for any person other than the licensees or their assigns, their agents, servants, and workmen, within the

Offences defined.

No. 5-1888.

limits of any oyster bed or laying, knowingly to do any of the following things:—

- (a) To use any implement of fishing except a line and hook or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster bed or oysters, or the oyster fishery:
- (b) To dredge for any ballast or other substance except under a lawful authority for improving the navigation:
- (c) To deposit any stone, ballast, rubbish or other substance:
- (d) To place any implement, apparatus, or thing prejudicial or likely to be prejudicial to any oyster bed or oysters, or brood or spawn thereof, or to the oyster fishery, except for a lawful purpose of navigation or anchorage:
- (e) To disturb or injure in any manner, except as last aforesaid, any oyster bed or oysters, or brood or spawn thereof, or the oyster fishery:
- (f) To interfere with or take away any of the oysters from such bed without the consent of the licensees or owners or occupiers of such bed.

Penalty for offences.

Any person knowingly contravening sub-section (a) shall be liable upon conviction before the Resident Magistrate of the district to a fine not exceeding five pounds, or imprisonment with or without hard labour for any term not exceeding one month, or to both such fine and such imprisonment; and any person knowingly contravening any of the sub-sections (b), (c), (d), (e) and (f), shall upon conviction be liable to like penalties as though he had been convicted of malicious injury to property; and nothing in this section contained shall be taken to deprive any such licensee of any right to recover damages by civil process in any competent court against any person contravening this section.

Further powers of Commissioner with regard to revocation of licence.

9. In any case where any such licence shall be granted by the said Commissioner, if it shall appear to him that the licensee under such licence, or his assigns, at any time not less than six months from the date of such licence has not taken steps proper in his opinion to form, keep, and cultivate the oyster bed or laying in such licence mentioned, then and in such case it shall be lawful for the said Commissioner, by an order in writing, to revoke such licence, and thereupon all the rights and privileges conferred by such licence shall cease and determine: Provided, always, that previously to the making of such order the said Commissioner shall cause a notice in writing stating his intention to make such order to be served upon the person for the time being entitled to such licence, or in case such person cannot be found, the Commissioner shall cause such notice to be inserted in the *Gazette*, and as an advertisement three times at least in some newspaper circulating in such district; and no such order shall be made till after the expiration of one month from the service of such notice, or from the date of the last of such advertisements, which shall last happen.

10. It shall and may be lawful for the Governor by proclamation in the *Gazette*, to fix a close time during which dredging for or otherwise taking or removing oysters shall be prohibited either throughout the Colony or at such places as to the said Governor may seem fit, and by like proclamation to make from time to time regulations for the improvement and protection of oyster fisheries generally, and to impose such penalties for breaches of anything done in contravention of any such proclamation as to him shall seem meet: Provided that no such penalty shall exceed the sum of twenty pounds, with the alternative of imprisonment with or without hard labour for any period not exceeding one month, unless such fine be sooner paid.

No. 5—1888.

Provision for close time to be fixed, and for regulations for improvement and protection of oyster fisheries.

11. It shall be lawful for the Commissioner to grant a licence to any person to search for pearl-bearing oysters along any extent of coast or shore not exceeding twenty miles in length, below high-water mark, and every licence so granted shall confer upon the licensee a full and exclusive right and privilege, within the prescribed limits, during the period for which such licence is granted, and subject to such conditions and limitations as the Commissioner may impose and insert in or endorse on such licence, to search for pearl-bearing oysters, and to acquire property in all pearl-bearing oysters discovered and removed by the licensee under such licence.

Licence to search for pearl-bearing oysters may be granted by Commissioner: rights of licensee.

12. The limits of the shore or coast-line to which any licence granted under the last section relates shall be clearly defined upon such licence, by reference to a map or otherwise, and no such licence shall be deemed to confer upon the licensee any right or privilege as against the owner of any land bound or limited by the sea, or shore, or coast-line within the limits so defined, or any greater or more exclusive right or privilege in respect of the sea-shore below high-water mark than shall be reasonably necessary for protecting the right and privilege of searching for, and removing and collecting such pearl-bearing oysters as may be found by him.

Local limits for exercise of licence to be defined: and limitations on rights under licence defined.

13. No licence shall be valid under the eleventh section unless and until such notices as are provided for in the fourth and fifth sections shall have been given in manner in those sections provided, and the provisions of the sixth, seventh, ninth, and tenth sections of this Act shall *mutatis mutandis* apply to the application for granting, vacation and determination of any licence granted under the eleventh section, to the protection during a close season of pearl-bearing oysters, and to the framing of regulations for the search for and recovery of such oysters: provided that no licence granted shall be held to be determined under the ninth section aforesaid unless the Commissioner shall be satisfied that the licensee or his assign has failed to make reasonable efforts to search for and discover pearl-bearing oysters, or has improperly acted in breach of his licence or any express or implied condition thereof.

Provisions of sections 5, 6, 7, 10, 11, to apply *mutatis mutandis*, to licence to search for pearl-bearing oysters.

No. 6—1888.

Penalty for interference with free exercise of rights conferred by licence under section 12: rights of licence with regard to pearl-bearing oysters.

14. Any person who knowingly shall interfere in any way with the free exercise of his exclusive right and privilege by any licensee under the eleventh section shall, upon conviction before the Resident Magistrate of any district bounded by any portion of the shore or coast line defined in such licence, be liable to a fine not exceeding fifty pounds, and in default of payment to imprisonment for any term not exceeding three months, and any pearl-bearing oysters found, discovered, or removed by any person other than the licensee or his assign shall be deemed to be the property of the licensee or his assign, who may recover from such person every pearl-bearing oyster so removed or the value thereof.

Short title.

15. This Act may be cited for all purposes as the "Oyster Fisheries Act, 1888."

No. 6—1888.]

[July 13, 1888.

ACT (1)

To Incorporate by the name of the South African Mutual Life Assurance Society, the Society heretofore called The Mutual Life Assurance Society of the Cape of Good Hope.

Preamble.

WHEREAS by an agreement dated the Seventeenth day of May, One Thousand Eight Hundred and Forty-five, certain persons associated themselves together to form a society for effecting assurances upon lives at Cape Town under the style of the Mutual Life Assurance Society of the Cape of Good Hope: And whereas it is expedient that provision should be made for enabling the said Society to carry on the business of and connected with a Life Assurance Society in all the various branches thereof: And whereas it is further expedient that the name and style of the society should be altered, and that the society should be incorporated, and hereafter styled The South African Mutual Life Assurance Society: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

I.—INCORPORATION OF THE SOCIETY.

Incorporation of the Society.

1. The present members of the said Mutual Life Assurance Society of the Cape of Good Hope, and all persons hereafter becoming members of the Society, whilst members, are hereby incorporated by the name and designation of The South African Mutual Life Assurance Society, and shall be entitled to carry on the business in this Act mentioned, until dissolved by the members thereof, or by legal process.

Use of name.

2. The said Society may in all matters and proceedings use the said name and designation, and may by the said name sue,

¹ Amended by Act 16, 1896 (p. 3599).

or be sued, prosecute or defend in all Courts of Law, and shall have power to purchase, hold or alienate lands and buildings, enter into contracts or agreements, and generally transact all the business of the Society.

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3. The principal office of the Society shall be in the city of Cape Town, and until changed, at the Society's Buildings in Darling-street.

Place of principal office.

VESTING OF PROPERTY NOW HELD.

4. All immovable property, mortgage bonds, deeds, money, securities for money and other property of every kind now held by the Trustees or Directors of the Mutual Life Assurance Society of the Cape of Good Hope, or to which the said Society has any right or claim, are hereby transferred to and vested in the said "South African Mutual Life Assurance Society."

Property vested in the incorporated Society.

LIABILITIES OF THE SOCIETY

5. The said Society shall be liable for and in respect of every lawful debt or obligation of the said Mutual Life Assurance Society of the Cape of Good Hope.

Liability for the debts and obligations of the former Society.

SUITS OR ACTIONS PENDING.

6. All suits or actions, or other proceedings pending at the time of the taking effect of this Act, at the instance of or against the Trustees of the said Mutual Life Assurance Society of the Cape of Good Hope, shall continue as if this Act had not been passed, and any final judgment or order thereon shall enure for the benefit of, or be binding upon the said Society as the case may be.

Continuance of pending actions and suits.

II.—BUSINESS OF THE SOCIETY.

7. The object of the Society is by means of funds heretofore accumulated, and hereafter to be raised by mutual contribution of the members, to carry on all the business of and connected with a life assurance society, in all the various branches thereof, which business may include the granting of policies to effect the assurances following:—

Business of the Society.

- (1) of sums payable at the death of the assured.
- (2) of sums payable when the assured shall attain a stipulated age, or at death, whichever shall first happen;
- (3) of sums payable at the death of the first or last of two or more persons assured jointly or on the failure of one life before another;
- (4) of endowments, and investments for children;

And may also include the purchase and sale of annuities and of reversions of policies issued by the Society and the issue of policies on the Tontine principle.

INVESTMENTS. (1)

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Investment of funds.

8. The funds of the Society may be laid out and invested from time to time in any of the modes following:—

- (1) In the purchase of or advance on the public stocks, funds or debentures of the Government of the United Kingdom of Great Britain and Ireland, or Colony of the Cape of Good Hope, Natal, or of any other British Colony, or of the Orange Free State or South African Republic.
- (2) Upon debentures or mortgages of any divisional council or municipality or body or company incorporated by law in South Africa and authorised to borrow money, or in debentures of any company secured by a registered bond on either movable or immovable property.
- (3) Upon first mortgage of immovable property in South Africa.
- (4) On deposit or current account with or without interest with any bank or joint-stock company or society in South Africa.
- (5) In loans on the security of policies of life assurance, or first mortgage bonds on immovable property, with or without other security.
- (6) In the purchase of immovable property and building thereupon in South Africa provided such purchase be sanctioned by two-thirds of the full Board.
- (7) In the purchase of policies granted by the Society, at a sum not exceeding the surrender value thereof.

III.—OF MEMBERS.

What persons are to be members.

9. Every person who is on the taking effect of this Act a member of the Mutual Life Assurance Society of the Cape of Good Hope, and every person who shall thereafter effect an assurance with the Society, other than a temporary or short term assurance without participation in profits, shall be a member. And, subject to any bye-laws to be made under the authority of this Act, every person registered in the books of the Society as the owner of a policy or contract of assurance, as aforesaid, acquired by purchase, cession, or otherwise (not being a person by whom any such policy or contract is held in trust for the purposes of family or other settlement) shall also be a member so long as he shall have an interest in the assurance.

Duration of membership.

10. Every such member shall be entitled to the rights and privileges of membership until his death, unless all claims against the Society in respect of the policy constituting membership are previously satisfied, or such policy shall lapse, be forfeited, or assigned, or unless the right to such policy passes by operation of law, and the person entitled thereto procures himself to be registered as the proprietor thereof, in the books of the Society.

¹ Printed as amended by Act 16, 1896.

11. The liability of the members is limited to the amount of contribution actually made by them to the funds of the Society.

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Liability of mem-
bers limited.

RIGHTS AND PRIVILEGES OF MEMBERS.

12. In case of a poll being taken, every member shall be entitled to vote according to the following scale:—

Title to vote at
poll.

If the holder of an annuity policy, who has paid not less than one hundred pounds sterling, but under five hundred pounds sterling, one vote; who has paid five hundred pounds sterling, but under one thousand pounds sterling, two votes, or who has paid one thousand pounds sterling, three votes, and no more. If the holder of any other policy exclusive of bonus additions:—For one hundred pounds sterling and less than five hundred pounds sterling, one vote; five hundred pounds sterling and less than one thousand five hundred pounds sterling, two votes; one thousand five hundred pounds sterling or upwards, three votes and no more. Where two or more persons are jointly members by virtue of any policy, only one of them shall be entitled to vote in person in respect of such policy: such one to be authorised by the other in writing, and failing such authority the member whose name stands first in the register of members shall be so entitled.

13. An insane member, or member under curatorship, may not vote except by his curator.

Votes of members
insane or under
curatorship.
Votes by proxy.

14. Male members not residing within the municipality of Cape Town, and any members, who although residing within the municipality, shall be absent from the Cape district at the time any meeting of the Society is held, and all female members, shall be entitled to vote by proxy upon all questions other than the election of directors. No proxy shall be valid after the expiration of three months from the time of its execution.

15. The holder of a General Power of Attorney for transacting the business of any member absent from the Colony may, if a member, vote for his principal, and if not a member, or if not resident within the municipality of Cape Town, he may grant a proxy to a member to represent his principal. The power, or an attested copy thereof, shall be exhibited at the time of voting unless previously produced and noted at the Society's principal office.

Votes of members
absent from the
Colony.

16. Every proxy shall be as nearly as is material in the following form:—

I, A. B., of _____, a member of the South African Mutual Life Assurance Society, hereby appoint C. D., also a member thereof, my proxy to appear and vote for me upon all matters in my absence, at the next meeting of the Society, to be held on the _____ day of _____ 18____, and at any adjournment thereof. Dated at _____ this _____ day of _____ 18____.

Form of proxy.

17. No member shall be entitled to vote on any question in which he has an interest, other than his interest as a member, at any meeting of the directors or of the Society.

Interest to dis-
qualify.

IV.—OF THE DIRECTORS.

No. 6—1888.

Nine directors to form the Board.

Directors may act notwithstanding vacancy.

Quorum.

Voting at Board meetings.

Defects in appointment or disqualification of Director not to invalidate proceedings.

Board may appoint officers, clerks and manager.

Chairman of Board.

Committees.

Local Boards.

Committees and Local Boards to be subject to Act, bye-laws and regulations.

Chairman of Committees and Local Boards.

Policies and instruments signed by two Directors and Secretary to be binding.

Qualification of Directors.

18. The business of the Society shall be conducted and managed by a board of nine directors.

19. The continuing directors may act notwithstanding a vacancy in their body.

20. Any four of the directors shall constitute a quorum for the transaction of business.

21. Questions arising at any meeting of the board or local board or any committee, shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

22. No proceedings of the board or of any local board shall be invalid by reason of any defect in the appointment of any director or local director, or that any director was disqualified.

POWER AND DUTIES OF THE BOARD.

23. Subject to the provisions of this Act, and of any bye-laws made under its authority, the board shall have power to appoint and remove all such officers and clerks as may be necessary, and generally to manage and transact all the business of the Society.

24. The directors shall elect a chairman and determine the period for which he is to hold office; but if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose a chairman to preside at such meeting.

25. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit.

26. The Board of Directors may delegate so much of their power as they may deem expedient to local boards within the Colony or beyond its limits in South Africa, and may from time to time revoke any such delegated powers.

27. Every committee and every local board shall be subject to this Act, to the bye-laws of the Society, and to any regulations framed by the Board of Directors for the guidance of committees and local boards.

28. A committee, or local board, may elect a chairman of their meetings; if no such chairman be elected, or if he be not present at a meeting the members present may elect one of their number to be chairman of such meeting.

29. All policies, powers of attorney, deeds or other instruments shall be valid and binding on the Society if signed by any two of the directors and the Secretary.

QUALIFICATION OF DIRECTORS.

30. No member shall be elected, or if elected continue a director or a local director, unless he shall be assured with the Society for a reversion of at least five hundred pounds upon his own life.

DISQUALIFICATION.

No. 6 - 1888.

31. No member who is a director, manager, agent or auditor of any other Life Assurance Office or who shall be related to any other director within the second degree of consanguinity or affinity, or who shall be a co-partner, or in the employ of any director, shall be eligible to be elected or to continue a director.

Disqualifications for office of Director.

32. If any director or local director shall resign, die, become insolvent, assign his estate for the benefit of, or compromise with, his creditors, be declared insane, or shall be otherwise disqualified, or shall be absent from the meetings of the board or local board for three consecutive months without leave from the Board of Directors (which leave of absence shall not exceed six months in all), then in every such case his office shall become vacant, and no more than two directors shall have leave of absence at any one time.

What causes shall create vacancy in office of Director.

Leave of absence

ELECTION AND RETIREMENT OF DIRECTORS.

33. The present directors shall, unless they become disqualified, continue in office until the time for their retirement shall arrive.

Present Directors continue until period of retirement.

34. At each Annual General Meeting three of the directors who have been longest in office shall retire, and each retiring director shall be eligible for re-election.

Retirement of Directors.

35. If a vacancy shall arise in the direction from any cause, and the director whose place becomes vacant would have retired at the next Annual General Meeting, the vacancy so created may be filled by the Board of Directors.

Vacancies which may be filled by the Board.

36. Any such vacancy which cannot or which shall not be filled by the Board of Directors, shall be filled in the manner hereinafter provided.

And which shall be otherwise filled.

37. It shall be competent for the members by a majority of votes of those present, or represented at a duly convened Special General Meeting, to remove a director from his office and to declare his place vacant.

Removal of a Director.

38. Any director appointed by the Board of Directors or elected to supply a casual vacancy shall continue in office for the remainder of the period during which his predecessor would have continued in office.

Continuance of Directors elected to fill vacancies.

39. No person shall be deemed to be a candidate for election as a director unless he shall be nominated in writing by at least five members within the time appointed for receiving nominations.

Nomination of candidates for directorship.

40. Not less than forty-two days before the date of every Annual General Meeting, and whenever members are to elect directors to supply casual vacancies, notice shall be given in the *Gazette*, and in such newspapers as the directors think fit, inviting nominations of candidates to supply the vacancies existing or to arise.

Notice inviting nominations for directorship.

No. 6-1888.

Notice to limit time for receiving nominations.

Election when number of candidates not greater than required.

Where no candidates or less than the number required.

Where number of candidates exceeds the number of Directors to be elected.

41. The notice in the last preceding section mentioned shall specify a day, not being less than fourteen days from the first publication of such notice in the *Gazette*, as the last day on which nominations will be received.

42. If no greater number of candidates be duly nominated than the number of directors to be elected, the candidates nominated shall be deemed to be elected directors.

43. If at the expiration of the time appointed for the receipt of nominations, none be sent in, or if the number of candidates duly nominated shall be less than the number of directors to be elected, the candidates nominated (if any) shall be deemed to be elected; and the Board of Directors shall thereupon fill up any vacancy for which no nomination has been made.

44. If the number of candidates duly nominated exceeds the number of directors to be elected, the Secretary shall without delay forward to the registered address of every member a circular stating what vacancies exist, and therewith a printed voting paper and an envelope with the address of the Secretary and the words "Voting Paper" printed thereon. The form of the voting paper shall be, as nearly as is material, the following:—

No. of Policy
Amount assured £
No. of Votes

I, A. B. of one of the members of the South African Mutual Life Assurance Society do hereby vote for

C. D. }
E. F. } names of Candidates nominated.
G. H. }

As

a Director
Directors

of the said Society.

Dated at this day of 188.....

Witness:—

(Sign here).....

NOTICE.—There are directors to be elected. You may vote for as many candidates as there are vacancies or for a lesser number if you please. Erase the names of the candidates for whom you do not intend to vote, and sign this paper in the presence of one witness at least.

The voting paper must be sent direct to the Secretary, and must reach his hand not later than the day of 18, if received afterwards your vote will not be reckoned.

No other voting paper will be received unless it is entirely in your own handwriting, and sent by you to the Secretary marked "Voting Paper" on the envelope, with a letter explaining why the printed form is not returned.

No voting paper not in accordance with these directions will be recognised.

No. 6—1888.

45. The Secretary shall retain all voting papers, addressed to him as aforesaid, unopened, and shall deliver the same to the scrutineers appointed for examining the votes; such scrutineers if not appointed by a General Meeting shall be appointed by the directors.

Scrutiny of voting papers.

46. Upon the completion of the scrutiny the scrutineers shall report the result in writing to the Secretary, and the candidates having the majority of votes shall be deemed duly elected. In the event of an equality of votes the candidates having such equal number shall draw lots in the presence of the Chairman of the Board of Directors, or of the Secretary, and the candidate upon whom the lot shall fall shall be deemed to be duly elected.

Result of the voting.

V.—AUDIT.

47. The accounts of the Society shall be audited at least once a month by two auditors.

Audit.

48. Any auditor may examine the accounts from day to day, and the auditors jointly may at all convenient times call for, inspect, and examine all the books, accounts, vouchers and securities of the Society.

Auditors may at all times examine accounts and inspect books and papers.

49. The present auditors shall, unless they become disqualified, continue until the period for their retirement shall arrive.

Continuance of present Auditors.

50. (1) The auditors shall be elected each year at the Annual General Meeting of the Society.

Election of Auditors.

- (1) No person shall be deemed to be a candidate for election of auditor unless he shall be nominated in writing by at least five members within the time appointed for receiving nominations.
- (2) Not less than forty-two days before the date of every annual general meeting, notice shall be given in the *Gazette*, and in such newspapers as the directors think fit, inviting nominations of candidates to supply the vacancies existing or to arise.
- (3) Such notice shall specify a day, not being less than fourteen days from the first publication in the *Gazette*, as the last day on which nominations will be received.
- (4) If no greater number of candidates be duly nominated than the number of auditors to be elected, the candidates nominated shall be deemed to be elected auditors.
- (5) If at the expiration of the time appointed for the receipt of nominations, none be sent in, or if the number of candidates duly nominated shall be less than the number of auditors to be elected, the candidate nominated shall be deemed to be elected, and the directors shall thereupon fill up any vacancy for which no nomination has been made.

No 6.—1888.
Disqualifications
for auditorship.

Vacancies in
office of Auditor.

Filling vacancies.

Appointment and
removal of Audi-
tors at other places
than Cape Town.

Annual General
Meeting.

Special General
Meetings.

Chairman of
General Meetings.

Convening of
Special General
Meetings.

Notice of same.

To be by adver-
tisement.

Business limited
to that set forth in
notice.

Ordinary and
special business at
Annual Meeting.

Consideration of
special business.

51. No director nor officer of the Society shall be eligible for appointment as an auditor; and any auditor retiring from office shall be eligible for re-election.

52. The office of auditor shall become vacant by death, resignation, conviction of any offence punished by imprisonment, or when an auditor shall in the opinion of the Board prove incompetent or neglect his duty.

53. The directors may appoint an auditor to supply any vacancy arising as aforesaid, to hold office until the next Annual Meeting.

54. The Board may from time to time appoint or remove an auditor or two auditors in each place other than Cape Town, where the Society may for the time being be carrying on business.

VI.—OF GENERAL MEETINGS.

55. An Annual General Meeting of the Society shall be held (1) in the month of September in every year at the Society's principal office, at such day and hour as the Board may determine.

56. Other meetings of the Society shall be called Special General Meetings.

57. The Chairman of the Board of Directors shall if present preside at all general meetings of the Society, and in his absence any other member of the Society may be appointed by the members present to take the chair.

58. A Special General Meeting may be convened by the Board at any time, and shall be so convened upon a written requisition delivered at the principal office, signed by not less than fifty members who have been members for one year at least, and who are entitled to vote, which requisition shall express distinctly the object for which it is desired that the meeting shall be held.

59. Notice of a Special General Meeting shall be published within ten days after the delivery of any such requisition as aforesaid.

60. Thirty days' notice at the least of every meeting of the Society shall be given by advertisement in the *Gazette*, and in such newspapers as the directors shall determine. The notice shall specify the day, the place and hour of the meeting, and in case of a Special General Meeting the nature of the business shall be stated.

61. No business shall be brought before any Special General Meeting except that set forth in the notice convening such meeting.

62. At an Annual Meeting the consideration of the report, accounts, and balance sheet, and the election of directors and auditors shall be deemed ordinary business; all other business shall be deemed special business.

63. The directors may, if they think fit, permit the consideration of any special business at an Annual General Meeting, the purport of which shall have been intimated to them in writing by any member at least thirty days before the day of such meeting, the said business to be advertised at least twenty-one days before such meeting.

¹ Printed as amended by Act 16, 1896.

64. At an Annual General Meeting twelve members personally present shall constitute a quorum for the transaction of the ordinary business. At a Special General Meeting, or for the transaction of any business other than the ordinary business at an Annual General Meeting, fifty members personally present shall constitute a quorum.

No. 6 1888.
Quorum.

65. If within thirty minutes after the time appointed for a General Meeting a sufficient number of members to form a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same hour and place, or to such other day not being more than fourteen days after such meeting as a majority of members personally present may then appoint, and if at such adjourned meeting a quorum be not present, it shall then be dissolved.

Insufficient number present at General Meeting.

66. The chairman of any duly constituted meeting may, with the consent of the majority of the members present, adjourn it from time to time and from place to place.

Adjournment of meetings.

67. No business shall be transacted at any adjourned meeting other than that left unfinished at the meeting from which the adjournment took place.

Business at adjourned meetings.

68. Unless a specified proportion of the votes of the members is required for the determination of any question coming under the consideration of a General Meeting, such question unless a poll be demanded immediately after the declaration of the chairman and before the consideration of any other business shall have been proceeded with, shall be decided by a show of hands, each member counting for one vote, and the declaration of the chairman at such meeting that a resolution has been carried, and an entry to that effect in the minute book of the Society shall be conclusive evidence of the fact.

Mode of voting at General Meetings.

69. If a poll is demanded by five or more members, or if a specified proportion of the votes of the members is required for the determination of the question, the votes shall be taken by ballot, and the result declared by the chairman and recorded in the minute book of the Society.

In case of poll votes to be taken by ballot.

70. At any meeting at which a poll is to be taken two scrutineers shall be appointed by the votes of the members present for examining the votes and reporting the result.

Scrutineers.

71. In the event of an equal number of hands being held up for and against any resolution, or of an equality of votes when a poll is taken, the chairman of the meeting shall be entitled to a casting vote in addition to his vote or votes as a member.

Equality of votes.

VII.—BYE-LAWS.

72. The present rules, orders, regulations, or bye-laws of the said Mutual Life Assurance Society shall continue in operation as bye-laws of the Society until repealed or altered under the provisions of this Act.

Bye-laws.

73. The directors may from time to time make and alter such bye-laws as may be necessary or expedient for carrying out the

Directors may make and alter bye-laws.

No. 6—1888.

provisions and objects of this Act, for the general management and control of the business and officers of the Society, and for providing pensions or retiring allowances on the retirement of such officers, but no such bye-law shall be repugnant to the provisions of this Act nor contrary to law.

Notice of intended
bye-laws.

74. Notice shall be given in the *Gazette* and in such newspapers as the directors shall see fit, of the framing of such bye-laws, and that the same are open to the inspection of members at the principal office of the Society, during a period of fourteen days at the least.

Objections thereto.

75. If such bye-laws are not objected to by at least fifty members entitled to vote before the expiration of the period stated in the notice, the same shall then be binding upon the directors, members, and officers of the society, until altered.

Mode of dealing
with objections.

76. In case any such bye-law shall be objected to as aforesaid, the directors shall either abandon the same, or submit it to an Annual or Special General Meeting.

Repeal of bye
laws at Genera
Meeting

77. Any bye-law may be repealed by a majority of votes taken by ballot at a general meeting, of the object of which due notice shall have been given as by this Act provided.

MISCELLANEOUS.

Notice of assign-
ments of policies
required.

78. No assignment of a policy shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue the society for the amount of such policy, or the moneys assured or secured thereby, until a written notice of the date and purport of such assignment shall have been given to the Society at its principal place of business; and any advance or payment *bonâ fide* made by the Society upon or in respect of any policy before the date upon which such notice shall have been received, shall be valid and effectual against the assignee or other person giving such notice.

Service of notices
and legal process
against the Society.

79. All notices, summonses, or other legal process may be served, and shall be effectual against the Society, if served or left at its principal office with any director, officer, or servant of the Society.

Services of notices
on members.

80. A notice given by the society to a member shall be effectual if in writing and either delivered to the member personally, or left at his place of business or residence, or sent through the Post Office stamped and directed to the member at his address, registered in the office of the society.

Commencement
and title of Act.

81. This Act shall come into operation on the tenth day of September, 1888, and may be cited for all purposes as "The South African Mutual Life Assurance Society Incorporation Act, 1888."

No. 7—1888.]

[July 13, 1888.

Act to Continue for another Year the Fourth Section of "The Vineyards Protection Act Amendment Act, 1886."

[Spent.]

No. 8—1888.]

[July 27, 1888.

ACT

To Provide for the Recognition in this Colony of Letters of Administration granted in other States. ⁽¹⁾

WHEREAS it is expedient to make provision for the recognition in this Colony of Letters of Administration granted in other States: 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:—

1. In this Act the following terms shall bear the following meanings:

“State” shall include England, Scotland, Ireland, every British Colony and British Possession wherever situate, and the Orange Free State, and South African Republic.

“Letters of Administration” shall include every document issued and delivered, or a copy of every such document duly certified, by any lawful and competent judicial or other public authority in any State, under and by which document any person or body corporate shall be authorised and empowered to act as the personal representative of any deceased person or as executor or administrator, either testamentary or dative, either of the whole estate of any deceased person which shall be legally situate in such State, or of so much of such estate so situate as consists of immovable, movable, real, or personal property as the case may be.

“British Consular Court” means any British Court having jurisdiction under an Order in Council made in pursuance of the Foreign Jurisdiction Acts, 1843, to 1878, or any of them.

2. All or any of the provisions of this Act shall come into force with regard to all letters of administration at any time granted in any State, as and from the date of and during the period if any limited by a Proclamation which it shall be lawful for the Governor to publish in the *Gazette*, declaring that the Legislature of such State has made proper reciprocal provision for the recognition of letters of administration granted in this Colony, and specifying the provisions of this Act which shall so come into force, and any provision of this Act so proclaimed shall continue in like force unless and until either any period so limited as aforesaid shall have expired or been extended by Proclamation in the *Gazette*, or unless and until a further Proclamation shall be similarly published by the Governor declaring that such proper

Preamble.

Definition of terms.

“State.”

“Letters of Administration.”

“British Consular Court.”

Operation of Act only with regard to letters granted in States, making reciprocal legal provision.

¹ See 55 Vict., chap. 6, and order in Council, published in *Government Gazette* 28th August, 1894 [Government Notice 845, 1894] extending provisions of that Act to Cape Colony.

Applied to Orange Free State	...	by Proc. :	237, 21-10-1889.
“ Transvaal	... ..	“	188, 24-9-1902.
“ Bechuanaland Protectorate	... ..	“	188, 20-6-1898.
“ Natal	... ..	“	394, 5-11-1894.
“ Rhodesia	... ..	“	117, 21-3-1893.
“ United Kingdom	... ..	“	236, 7-8-1892.

DD

No. 8—1888.

reciprocal provision no longer exists, or that all or any of the provisions of this Act shall no longer apply to letters of administration granted in such State.

Letters granted in other State on production to Master may be sealed and signed and given effect to in this Colony:

3. Whenever letters of administration granted in any State shall be produced to, and a copy thereof deposited with, the Master of the Supreme Court of this Colony, such letters may be sealed with his seal of office and signed by the Master, and shall thereupon be of like force and effect and have as full operation in this Colony, with respect to the entire estate of the deceased here situate, as though the said letters had been letters dative granted by the said Master: Provided, however,

But no letters to be so sealed and signed if any letters already granted here;

(1) That the Master shall not seal and sign any such letters so produced in case any letters of administration shall have been already granted by him in respect of the estate of any deceased person which shall be situate in this Colony;

Stamps, fees, &c., to be, subject to rule of court, the same as for letters issued by Master:

(2) That, before any such letters are sealed and signed the same stamps, fees of office, duties, and security shall, in the absence of any rule of court to the contrary, be paid, discharged, and given by the person authorised and empowered to act by the produced letters of administration, which would be required if the said letters had been granted by the Master;

Jurisdiction of Supreme Court in case Master refuses to sign.

(3) That in case the Master shall refuse to seal and sign any such letters of administration so produced, it shall be lawful for the person thereby authorised and empowered to act, after notice to the Master, to make application to the Supreme Court for relief, and thereupon the Supreme Court shall make such order as to justice shall appertain, but no such order shall be inconsistent with the provisions of this Act or with rules of court framed hereunder.

Power of Supreme Court to make rules of Court.

4. The Supreme Court may from time to time make, revoke, amend, and vary rules of court regulating the procedure and practice, including rules as to fees and costs to be observed in and about the carrying out of the provisions of this Act, and all such rules shall come into operation from the date of their proclamation in the *Gazette*.⁽¹⁾

Letters granted by British Consular Courts recognised.

5. Letters of administration lawfully granted by any British Consular Court shall be deemed and taken to be granted in a State to which all the provisions of this Act apply.

Evidence by copy of letters, certified by Master and provision for Master's certificate of right to administer estates here situate under letters produced.

6. A copy certified by the Master of the Supreme Court of the copy of any letters of administration, deposited with him under the third section of this Act, shall be admitted in evidence in all legal proceedings in this Colony, as though such certified copy were the original letters, and a certificate under the hand of the Master to the effect that he has, in accordance with the said sec-

¹ See Government Notice No. 379, 1893, 10th April. 1893, for rules.

tion, sealed and signed any letters of administration, authorising and empowering any person to act thereunder, shall be admitted in all legal proceedings in this Colony as *prima facie* proof of the legal right and title of such person to administer so much of the estate of the deceased person named in such certificate as is situate in this Colony.

No. 9—1888.

7. Every proclamation under the second and fourth sections of this Act shall be laid before the Legislative Council and House of Assembly within fourteen days after the meeting of the next session of Parliament after its publication.

Proclamation under Act to be laid before Houses of Parliament.

8. This Act may be cited for all purposes as "The Foreign Letters of Administration Act, 1888."

Short title.

No. 9—1888.]

[July 27, 1888.

ACT

To Provide for the Prohibition under certain circumstances of the Exportation from this Colony of certain Articles.

WHEREAS it is expedient to make provision to prevent the exportation from this Colony of certain articles under certain special circumstances and to obviate as far as may be any danger of this Colony being involved in disputes in cases of war: 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, when thereto advised by special resolution passed at a meeting of the Executive Council summoned for that purpose, to prohibit by a proclamation published in manner hereinafter set forth for any period limited in such proclamation, the exportation from and across all or any of the borders of this Colony, or by land only, or by sea only, of all or any of the articles mentioned in the Schedule to this Act.

Governor when advised by Executive Council may prohibit export of the scheduled articles.

2. Every proclamation made in accordance with the provisions of the last preceding section shall be published in the *Gazette*, and in so many registered public newspapers in this Colony as to the Governor shall seem fit.

Mode of publication of the Proclamation.

3. From and after the said publication in the *Gazette* of any such proclamation as aforesaid, every person and the agent of any person who shall either personally or by any agent export or attempt to export, in violation of the prohibition contained in such proclamation, any article therein mentioned, shall be liable upon conviction to a fine not exceeding one hundred pounds, or imprisonment with or without hard labour for any term not exceeding twelve months, unless such fine be sooner paid, or to both such fine and such imprisonment: provided, however, that no person shall be convicted under this section, who shall prove to the satisfaction of the court before which he is tried, that the act or attempt in respect of which he is charged or accused was committed at a time

Penalties for exporting in violation of the Proclamation.

Proof by offender of ignorance of the Proclamation shall excuse him.

No. 9—1888.

when he was in fact ignorant that such proclamation had been published.

Proclaimed articles found under circumstances raising reasonable suspicion that they are intended for export liable to seizure by certain officers and forfeited; unless owner prove that he had no intention to export, or violate Proclamation after it came to his knowledge.

4. Every article, the exportation of which shall be prohibited by any such proclamation as aforesaid shall, during the period, if any, limited in such proclamation, be liable to seizure by any justice or special justice of the peace, or by any field-cornet or police-constable, or customs or other officer invested by the Governor with power to seize such articles, if such article be found under circumstances raising a reasonable suspicion that it is intended for exportation, or is about to be exported contrary to the provisions of such proclamation: and every article so seized shall be detained in possession by the person effecting seizure, or by such person as the Governor may direct, and shall be deemed to be forfeited for the benefit of the Colonial Government, unless within one month after the date of such seizure the owner or any other person interested in such article, shall prove to the satisfaction of the Supreme Court, in an action to which the Assistant Treasurer of the Colony shall be a defendant party, either that such article was not intended for exportation, or about to be exported, or that no attempt was made to export such article, after such owner or other interested person had knowledge of the fact of the publication of such proclamation as aforesaid; provided, however, that in any case the Governor may at any time release from detention or forfeiture any article seized under the provisions of this Act, and may direct the restoration of such article to the owner or other person interested therein, upon production of satisfactory proof that such owner or other interested person, as the case may be, had no intention to violate and was no party to the violation or attempted violation of the provisions of such proclamation.

Governor may order release of the goods if satisfied that owner did not intend to violate Proclamation.

Mode of dealing with seized articles.

5. Every article forfeited under the provisions of this Act may be dealt with in all respects as though it were an article seized, confiscated, and forfeited for contravention of the customs laws regulating or prohibiting the importation of certain articles.

Powers of search of Customs and other officers. Governor may frame regulations for regulating conduct of officers and for carrying out this Act.

6. All powers of search, seizure, and detention by law vested in officers of customs or any other officers in respect of any ship, vessel, wagon, vehicle, or other conveyance, coming within the territorial waters of, or crossing any border into this Colony, shall, *mutatis mutandis*, and during the operation of any such proclamation as aforesaid and in respect of any ship or vessel leaving or about to leave the territorial waters of this Colony, and in respect of every wagon, vehicle, or other conveyance, going from and crossing or about to cross any border of this Colony, be deemed and taken to be vested in the said officers and in such other officers as may be appointed by the Governor to carry out the purposes of such proclamation, and it shall be lawful for the Governor from time to time to frame, add to, alter, and amend, rules and regulations, to be published in the *Gazette*, and which shall prescribe and regulate the proper conduct of all such officers and all matters

concerning the due carrying out and observance of the provisions of this Act and of any such proclamation.

7. It shall be lawful for the Governor, during the period for which any such proclamation as aforesaid shall be in operation, to grant to any person a special licence for the exportation of any article or articles specified in such licence, and every such licence shall, notwithstanding any prohibition contained in such proclamation, be deemed and taken to authorise the exportation of the article or articles therein named, subject, however, to such conditions and limitations as may be imposed in such licence, the breach of any of which shall render every article otherwise covered by such licence liable to seizure and forfeiture as though such licence had not been granted; provided that in respect of such licence, if granted, no other fee, stamp, or duty shall be required than would have been by law required if such proclamation had not been published.

8. Nothing in this Act contained or in any proclamation under it shall be deemed or taken in any way to abrogate or affect the existing provisions of the law regulating or limiting the exportation of fire-arms, gunpowder, or lead.

9. This Act may be cited as the "Warlike Articles Exportation Prohibition Act, 1888."

No. 9—1888.

Governor may under conditions authorise export of proclaimed articles.

Violation of conditions renders articles liable to seizure.

The passing of this Act not to affect existing laws relating to the export of fire-arms, gunpowder, or lead.

Short title.

SCHEDULE.

Schedule.

1. Explosives, and ingredients used in the manufacture of explosives.
2. Military and naval stores.
3. Marine engines.
4. Screw propellers.
5. Paddle-wheels.
6. Cylinders.
7. Cranks.
8. Shafts.
9. Boilers.
10. Tubes for boilers.
11. Boiler plates.
12. Fire bars.
13. Every article, or any other component part of an engine or boiler, or any article whatsoever which is, can, or may, become applicable for the manufacture of marine machinery.
14. Torpedoes.
15. Torpedo boats.
16. Boats fitted with apparatus to be used for torpedoes.
17. All apparatus for projecting inflammable materials or firing torpedoes.
18. Pumps or other machinery intended to be used for projecting inflammable materials.
19. Machinery intended to be used in the construction of torpedoes or torpedo boats.

No. 10—1888.]

[July 27, 1888.

ACT

To Amend the Existing Law with regard to Gold Mining.

[Repealed by Act 31, 1898.]

[Pages 2549 and 2550.]

No. 11—1888.]

[July 27, 1888.]

ACT

To Prohibit the practice of giving Bonus at Sales by Public Auction.

WHEREAS it is expedient to prohibit the practice of giving bonus, or strijkgeld, or other valuable consideration for or in respect of any bid at any sale by public auction: 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. This Act shall come into operation on the first day of January, 1889, and from and after the said day so much of any law in force in this Colony as shall be repugnant to or inconsistent with the provisions of this Act shall be and is hereby repealed.

Operation of Act. repugnant laws repealed.

2. Every offer or agreement to give any bonus, or strijkgeld, or other valuable consideration for or in respect of any bid at any sale by public auction, shall be deemed to be illegal and void, and not enforceable at law, but nothing herein contained shall be deemed to invalidate or render illegal or void any contract of sale completed by public auction, merely by reason that in the course of bidding at such sale, any bonus, or strijkgeld, or other valuable consideration shall have been offered, or offered and accepted, for or in respect of any bid.

Offer or agreement to give bonus, &c., at sales by public auction illegal and void, but contracts of sale not invalidated by offer of bonus.

3. Every auctioneer or other person who at any sale by public auction, shall offer or agree to give any bonus, or strijkgeld, or other valuable consideration for or in respect of any bid, shall upon conviction before the Resident Magistrate of the district wherein such sale is held, be liable to a fine not exceeding twenty-five pounds sterling.

Penalty for offering or agreeing to give bonus.

4. This Act may be cited as "The Bonus Prohibition Act, 1888."

Short title.

No. 12—1888.]

[July 27, 1888.

ACT

To Make provision against Fraudulent Marks on Merchandise. (1)

Preamble.

WHEREAS it is expedient to make provision against Fraudulent Marks on Merchandise: 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:—

Definition of offences with regard to trade marks, &c.

1. (1) Every person who—
 - (a) forges any trade mark; or
 - (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or
 - (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or
 - (d) applies any false trade description to goods; or
 - (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or
 - (f) causes any of the things above in this section mentioned to be done;

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

Definition of offence of selling, &c., goods marked with forged trade mark.

(2) Every person who sells, or exposes for, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

- (a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and
 - (b) That on demand made by or on behalf of the complainant, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
 - (c) That otherwise he had acted innocently;
- be guilty of an offence against this Act.

Punishment of offences against this Act.

(3) Every person guilty of an offence against this Act shall be liable—

¹ Amended by Act 14, 1889 (p. 2661).

- (i) on conviction on indictment to a fine not exceeding fifty pounds, with the alternative of imprisonment with or without hard labour for any period not exceeding two years unless such fine be sooner paid, or to both such imprisonment and such fine ; and
 - (ii) on conviction by any Resident Magistrate to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months or to a fine not exceeding fifty pounds ; and
 - (iii) in any case to forfeiture, at the discretion of the court, of every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.
- (4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

Forfeited articles,
how disposed of.

Definition of terms.

2. (1) For the purposes of this Act—

The expression “trade mark” means a trade mark registered in the register of trade marks kept under the Trade Marks Registration Act, (1) 1877, and includes any trade mark which, either with or without registration, is protected by law in the United Kingdom, or in any British Colony or Possession or Foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, enacted by the Imperial Parliament, are under Order in Council for the time being applicable :

The expression “trade description” means any description, statement, or other indication, direct or indirect,

- (a) as to the number, quantity, measure, gauge, or weight of any goods, or
- (b) as to the place or country in which any goods were made or produced, or
- (c) as to the mode of manufacturing or producing any goods,
- (d) or as to the material of which any goods are composed, or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright ; and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act :

The expression “false trade description” means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition,

¹ No. 22. See Act 12, 1895 (p. 3451).

No. 12—1888.

effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate:

The expression "name" includes any abbreviation of a name.

Application to goods and of deceiving figures, words, &c. deemed to be application of false trade description.

(2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

Application of false name or initial deemed to be application of false trade description.

(3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

- (a) are not a trade mark, or part of a trade mark, and
- (b) are identical with, or colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials, and
- (c) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

Forging trade mark: offence defined.

3. A person shall be deemed to forge a trade mark who either—
- (a) without the consent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
 - (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise; and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Onus on defendant to prove assent of proprietor of trade mark forged.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Definition of application of trade

4. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

- (a) applies it to the goods themselves; or
- (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
- (c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
- (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.

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mark, mark, or
trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule case, frame or wrapper; and the expression "label" includes any band or ticket.

"Covering" and
"label" defined.

A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

False application
of trade mark, &c.

5. Where a person is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely apply to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

Defence of person
charged with mak-
ing die, block, &c.,
for purpose of
forging.

- (a) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was employed by some person resident in this Colony, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

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Defendant liable for costs unless notice of defence given to complainant.

Words, &c., on watch commonly reputed to constitute description of country of manufacture, such words &c., deemed to describe watch as made in such country, and provisions of Act regarding false trade description to apply.

In indictment, &c., sufficient to refer to trade mark without description or copy thereof.

Imported goods, *prima facie* presumed to be made in country of port of shipment

Accessory in Colony to offence without Colony deemed guilty as principal.

Powers of search and seizure after information charging offence against this Act: goods and things seized liable to forfeiture by resident magistrate.

(d) That he gave to the complainant all the information in his power with respect to the persons on whose behalf the die, block, machine, or other instrument was made, or the trade mark, mark, or description was applied—

he shall be discharged from the prosecution but shall be liable to pay the costs incurred by the complainant unless he has given due notice to him that he will rely on the above defence.

6. Where a watch case has thereon any words or marks which constitute or are by common repute considered as constituting a description of the country in which the watch was made, and the watch bears no description of the country where it was made, these words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

7. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

8. In any prosecution for an offence against this Act, evidence of the port of shipment of imported goods shall be *prima facie* evidence of the place or country in which the goods were made or produced.

9. Any person who, being within this Colony, procures, counsels, aids, abets, or is accessory to the commission, without this Colony, of any act, which, if committed in this Colony, would under this Act be an offence, shall be guilty of that offence as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any place in this Colony in which he may be, as if the offence had been there committed.

10. (1) Where, upon information of an offence against this Act, there has been issued in due form of law, either a summons requiring the person charged by such information to appear to answer to the same, or a warrant for the arrest of such person, and either the person issuing such summons or warrant on or after issuing the summons or warrant, or any other officer of the law empowered to issue criminal process is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the person charged or arrested or otherwise in his possession or under his control in any place, the person issuing such summons

or warrant, or such other officer as aforesaid, as the case may be, may issue a warrant under his hand by virtue of which it shall be lawful for any police officer named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before the Court of the Resident Magistrate having jurisdiction in respect of such offence for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

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(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the Resident Magistrate of the district in which such goods or things shall be found may cause notice to be advertised in the *Gazette* stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Resident Magistrate, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

Forfeiture may be declared though owner of goods, &c., is unknown or cannot be found.

(3) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated) award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Disposal of forfeited goods and things.

11. On any prosecution under this Act the court may order costs to be paid to the accused by the complainant, or to the complainant by the accused, having regard to the information given by and the conduct of the accused and complainant respectively.

Costs may be ordered against complainant or accused

12. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the complainant, whichever expiration first happens.

Prosecution of offences against this Act.

13. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act: Be it therefore enacted as follows:

Further provisions for prohibition of importation of goods liable to forfeiture.

(1) All such goods, and also all goods of foreign (1) manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer,

Prohibited goods

¹ See § 1, Act 14, 1889, for definition (p. 2662).

No. 12—1888.

Regulations to be complied with before detention of goods.

Regulations by the Governor by Proclamation in *Gazette*.

Name on goods presumed to be name of place similarly named in Colony.

Different regulations as to different classes of goods.

Customs officials under control of Treasurer-General.

Regulations may charge informant with expenses consequent on detention.

- dealer, or trader in this Colony, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into this Colony, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section fourteen of the Customs Act, 1872.
- (2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof, under the law relating to the Customs, the officers of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.
 - (3) The Governor may, by proclamation in the *Gazette*, from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.
 - (4) Where there is on any goods a name which is identical with, or a colourable imitation of the name of a place in this Colony or elsewhere,⁽¹⁾ that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of the place in this Colony, or elsewhere, as the case may be, wherewith the name on such goods is identical, or whereof it is a colourable imitation.
 - (5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
 - (6) The officers of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Treasurer of the Colony.
 - (7) The regulations may provide for the informant re-imbursing the Collector of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

¹ Printed as amended by Act 14, 1889, § 2 (p. 2662).

14. On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee.

15. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method or manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

16. No person shall be convicted of an offence against this Act, merely by reason that he has applied to any goods or things, including watches and watch cases, any trade mark, mark, or trade description which is in fact a false trade mark, mark, or trade description, if such person shall prove to the satisfaction of the court before which he is tried—

- (a) that such goods or things were imported into this Colony before the first day of September, 1888; and
- (b) that such false trade mark, mark, or trade description was applied to such goods or things when the same were imported into this Colony;

nor shall any goods or things, including watches and watch cases, imported into this Colony before the first day of September, 1888, be liable to forfeiture under the provisions of this Act, merely by reason that any false trade mark, mark, or trade description is or has been applied thereto, if it shall be proved to the satisfaction of the Resident Magistrate having, under the tenth section of this Act, jurisdiction in respect of the forfeiture thereof, that such false trade mark, mark, or trade description, was applied to such goods or things before such importation; provided, however, that nothing in this section contained shall be deemed either in any way to protect or defend any person in respect of any legal proceedings, civil or criminal, which may be brought or instituted against him, or to exempt from forfeiture any goods or things which shall be

No. 12—1888.

Warranty by vendor of goods that trade mark is genuine; may be excluded by written notice by vendor delivered to purchaser.

Trade description lawfully and generally applied, when this Act passes, to particular class of goods, &c., not deemed to be false trade description subject to provision in certain cases as to conspicuous notice of place where goods are made.

This Act not to apply to goods imported into Colony before 1st September, 1888.

No. 12—1888.

thereto liable under this Act, by reason or in consequence of any act or thing done in wilful violation of any provision of this Act after the importation of such goods or things.

This Act not to exempt from other suit, &c., or from answering questions.

17. (1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

Servant not liable for *bona fide* obedience to master's orders.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in this Colony, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

False representation that goods are made under Royal Warrant, &c., how punished.

18. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family or of the Governor, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Repeal of existing legislation, subject to proviso against retrospective effect.

19. The Merchandise Marks Act 1864, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect—

- (a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor
- (b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor
- (c) any right, privilege, liability, or obligation acquired accrued, or incurred under any enactment hereby repealed.

Exemption of goods for States or Territories beyond the Colony.

20. It shall and may be lawful for the Governor by Proclamation in the *Gazette* at the request of the Government of any State or Territory beyond the boundaries of this Colony, to exempt under such regulations as to him may seem fit, any goods or things imported through the sea-ports of this Colony into such State or Territory directly: Provided that goods or things so exempted, shall in case of re-importation into this Colony, become subject to the provisions of this Act.

Short title.

21. This Act may be cited as "The Merchandise Marks Act, 1888."

No. 13—1888.]

[August 14, 1888.

ACT

To amend in certain respects the "Precious Stones and Minerals Mining Act, 1883," and the law with regard to Joint Stock Companies.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. [Repealed by Acts 31, 1898, and 11, 1899.]

[Remainder of Act repealed by Act 25, 1892.]

No. 14—1888.]

[August 17, 1888.

ACT

To Amend the Act No. 6, 1856, entitled "An Act for Regulating the Public Schools of Port Elizabeth upon the Grey Foundation."

WHEREAS it is desirable to amend the Act No. 6 of the year 1856, entitled "An Act for Regulating the Public Schools of Port Elizabeth upon the Grey Foundation," in certain respects, viz.:—

Preamble

- (1) To reduce the number of Members of the Board of Managers of the said Schools; and
- (2) To increase the Capital Sums entitling Donors to the presentation of Free Scholarships:

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, to wit:—

1. The second, seventh, ninth, tenth and fourteenth sections of the said Act shall be, and the same are hereby repealed: Provided that the Board of Managers as now constituted shall continue in office until the first election by the Town Council of Six Members, and the first election by Donors and Subscribers of Seven Elective Members, as in this Act provided, shall have taken place.

Sections 2, 7, 9, 10 and 14, Act 6 of 1856 repealed.

2. The Civil Commissioner of the division of Port Elizabeth for the time being, the (1) Mayor of Port Elizabeth for the time being together with Six other Members of the Town Council of Port Elizabeth for the time being, and Seven Elective Members, not being Members of the Town Council of Port Elizabeth, to be chosen in manner hereinafter provided, shall form a Board for the Management of the said Schools, of which Board the Civil

Constitution of Board of Management.

¹ See Act 27, 1897 § 2 (p. 3785).

No. 14—1883

Commissioner for the time being shall be the Chairman: Provided that when the Civil Commissioner is not present at any Meeting of the Board, then the Managers present shall choose their own Chairman; and in case of an equality of votes upon any matter or question submitted to the said Board, the Chairman for the time being shall, besides a deliberative vote, possess a casting vote.

Provision for election of 6 Members of Town Council to be Members of Board.

3. At the first ordinary Meeting of the Town Council of Port Elizabeth in the month of January in every year, whereat a quorum shall be present, commencing with the year 1889, the Members of the Town Council aforesaid then present shall proceed to elect from the whole Council, the Mayor excepted, Six Members to form, with the *ex officio* Members and seven other Elective Members to be chosen in manner hereinafter provided, the Board of Management from the date of such Meeting to the next following election: Provided that if any of the Six Members of the Town Council chosen as aforesaid shall vacate his office as a Member of the Board of Managers aforesaid, or cease to be a Member of the Town Council of Port Elizabeth, the said Town Council shall forthwith, at the first subsequent Meeting whereat a quorum shall be present, fill up any such vacancy out of their own number; and any Member so elected shall continue in office until the next Annual Election of Members by the Town Council aforesaid.

Meeting of Donors and subscribers for electing seven other Members of Board not being Town Councillors.

4. On the Second Wednesday in the month of January in each year, a Meeting shall be holden of the Donors and Subscribers to the said Schools, at some place in Port Elizabeth to be specified in the notice convening such Meeting, for the purpose of electing Seven Members of the said Board, not being Members of the Town Council for the time being.

How Meeting to be convened.

5. Every such Meeting as last mentioned shall be convened by a notice signed by the Civil Commissioner for the time being of Port Elizabeth, published in the *Gazette* and in one or more local newspapers, not less than once a week for at least twenty-one days before the day aforesaid, and shall be conducted in manner provided in the eighth Section of the said Act, and the Seven Members then elected shall continue in office until the Second Wednesday of January in the year next succeeding, but shall be eligible for re-election.

How to be conducted.

6. A list of all Donors and Subscribers entitled to vote at such election shall be placed in the Office of the Civil Commissioner for inspection for at least three weeks before the date appointed for each election: and no person shall be eligible as a Member of the said Board at any such Meeting who is not a Donor or Subscriber as defined by the fourth Section of the said Act.

List of Donors and Subscribers to be placed in Civil Commissioner's Office.

Words "Tenth Section" in Section 12 of Act 6 of 1856 to be read as referring to Section 4 of this Act.

7. In the twelfth Section of the said Act the words "Tenth Section" shall be read as referring to the 4th Section of this Act.

8. In the twenty-second Section of the said Act, the sum of one hundred pounds sterling shall be substituted for fifty pounds sterling, and the sum of two hundred pounds for one hundred pounds, wherever these sums respectively are mentioned.

9. This Act shall be read as one with the Act No. 6, 1856, and may be cited for all purposes as the "Port Elizabeth Public Schools Amendment Act, 1888."

No. 16—1888.

Increasing sums payable by Donors under Section 22 of Act 6 of 1856.

Short title.

No. 15—1888.]

[August 17, 1888.

ACT

To Amend "the ⁽¹⁾ Dutch Language Judicial Use Act, 1884."

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. In addition to the proviso set forth in the fourteenth section of the Act No. 17 of 1886, there shall be added the following proviso to the second section of Act No. 21 of 1884:—"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."

Provision as to issuing of legal process in the Dutch language in certain cases in divisions of the Colony to which Section 2 of Act No. 21 of 1884 applies.

2. This Act may be cited as "The Dutch Language Judicial Use Amendment Act, 1888."

Short title.

No. 16—1888.]

[August 17, 1888.

ACT

To make provision for the Payment of Members attending the Sessions of Parliament, and to Alter and Amend the Law in regard to the Travelling and Personal Expenses of such Members.

BE it enacted by the Parliament of the Cape of Good Hope in Parliament assembled, and by the authority of the same, as follows:—

1. So much of the ninetieth section of the Constitution Ordinance as provides for the payment of travelling and personal allowances, together with so much of any law as may be repugnant to or inconsistent with the provisions of this Act, shall be and is hereby repealed.

Inconsistent and repugnant laws repealed.

No 16--1888.

Meaning of "member" in this Act.

Travelling allowances of members going to and returning from Parliament, how calculated.

2. In this Act the term "member" shall include every member of either the Legislative Council or House of Assembly, with the exception only of Cabinet Ministers and of the President of the Legislative Council and Speaker of the House of Assembly.

3. Every member who shall attend any Session of Parliament, and whose ordinary place of residence within this Colony shall be distant more than fifteen miles from the place whereat Parliament shall be summoned to assemble, shall, by whatever route or from whatever place he shall in fact have travelled, be entitled to receive, by way of allowance for travelling expenses incurred in the discharge of his Parliamentary duties—

- (1) The sum of one shilling for every mile reckoned by the most direct route from such place of residence either to the nearest railway station from which there shall be continuous railway communication with the place whereat Parliament shall be summoned to assemble, or to the nearest sea port whereat passenger steamers usually call to land passengers or take them on board, whichever of such railway station or sea port shall be nearer to such place of residence.
- (2) The amount of a first-class ticket from such railway station, or by steamer from such sea port, as the case may be, for conveyance by the most direct route from such station or sea port to the place whereat Parliament shall be summoned to assemble,

and shall be entitled to a similar allowance for travelling expenses upon one return journey in or after the same Session of Parliament from the place whereat Parliament shall be summoned to assemble to the place of residence of such member as aforesaid: Provided, that where such a sea port as aforesaid shall be nearer to such place of residence than any railway station connected by continuous railway communication with the place at which Parliament shall be summoned to assemble, but such sea port shall be connected by continuous railway communication with some railway station, being the nearest railway station in point of distance and nearer than such sea port to such place of residence, then and in such case the allowance of one shilling per mile shall be estimated on the distance between such place of residence and such last mentioned railway station, and not on the distance between such place of residence and such sea port, but in every such case an allowance shall be made, additional to the allowance of one shilling per mile and the amount of a first-class ticket by steamer from such sea port, of the amount of a first-class ticket from such last mentioned railway station to such sea port, or from such sea port to such railway station in respect of the return journey above provided for.

4. Every member whose ordinary place of residence within this Colony shall be distant not more than fifteen miles from

Remuneration of members residing not more than

the place whereat Parliament shall be summoned to assemble shall, by way of remuneration for his parliamentary services, be entitled to receive the sum of one guinea for every day of any Session of Parliament upon which such member shall actually attend either the sitting of the House of the Legislature of which he is a member, or any committee of such House.

No. 16 1888.

fifteen miles from place of assembling of Parliament.

5. Every members whose ordinary place of residence within this Colony shall be distance more than fifteen miles from the place whereat Parliament shall be summoned to assemble shall, for and in respect of every day in which he shall be absent from home on his parliamentary duties be entitled to receive

Remuneration of members residing more than fifteen miles from the place of assembling of Parliament.

- (1) The sum of one guinea, by way of remuneration for his parliamentary services, and
- (2) The sum of fifteen shillings by way of allowance for personal expenses ;

but no allowance for personal expenses shall be made for or in respect of any day during which such member shall be in fact travelling by any passenger steamer, for his passage by which he is entitled to claim the amount of a first-class ticket under the third section.

6. A member shall under the fifth section be deemed to be absent from home on his parliamentary duties upon every day upon which he shall declare in the form prescribed in Schedule B of this Act—

Meaning of "absence from home on Parliamentary duty."

- (a) That he has been occupied in travelling to or returning from the place whereat Parliament shall be summoned to assemble.
- (b) That he has been actually attending the sitting of the House of the Legislature of which he is a member, or any committee thereof.
- (c) That after the opening of any Session of Parliament, he has been at any place in this Colony, awaiting the next sitting after the last sitting attended by him, of the House of the Legislature of which he is a member, or any committee thereof: Provided that he shall actually have attended such next sitting or committee as aforesaid.
- (d) That he has been at the places where Parliament is assembled to attend the sittings of the House of which he is a member, but has been prevented by illness from actually attending.

Provided that no member shall declare that he has been occupied in travelling to or from the place whereat Parliament shall be summoned to assemble for any number of days greater than the number of days which would be required for travelling between such place and the ordinary place of residence of such member by the most direct route ascertained in accordance with the provisions of the third section of this Act.

No. 16—1888.

Remunerations or allowance not payable for more than ninety days.

Declaration to be made by members in forms prescribed in Schedules, and accounts settled by drafts on Treasury.

7. No remuneration or allowance for personal expenses shall in respect of any one Session of Parliament be claimable by any member under the provisions of the fourth and fifth sections of this Act for any greater number of days than ninety days in all.

8. Every member referred to in the fourth section of this Act who shall make and render to the Clerk of the House of the Legislature of which he is a member a declaration and sign a receipt in the form set forth in Schedule A of this Act, and every member referred to in the fifth section of this Act who shall similarly make and render a declaration and sign a receipt in the form set forth in Schedule B of this Act shall be entitled to receive the sum shown in such declaration from the Clerk of the Legislative Council or House of Assembly, as the case may be; provided that in any case the President of the Legislative Council or Speaker of the House of Assembly, as the case may be, may alter the forms set forth in the Schedules to meet the requirements of this Act.

Operation and short title of Act.

9. This Act shall take effect from and after the first day of October, 1888, and may be cited for all purposes as "The Members of Parliament Allowances Act, 1888."

Schedule A.

SCHEDULE A.

Cape of Good Hope.

Parliamentary.

Remuneration to members residing within fifteen miles from the place where Parliament is assembled.

The Colonial Government,

To Mr.

18

Member of the
for

Remuneration for attendance at Parliament,
Session of 18 for days _____ £

I declare that on days of the Session of Parliament, 18, I have been in actual attendance on the sittings of the or committees thereof.

(Signed) A.B.

Received from the Honourable the Treasurer of the Colony through the Clerk of the the sum of in full of the above account, for which sum I have signed duplicate receipts of the same tenor and date.

Witness to payment :

(Signed) A.B.

SCHEDULE B.

No. 16—1888.
Schedule B.

Cape of Good Hope.

Parliamentary.

Remuneration and allowances to members residing more than fifteen miles from the place where Parliament is assembled.

The Colonial Government,

To Mr.

18

Member of the
for

Remuneration at one guinea per day for	days	_____
absence from home on Parliamentary duty, for		
the Session of Parliament, 18		£_____
Allowance for personal expenses for	days at	
fifteen shillings per day		£_____
Travelling Allowances	*miles	from my
ordinary place of residence at	to	and
miles for the return journey, at one shilling		
per mile		£_____
First-class ticket from	to	, and
return journey		£_____
		£_____
		£_____

I declare that I have correctly stated in accordance with the provisions of "The Members of Parliament Allowances Act, 1888," the number of days during which I have been absent from home on parliamentary duty, and am entitled to the remuneration and allowance for personal expenses stated above, and I further declare that the reasonable time for travelling from my place of residence to _____ is _____ days, and that the distance in miles† above mentioned, and the amount payable for first-class fare between the places referred to are correctly stated above.

(Signed) A.B.

Received from the Honourable the Treasurer of the Colony through the Clerk of the _____ the sum of _____ in full of the above Account, for which sum I have signed duplicate receipts of the same tenor and date.

Witness to payment :

(Signed) A.B.

* *Vide* Section 3.

† If any.

No. 17—1888.¹

[August 17, 1888.]

ACT

To Amend the Cape of Good Hope General Loans Acts, (1) 1881 (2) 1883, and certain other Acts under the authority of which Colonial Stock has been issued.

BE it enacted by the Parliament of the Cape of Good Hope in Parliament assembled as follows:—

Certain laws repealed.

1. The several laws mentioned in the 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, or commenced and still pending, at the time of the taking effect of this Act.

DEFINITION OF TERMS.

Certain terms defined.

2. In this Act the terms hereinafter set forth shall be taken to mean as follows:—

“Stockholder” shall mean any person having colonial stock registered in his name as proprietor in the stock books of the Treasury.

“Person” shall include corporation, association or company and fund.

“Representatives” shall mean executors, tutors, curators, successors, trustees in insolvent estates, assignees, trustees of any company, or trustees or office bearers of any association in whom the property of such company or association is vested, or the persons authorised to invest the balance to the credit of any fund.

“Receiver of Revenue” shall mean the Assistant Treasurer, the Agent-General, or any Civil Commissioner or Chief Magistrate.

“Divident warrant” shall include Treasury draft, order, cheque or other document used as a medium for payment of interest on colonial stock.

DISPOSAL AND ISSUE OF COLONIAL STOCK.

Colonial Stock or money raised under statutory borrowing powers to be tendered for.

Discretion as to accepting whole or part of any of tenders offering same terms, when such tenders cover amount larger than stock to be issued.

3. Whensoever the Governor may deem it expedient to raise partly or wholly by Colonial Stock, any sum of money authorised by any Act to be borrowed, 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 or equivalent 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.

¹ No. 16.

² No. 18.

If the tenders received shall be deemed unsatisfactory, or if tenders for a portion only of the amount to be issued shall be accepted, it shall be lawful for the Treasurer of the Colony, at any time within six months after the date fixed for the opening of tenders, to issue the whole or part of such amount, or of such portion thereof as may not have been disposed of by public tender, to any person applying for the same, at the best price obtainable, not being less than the equivalent of the average rate offered by tender, or if no satisfactory and sufficient tenders shall have been received, at not less than the minimum rate prescribed in the advertisement calling for tenders, or a rate equivalent thereto at a different rate of interest.

4. Schedules of tenders or offers accepted by the Treasurer of the Colony under the provisions of the preceding section shall be forwarded by such Treasurer to the Controller and Auditor-General; and on finding that the amount for which tenders or offers have been accepted is authorised by law to be borrowed, and that any person mentioned in any such schedule has paid the amount of his tender or offer to a Receiver of Revenue, of which fact the receipt of such Receiver shall be regarded as sufficient evidence, the Controller and Auditor-General shall issue to such person or his representatives a scrip certificate, signed by himself or in his absence by the Assistant Controller and Auditor, specifying *inter alia* the name of such person, the amount of Colonial Stock purchased, the rate of interest at which the tender or offer has been accepted, and the half-yearly dates on which such interest becomes payable.

5. Upon production and delivery of such scrip certificate to the Assistant Treasurer, which scrip certificate shall be kept in the Treasury, he shall forthwith cause the person named therein to be credited in stock books kept for that purpose in the Treasury with the amount of Colonial Stock specified in such certificate, and shall grant to such person or his representatives a certificate of stock, specifying the name of the stockholder, the amount of Colonial Stock then placed to his credit, the rate of interest borne, and the half-yearly dates on which such interest becomes payable.

INTEREST.

6. All Colonial Stock heretofore issued under the authority of any Act shall bear interest at the rate specified in such Act, or in the case of Colonial Stock issued since the passing of "The Cape of Good Hope General Loans Act, 1881," at the rate specified in the scrip certificates issued in respect thereof, and all Colonial Stock hereafter issued under authority of any Act shall bear interest at such a rate as may be specified in such Act, or, if no rate be specified therein, then at such rate as may be specified in the scrip certificates issued under the provisions of the preceding section.

No. 17—1888.

If tenders unsatisfactory or insufficient, Treasurer may within six months issue stock not disposed of by tender at best price obtainable.

Price not to be less than average rate of tenders, or equivalent to minimum advertised rate, as the case may be.

Scrip certificate to be issued by Controller and Auditor-General, for amount of tender accepted as shown in schedule of tenders received from Treasurer provided Controller and Auditor-General is satisfied that amount is authorised by law and has been paid to a Receiver of Revenue.

Assistant Treasurer upon production of scrip certificate, to credit in stock books person therein named with stock specified in certificate and to issue certificate of stock in name of such person.

Interest on stock at rates specified in Acts under which it is issued, or at rates specified in scrip certificates issued hereafter or heretofore since Act No. 16 of 1881 as the case may be.

No. 17—1888.

Dates fixed for payment of interest at rates of 5 and 4½ per cent. At other rates, dates left to the discretion of the Governor.

7. Interest on Colonial Stock already issued or hereafter to be issued shall be payable on the 15th day of April and 15th day of October in each year, in the case of all stock bearing interest at the rate of five per cent. per annum; and on the 1st day of January and 1st day of July in each year, in the case of all stock bearing interest at the rate of four and a half per cent. per annum; and in the case of any such stock which may hereafter be issued bearing a different rate of interest on such dates as the Governor may direct on the occasion of any such issue being first made.

Dates fixed for first payments of interest after passing of this Act on stock heretofore issued, and on stock hereafter issued.

8. The first payment of interest after the taking effect of this Act at the rate of five per cent. per annum on Colonial Stock issued under the authority of Act No. 13 of 1871, and Act No. 8 of 1872, and at the rate of four and a half per cent. per annum on Colonial Stock issued under the authority of Act No. 13 of 1873, and Act No. 8 of 1876, shall become due on the first half-yearly date prescribed in the preceding section for such stock, which shall happen next after the date of the promulgation of this Act: and the first payment of interest on any Colonial Stock hereafter issued, shall become due on the first half-yearly date prescribed for such stock, which shall happen next after the issue of the certificate of stock under the provisions of the fifth section hereof.

Interest payable at Treasury to stock holder, his representatives, or attorney.

9. Interest on Colonial Stock shall be payable at the Treasury, and shall be paid to the stockholder, or his representatives, or to his or their duly authorised attorney, on the date on which it falls due or so soon thereafter as demand shall be made therefor by such stockholder, representatives, or duly authorised attorney.

Dividend warrants may issue for payment of interest, and shall be deemed to be equivalent to delivery.

10. It shall be lawful to make arrangements for the payment of interest on Colonial Stock by the issue or transmission by post of dividend warrants, and every dividend warrant so issued or transmitted by post shall be deemed to be a Treasury draft.

Such warrants to issue on due request of stockholder: posting of warrant to be equivalent to delivery.

11. When a stockholder desires to have his dividend warrants sent to him by post he shall forward a request in writing to that effect to the Treasury, signed by him on a form prescribed in regulations framed under the provisions of this Act, and shall give the address to which such warrants are from time to time to be sent: and the posting of a letter containing a dividend warrant duly addressed to a stockholder at his request shall be equivalent to the delivery of the warrant to the stockholder himself.

TRANSFER OF STOCK.

Transfer of stock by transfer ticket in accordance with regulations under this Act.

12. Every Transferor of Colonial Stock shall grant to the transferee a transfer ticket, authorising the transfer thereof from the registered holder to such transferee, and such ticket shall specify the rate of interest borne by such stock, and any other particulars which may be required by regulations framed under the

provisions of this Act, for the purpose of distinguishing the stock then to be transferred from any other stock which may be registered in the name of the same holder.

13. Such transferor shall also sign a transfer book to be kept in the Treasury for the purpose of recording all transfers of Colonial stock, and every entry in such book shall be expressed in words proper for the purpose of transferring a part or the whole of any stock duly registered in the name of the person granting transfer, and before allowing any such entry to be made, the Assistant Treasurer shall satisfy himself that sufficient Colonial Stock of the same denomination stands registered in the name of such person.

Transferor must sign transfer book in Treasury, assistant Treasurer to be satisfied that transferor is registered holder of sufficient stock.

14. No person shall be recognised as a transferor of Colonial Stock except a stockholder, or his representatives, or his or their duly authorised attorney.

Stockholder, and his representatives or attorney.

15. Upon production and delivery at the Treasury of a duly completed transfer ticket, and on the due completion of the corresponding entry in the transfer book to be kept in the Treasury, the Assistant Treasurer shall forthwith cause the person named in the transfer ticket to be credited in the stock books of the Treasury with the amount of stock specified in the transfer ticket and transfer book, and shall grant to such person a certificate of stock, precisely as if he were an original tenderer or purchaser thereof.

Transferee credited with stock, and granted certificate upon delivery of proper transfer ticket, and completion of entry in transfer book.

16. It shall be lawful for the Assistant Treasurer to close his transfer book for the transfer of Colonial Stock during a period not exceeding three clear days before that on which interest on such stock becomes due, and the persons who on the day of such closing are registered as stockholders, shall as between them and their transferees of stock be entitled to the then current interest thereon.

Transfer book may be closed for not more than 3 days before date on which any interest falls due.

GENERAL.

17. It shall be lawful for the Governor to prescribe forms for scrip certificates, certificates of stock, dividend warrants, transfer tickets, transfer book and other like purposes, and to frame or approve of regulations, not inconsistent with this Act, for carrying out the provisions thereof: and should any question arise not provided for in this Act, or in such regulations as aforesaid, it shall *mutatis mutandis* be decided by the same law, rules or regulations as if such question had arisen in England.

Governor may prescribe forms of certificates, warrants, tickets, books, &c., and frame rules under this Act; where Act and rules are silent, English rules to apply.

18. This Act shall be construed as one with "The Cape of Good Hope General Loans Acts, 1881, and 1883," and may be cited as the "Colonial Stock Act, 1888," and this Act and the said Acts may be cited together as "The Cape of Good Hope General Loans Acts, 1881, 1883 and 1888."

This Act to be read with Act No. 16 of 1881 and Act No. 18 of 1883. Short Titles.

SCHEDULE.

No. 17--1888.

Schedule.

LAWS REPEALED.

Number and Year.	Title and description.	Extent of Repeal.
Act No. 13 of 1869	To empower the Governor to raise the sum of fifty thousand pounds sterling, for the purpose of redeeming a like sum raised by means of debentures, under authority of the Act No. 22 of 1859.	Sections 2, 5, 6 and 7.
Act No. 7 of 1871	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.	Sections 2, 5, 6 and 7.
Act No. 13 of 1871	To empower the Governor to raise a sum of fifty thousand pounds sterling for the purpose of redeeming a like sum raised by means of debentures, under authority of Act No. 12 of 1866-'67.	Sections 2, 5, 6 and 7, and so much of section 3 as fixes the dates on which half yearly interest is payable.
Act No. 8 of 1872	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 of 1870.	Sections 3, 7, 8 and 9, and so much of section 4 as fixes the dates on which half-yearly interest is payable.
Act No. 13 of 1873	The "Railway Act, 1873."	Sub-sections 1, 4, 5 and 6 of section 9 and so much of sub-section 2 of section 9, as fixes the dates on which half-yearly interest is payable.
Act No. 8 of 1876	The "Wynberg Railway Purchase Act, 1876."	Sub-sections 1, 4, 5 and 6 of section 7, and so much of sub-section 2 of section 7, as fixes the dates on which half-yearly interest is payable.
Act No. 16 of 1881	"The Cape of Good Hope General Loans Acts, 1881 and 1883."	{ Section 3.
Act No. 18 of 1883		{ Section 3.

No. 18—1888.]

[August 17, 1888.

ACT

For the More Effectual Prevention of Cruelty to Animals. (1)

WHEREAS by the Act No. 3 of 1875, provision was made for the prevention of cruelty to animals, and it is expedient to repeal the said Act, and to make other and more effectual provisions for promoting the object and purposes thereof: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. The said Act No. 3 of 1875, intituled "Cruelty to Animals Act, 1875," is hereby repealed: Provided that such repeal shall not affect any pending proceedings under the said Act, which shall proceed as if the said Act were still in force.

Act No. 3 of 1875 repealed.
Repeal not to affect pending proceedings.

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

Penalty for ill-treatment of animals.

3. This Act may be cited for all purposes as "The Cruelty to Animals Act, 1888."

Short title.

No. 19—1888.]

[August 21, 1888.

ACT

For raising a Further Sum of Fifty Thousand Pounds Sterling for Carrying on the Extension of the Breakwater and Construction of the Outer Harbour of Table Bay.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

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 raised shall be applied to the purposes of carrying on the extension of the Breakwater and construction of the Outer Harbour of Table Bay.

Power to raise loan of £50,000.

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

Application of moneys.

¹ See Acts 13, 1895 (p. 3451), and 3, 1897 (p. 3706). Extended by Proclamation No. 206 of 1893 to all the Native Territories, and by Proclamation No. 340 of 1894 to East and West Pondoland.

No. 20—1888.

said Harbour Board shall in respect of such application have and exercise all the powers conferred upon such Board by any such Act.

Short title.

3. This Act may be cited as "The Table Bay Harbour Board Loan Act, 1888."

No. 20—1888.]

[August 21, 1888.

ACT

To provide for Constructing, Equipping and Working Certain Lines of Railway, and for Certain Additional Works on Existing Railways.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

Governor authorized to construct certain lines of Railway and additional works in connection with Railways already completed.

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be constructed and equipped the several Railways set forth in Schedules A, B and C to this Act, 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. The Governor shall likewise cause to be constructed as aforesaid, the additional works in Schedule D to this Act set forth.

Sections 2, 3, 4 and 5, of Act 19 of 1874 to apply *mutatis mutandis*.

2. For the several purposes in the preceding section mentioned, the several powers and provisions given and contained in sections 2, 3, 4 and 5 of "The Railways Act, 1874," shall be deemed and taken, *mutatis mutandis*, to apply to this Act.

Authority to expend a sum of money not exceeding £642,000.

3. For the purposes of constructing and equipping the said Railways, and providing rolling stock and bridges, as in the said Schedules A, B and C set forth, it shall be lawful for the Governor to expend a sum not exceeding Five Hundred and Fifty-five Thousand Pounds Sterling, and for the purpose of constructing the additional works in the said Schedule D set forth a sum not exceeding Eighty-seven Thousand Pounds Sterling.

Authority to raise a sum of £642,000.

4. For the several purposes aforesaid, it shall be lawful for the Governor to raise a sum of Six Hundred and Forty-two 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, 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.

Short title.

5. This Act may be cited as "The Railways Extension and Additional Works Act, 1888."

SCHEDULE A.

No. 20—1888.
Schedule A.

No.	Description.	Amount.
1	An Extension of the Colesberg line from its present terminus at Colesberg to a point on the Orange River	£110,000
2	Half-cost of a Bridge across the Orange River...	30,000
	Total ...	£140,000

SCHEDULE B.

Schedule B.

No.	Description.	Amount.
1	An Extension of the Kimberley Line from its present terminus at Kimberley <i>via</i> Warrenton at Fourteen Streams, to a point on the North Bank of the Vaal River	£302,500
2	Cost of a Bridge across the Vaal River	52,500
	Total ...	£355,000

SCHEDULE C.

Schedule C.

No.	Description.	Amount.
1	A Line from a point at or near Eerste River to a point at or near the foot of Sir Lowry's Pass	£60,000
	Total ...	£60,000

No. 22—1888.

SCHEDULE D.

Schedule D.

Additional New Works to be constructed in connection with Railways already constructed.

Description.	Amount.
Additional Fencing of Existing Lines	£5,000
Additional Accommodation for Railway Employés ...	15,000
Additional Accommodation for Passengers, Rolling Stock, Engine Sheds, Waterway, Vacuum Brakes, &c.	10,000
Additional Water Supply	20,000
New Coal Sheds	4,000
Additional Siding Accommodation	6,000
Overhead Bridges	9,000
Additional Works already completed	18,000
Total	£87,000

No. 21—1888.]

[August 21, 1888.

Act to amend the Law regulating the Imposition and Incidence of House Duty, to relieve from Liability Owners of Houses not in their actual occupation, to extend in certain cases the Liability of Occupiers of Houses, and to exempt certain Houses.

[Repealed by Act No. 4, 1889.]

No. 22—1888.]

[August 21, 1888.

ACT

To Provide Means for the Erection and Equipment of certain Lines of Telegraph.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. The sum of ten thousand one hundred and eighty-two pounds thirteen shillings and eleven pence (£10,182 13s. 11d.) remaining unexpended out of the funds raised under authority of Act No. 19 of 1881, and the sum of four thousand three hundred and thirty-eight pounds twelve shillings and eleven pence (£4,338 12s. 11d.) remaining unexpended out of the funds raised under Act No. 5 of 1882, making together a total sum of fourteen thousand five hundred and twenty-one pounds six shillings and tenpence sterling (£14,521 6s. 10d.), shall be applied for the purpose of the construction of the lines of telegraph specified in the

Application of certain unexpended balances to the construction of new lines.

schedule to this Act, anything in the said Acts No. 19 of 1881 and No. 5 of 1882 to the contrary notwithstanding.

2. This Act may be cited as the "Telegraph Extension Act, 1888."

No. 23—1888.

Short title.

SCHEDULE,

Schedule.

	£	s.	d.
1. Cape Town to Worcester	1,400	0	0
2. Worcester to Touws River	1,200	0	0
3. De Aar to Kimberley	1,500	0	0
4. Fauresmith to Kimberley	1,600	0	0
5. Kimberley to Transvaal Border	4,000	0	0
6. Knysna to Millwood	373	0	0
7. Piquetberg to Porterville	700	0	0
8. De Aar to Brits Town	1,350	0	0
9. Somerset West to Strand	160	0	0
10. Burghersdorp to Venterstad	2,000	0	0
11. Loop Line to Hebron	238	6	10
	£14,521	6	10

No. 23—1888.] (1)

[January 1, 1889.

ACT

To Consolidate and Amend the Law relating to Convict Stations and Prisons.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Convict Stations and Prisons Management Act, 1888."

Short title.

2. In this Act and in any Act applied or incorporated by this Act the expressions hereinafter mentioned shall have the meanings attached to them unless there is something in the tenor of this Act inconsistent with such meanings, that is to say:—

Meaning of terms

"The Minister" shall mean the Minister to whose department the Governor shall assign the control and management of convicts and prisoners, or convicts and prisoners respectively.

¹ See §§ 8, 9, 10, 11, Act 34, 1888 (p. 2624, Diamond Trade). Amended by Act No. 3, 1891 (p. 2826). Extended by Proclamation No. 80 of 1890 to all the Native Territories. To Walfish Bay by Proclamation 323, 1903. See also Act 4 1905 (p. 4808), providing for custody otherwise than in gaol for females arrested or committed for crime other than murder; for juveniles under 16 falling under the same category, and for juvenile convicted offenders.

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“Convict Station” shall mean any place which has already been appointed to be a station for the imprisonment, detention or confinement of persons convicted of any offence, or which shall hereafter by notice in the *Gazette*, signed by or by direction of the Minister, be appointed to be such station or place, and shall include all branches or out-stations, buildings or places to which convicts may be drafted or sent from any such station or place for the purposes of imprisonment, detention, confinement, labour or otherwise.

“Prison” shall mean any gaol, house of correction or lock-up, now used or provided or hereafter to be appointed by the Minister as a place for the detention or confinement of persons liable to detention in custody, and shall include all yards and buildings in connection with such gaol or house of correction.

“Lock-up” shall mean any building, cell or place in which any person lawfully arrested or detained in custody is placed with a view to his being brought to trial or removed to a prison, or any building, cell or place provided for the detention in custody of prisoners at or in the neighbourhood of any place where there is no ordinary prison and where any court is holden.

“Superintendent” shall mean the officer for the time being in chief control of any convict station.

“Gaoler” shall mean the keeper of or officer for the time being in chief control of any prison or lock-up.

“Convict” shall mean any convicted person under detention at a convict station.

“Prisoner” shall mean any person whether convicted or not under detention in any prison or lock-up.

“Lashes” shall include cuts or strokes with a cane or rod.

PART II.—CONVICT STATIONS.

APPOINTMENT OF OFFICERS.

Officers of Convict Station.

3. The Governor may appoint an officer, to be styled the “Inspector of Prisons,” who shall perform such duties as are assigned to him by this Act, or which may hereafter be assigned to him by regulations to be framed under the authority of this Act.

Duties of Inspector.

4. The Inspector of Prisons shall periodically at such times as the Governor may direct, visit and inspect, or cause to be visited and inspected, all convict stations and prisons within the Colony, and shall conform to such instructions as may be issued to him in that behalf by the Minister, and shall, subject to the control of the Minister, have the supervision of all convict stations and prisons.

Convict received at Station only under lawful warrant, to be transmitted to Superintendent of Station.

5. Every superintendent or other officer receiving into his custody at a convict station any convict, shall be bound to obtain the warrant of the court by which sentence was passed upon the

convict, or a warrant from the Minister, and he shall keep such warrant of record. And every sheriff, deputy sheriff, gaoler, or other person shall be bound to transmit through an officer in charge of any convicts such warrants at the time of the removal of any convict to a convict station.

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6. Convicts may by direction of the Minister be from time to time removed from one convict station to another convict station, or from a convict station to a prison, or from a prison to a convict station in case the convict be under sentence of hard labour.

Removal of convicts by direction of Minister.

7. In case a convict shall be removed from one convict station to another convict station, or to or from a prison as in the last section mentioned, the warrant under which he shall have been detained at the place from which he shall be removed, shall be transmitted to the superintendent or gaoler of the convict station or prison to which he shall be removed, together with a statement signed by the superintendent or gaoler of the station or prison from which the convict shall be moved setting forth the punishments recorded against him, if any.

Warrant to be transmitted on removal of convict, together with report by Superintendent or Gaoler.

VISITING MAGISTRATES.

8. It shall and may be lawful for the Governor from time to time as occasion may require to appoint any resident magistrate or justice of the peace to be the visiting magistrate or one of the visiting magistrates of any convict station or place where convicts may be employed, and from time to time to revoke every such appointment.

Visiting Magistrates of Convict Stations.

OFFENCES PUNISHABLE BY VISITING MAGISTRATES AND OTHERWISE, PROCEDURE, REWARDS FOR APPREHENSION, &c.

9. When in the course of any visit to or inspection of any convicts whom it shall be the duty of any such visiting magistrate as aforesaid to visit and inspect, it shall be proved to the satisfaction of any such magistrate that any convict shall have been guilty of any of the following offences:—

Jurisdiction of Visiting Magistrates.

- (a) A repetition of any misbehaviour theretofore punished by the superintendent;
- (b) Any flagrant act of disorder or breach of prison discipline;
- (c) Insolence in language or manner towards the superintendent;

Offences defined.

it shall be lawful for every such magistrate as aforesaid, and he is hereby empowered to order any such convict to be placed in solitary confinement with or without spare diet for any period not exceeding fourteen days, or to receive corporal punishment in any number of lashes not exceeding twenty-five or to undergo imprisonment with or without hard labour for any period not exceeding three months in addition to his existing sentence.

Punishment of offences.

10. The said visiting magistrates shall have and exercise jurisdiction under this Act without appeal, and the proceedings shall

No appeal from decision of Visiting Magistrate.

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Provisions of Act not to impair existing jurisdictions.

Duty of Superintendent &c., with regard to the carrying out of sentences.

Certain offences by convicts punishable by Superintendent of Station, who shall record punishment, and submit record to Visiting Magistrate, subject to penalty for wilful neglect to make such record.

Offences of desertion, escape, &c., committed by convicts, and the

be carried on in such manner and form as shall for the time being be lawfully practised by the courts of the resident magistrates of this Colony in regard to the hearing and determination of criminal cases. Nothing in this Act contained shall be deemed or taken to affect or impair any jurisdiction now belonging to any of the courts of this Colony in case the Attorney-General shall direct that proceedings be originated or taken in such court instead of before the visiting magistrate.

11. It shall be the duty of the superintendent, overseers, and constables in charge of any convicts, and other officers whose duty it may be to aid in the execution of sentences, and they are hereby respectively required, to cause every convict who shall by any order as aforesaid of any court or visiting magistrate be ordered to undergo any punishment as aforesaid to undergo the same in manner and form as by the said order directed, and for so doing such order or a certified copy thereof shall be a sufficient warrant to each of the said persons respectively.

12. In case any convict shall wilfully disobey any lawful order, or if he shall exhibit insolence in language or manner to any officer belonging to the convict station while such officer shall be on duty or to any constable or police officer while on duty, or if he shall be guilty of profane cursing and swearing or of any indecent behaviour or of using foul language, or if he shall without sufficient reason be absent at any hour appointed for muster or school or divine service, or if he shall use to any person intimidating language or threatening acts, or if he shall refuse or neglect to perform or shall wilfully mismanage any of his allotted work, or if he shall wantonly destroy or injure any clothing, food, implements of labour, or any other matter or thing intrusted to him, the superintendent shall be empowered in addition to any other penalties which he may be authorised to inflict by any regulation made by the Governor in that behalf, to order the convict so offending to be placed in solitary confinement with or without spare diet for any uninterrupted period not exceeding three days: Provided that the said superintendent shall make a record in a book to be kept for that purpose of every case in which any punishment as last aforesaid shall be ordered by him, showing the name of the convict, the nature and particulars of the misbehaviour, and the punishment ordered, and shall submit such record for the examination of the visiting magistrate upon the occasion of his then next visit; and if any such superintendent shall wilfully neglect to make such a record as is herein directed or shall not make the same a true and faithful record or shall neglect to submit such record for the examination of the visiting magistrate upon the occasion of his then next visit such superintendent shall for every such omission of his duty incur and be liable to a penalty not exceeding fifty pounds.

13. Any convict who shall desert or escape, or conspire with any person to procure the escape of any convict or to enable or assist any convict to desert, or who shall conspire with, assist or incite

any other convict to desert or escape from the station where he shall be placed, or from any post, place or conveyance where or wherein he may be for the purpose of labour, detention, confinement in hospital, removal in custody from one place to another, or otherwise, or who shall make any attempt to desert or escape from custody whether inside or outside any building or enclosure, or place or conveyance as aforesaid, or who shall have any instrument, matter, or thing with intent to procure his own or another convict's escape shall upon conviction of such offence be liable to imprisonment with hard labour for any period not exceeding two years, to commence from the expiration of any period or periods of imprisonment which he shall have been sentenced to undergo, and also to receive corporal punishment in any number of lashes not exceeding fifty.

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punishment of such offences.

14. A convict charged with any offence in the last preceding section mentioned may be tried by:

Jurisdiction of Visiting Magistrate and Resident Magistrates over offences under last section.

- (a) Any visiting magistrate who is also a resident magistrate.
- (b) The resident magistrate of the district in which he shall have escaped, or in which he may be found.

And such visiting magistrate or resident magistrate shall respectively have jurisdiction to impose such and so much of the sentences in the said section contained as he shall think fit.

15. Every person not being an officer in charge of or belonging to the gang from which the convict shall escape who shall apprehend and secure any convict who shall have escaped as aforesaid and shall cause such convict to be lodged in any prison or in custody of the superintendent of any convict station, shall be entitled to receive out of the colonial treasury (over and above his just and reasonable expenses) such sum as the Minister shall consider fit.

Expenses of person, not in charge of escaped convict at time of escape, to be paid out of Colonial Treasury.

16. Every superintendent, assistant superintendent, head-overseer, and sub-overseer shall be deemed and taken to be a constable, and it shall and may be lawful for the Minister and for any superintendent from time to time to nominate and appoint so many other persons as the Minister or the said superintendent shall deem necessary to be and act as constables at the several convict stations, and such persons shall be invested with all powers, authorities, and functions by law belonging to constables or officers of police: Provided that every appointment made by any superintendent shall be subject to the approval of the Minister and that every constable shall be removable at his pleasure and any constable may be suspended by any superintendent until the pleasure of the Minister shall be expressed thereon, and no superintendent shall have any authority to appoint or suspend any constable as aforesaid to or at any station other than the one of which he shall be the superintendent.

Superintendents and other officers invested with the functions of constables; power of appointment and suspension of constables of Convict Stations, subject to Minister's approval.

17. All such constables as aforesaid shall be and they are hereby authorised and required to use all lawful means in their

Powers and duties of Constables of Convict Stations.

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Ordinance No. 73,
Sections 12, 13, 14,
15, 17, 18, 19.Ordinance No. 2
of 1837, sec 1.

power for retaining the convicts under their charge in safe custody; and the crimes set forth in the thirteenth section of this Act shall with reference to and for the purposes of the provisions of the Ordinances hereinafter mentioned be deemed and taken to be crimes of equal degree of guilt with the crimes specified in the fourteenth section of the Ordinance No. 73, entitled "An Ordinance for explaining, altering, and amending the Ordinance No. 40," and all and singular the provisions made and contained in the twelfth, thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, and nineteenth sections of the said Ordinance No. 73, and in the first section of the Ordinance No. 2, 1837, entitled "An Ordinance for the more effectual prevention of crimes against Life and Property within the Colony," shall extend and apply and they are hereby extended and made applicable to every person who shall have committed or shall on reasonable grounds be suspected to have committed or shall attempt or manifest an intention to commit any of the said crimes.

PART III.—PRISONS.

APPOINTMENT OF OFFICERS

Gaoler and
Officers of Prisons.

Female Officers.

18. There shall be for every prison a surgeon or medical officer, a gaoler and such subordinate officers as may be necessary. The district surgeon or other medical officer appointed by the Minister shall visit the prisons in his district. And for every prison in which females are detained in custody there shall be a matron and such subordinate female officers as may be necessary: Provided that in a prison where females only are imprisoned, the matron shall be deemed to be the gaoler, and shall so far as is practicable perform all the duties, and be subject to all the obligations of a gaoler in relation to such prison.

MANAGEMENT OF PRISONS.

Custody of per-
sons in Prisons.Duty of im-
prisoned person
imposed by Gaoler.Resident Magis-
trate to have
authority over
local gaoler and
prison officers;
Gaoler to be a con-
stable and reside in
gaol.Divisions of
prisoners according
to sex, and class of
offence.

19. Every prison shall be a place for the safe custody of persons liable to be detained in custody, and also a place of detention for convicted persons. If any person sentenced to imprisonment with hard labour shall be imprisoned in a prison, he shall perform such labour and discharge such duty as may be imposed upon him by the gaoler or officer in whose charge he shall be.

20. The gaoler and officers of every prison shall be under the immediate authority and superintendence of the resident magistrate of the district in which the prison in question shall be situate. The gaoler shall in virtue of his office be a constable and possess all the powers by law belonging to the office of constable, and shall reside within the prison of which he is gaoler.

21. Male and female prisoners shall be confined in separate parts of the prison so as to prevent them from seeing, conversing, or holding any intercourse with each other, and the prisoners of

each sex shall be divided into classes, subject to the regulations framed under the powers of this Act conferred.

22. The gaoler of every prison shall keep a journal in which he shall record all occurrences of importance within the prison, which journal shall be produced to the resident magistrate of the district upon the occasion of every periodical visit by such magistrate as hereinafter directed, and shall be signed by him in proof of the same having been so produced.

23. Prisoners confined before trial for any supposed crime or offence shall be allowed to procure for themselves and receive at proper hours any food, bedding, clothing, or other necessaries, subject to a strict examination thereof and under such limitations and restrictions to be prescribed by any rule or rules as aforesaid as may be deemed necessary to prevent extravagance or luxury within the walls of the prison, and to exclude all articles which might possibly communicate infection or facilitate escape.

24. No prisoner before trial shall be compelled to wear a prison dress unless his own clothes be deemed insufficient or improper or necessary to be preserved for the purposes of justice.

25. No gaoler shall without the order of the resident magistrate punish any prisoner for any offence or supposed offence under any pretext whatsoever: Provided that when and as often as it shall be urgently and absolutely necessary to secure any refractory prisoner or any prisoner contriving to escape pending the arrival of the magistrate, the gaoler may by his own authority place such prisoner in irons; and such gaoler shall in every such case make an entry in his journal recording the particulars thereof, and shall without loss of time send notice to the resident magistrate of what has taken place.

26. Except for the causes and under the circumstances aforesaid no prisoner before trial shall be put in irons or be fastened or fettered in any manner whatsoever whether by way of security against escape, or otherwise, unless the resident magistrate shall in special cases authorise by writing inserted in the gaoler's journal a departure from this rule.

27. When in the course of any visit to or inspection of any prison which it shall be the duty of any resident magistrate to visit and inspect, it shall be proved to the satisfaction of such magistrate that any prisoner has wilfully disobeyed any lawful order, or has shown violence or insolence to the gaoler of the prison or any other officer thereof, or has been guilty of profane cursing and swearing or using foul language or of any indecent behaviour, or has used to any person intimidating language or threatening acts, or has wantonly destroyed or injured any food, clothing, or other matter or thing intrusted to him to use, or has committed any wilful act of disorder or breach of the prison discipline, such resident magistrate may order any such prisoner so offending to be placed in solitary confinement with or without

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Journal to be kept by Gaoler, and exhibited to Resident Magistrate on periodical visit.

Regulations as to supply of food and clothing to prisoners. Unconvicted prisoners may procure and receive food, &c., subject to necessary limitations and restrictions.

Regulations as to clothing of prisoner.

Gaoler to have no power of punishment, but may secure refractory prisoner in irons, making entry in Journal and sending notice to Resident Magistrate.

Limitation in power to place prisoner in irons.

Offences against prison discipline punishable by Resident Magistrate on visit.

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spare diet for any period not exceeding five days, or to be kept in irons for any period not exceeding seven days, or to receive corporal punishment in any number of lashes not exceeding twenty-five, or to be kept at hard labour for any period not exceeding twenty-one days in addition to any punishment to which he was liable at the time of the offence: Provided that the name of the offender, the nature and particulars of the offence, and the punishment ordered shall be recorded in the journal of the gaoler; but no prisoners save those under sentence of imprisonment with hard labour shall be liable to receive corporal punishment.

Jurisdiction of Resident Magistrate over offences connected with escape from prison, and punishment of such offences.

28. If any prisoner shall make his escape from prison or attempt to make his escape or conspire or confederate with any other prisoner or other person to make the escape of both or either of them or shall have in his possession or supply any other prisoner with any implement, matter, or thing intended to aid in the escape of himself or such other prisoner, he may be tried for such offence before the court of the resident magistrate of the district in which such prison shall be situated, and upon conviction may be sentenced if an unconvicted prisoner to imprisonment with or without hard labour for any period not exceeding six months or to corporal punishment in any number of lashes not exceeding twenty-five, or if a convicted prisoner to imprisonment with or without hard labour for any period not exceeding twelve months, or to corporal punishment in any number of lashes not exceeding twenty-five, or to both such imprisonment and corporal punishment.

Jurisdiction over offences connected with escape from custody, outside a prison, and punishment of such offences.

29. If any prisoner shall make his escape from custody, when outside the precincts of the prison, or shall attempt to make such escape, or shall, either within or outside the precincts of the prison as aforesaid, conspire or confederate with any other prisoner or other person to make the escape of both or either of them either from prison or from custody, or shall, either within or outside the precincts of such prison, have in his possession or supply any other prisoner with any implement, matter, or thing intended to aid his own escape or that of such other prisoner either from prison or from custody, every such prisoner may be tried for such act or offence by the persons specified in sub-sections *a* and *b* of section fourteen of this Act, and upon conviction may be sentenced to be imprisoned with hard labour for any term not exceeding two years, to commence from the expiration of the sentence which such prisoner shall then be undergoing, or to receive corporal punishment in any number of lashes not exceeding fifty, or both to be imprisoned as aforesaid and to receive such corporal punishment as aforesaid.

Power to place certain prisoners in irons when necessary for safe custody.

30. When it shall be necessary to secure any refractory or insubordinate prisoner, or any prisoner contriving or endeavouring to escape from custody, the officer, constable, or guard in charge of such prisoner may cause him to be bound or placed in irons for safe custody until he shall be dealt with according to law.

31. All offences against discipline committed by any prisoner while outside the precincts of the prison shall be dealt with and punishable in like manner, in all respects, as if committed within the precincts of such prison.

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Offences outside dealt with as though committed within prison.

PART IV.

General.

DISCIPLINE OF CONVICTS AND PRISONERS.

32. In every convict station and prison punishment cells shall be provided or appropriated for the confinement of convicts and prisoners for convict stations and prison offences.

Punishment cells in convict stations and prisons.

33. No punishment cell shall be used at any convict station or prison unless it is certified by the visiting magistrate or resident magistrate as the case may be that it can be used as a punishment cell without detriment to the health of convicts or prisoners.

Certificate that punishment cell not detrimental to health of prisoner.

34. Every certified cell as in the last section mentioned shall be distinguished by a number or mark placed in a conspicuous position and shall be referred to by its number or mark in the certificate of the visiting or resident magistrate.

Mark of punishment cell.

35. Every person who aids any convict or prisoner in escaping or attempting to escape from any convict station, or prison, or who for the purpose of facilitating the escape of any such convict or prisoner supplies or agrees or attempts or assists, incites or encourages any other person, to supply him with any mask, dress, disguise, or any other article, instrument, matter or thing, or conveys or causes to be conveyed into any convict station, or to any place where convicts may be placed, or into any prison or lock-up any letter or token, encouraging, inciting, or showing desire to give aid in escaping or in breaking any regulation made by the Governor, as by this Act is provided, shall upon conviction be liable to imprisonment with or without hard labour for any period not exceeding two years.

Offences of aiding escape or breach of regulations by convict or prisoner, and punishment of such offences.

36. Every person who shall without lawful authority supply or cause to be supplied to any convict or prisoner any intoxicating liquor, tobacco, dagga, or any other article, and every person who brings or attempts by any means whatever to introduce into any convict station or prison, any intoxicating liquor, tobacco, dagga, or any other article, to be sold or used therein contrary to any regulations made by the Governor as by this Act is provided; and every officer of a convict station, or prison, or person employed therein, who suffers any intoxicating liquor, tobacco, dagga, or any other article to be sold, received or used therein contrary to the said regulations, or who shall sell, lend, or give away to any convict or prisoner any intoxicating liquor, tobacco, dagga, or any other article, contrary to the said regulations, shall be liable upon conviction to imprisonment with or without hard labour for any period not exceeding six months,

Offences of supplying certain articles to convict or prisoner.

Such offences by officers of convict stations.

Punishment of such offences.

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or to a fine not exceeding forty pounds, and in default of payment he shall be liable to be imprisoned with or without hard labour for any period not exceeding three months, unless such fine be sooner paid, or to both such fine and such imprisonment, and every such officer or person employed as aforesaid shall, in addition to any other punishment, forfeit his office and all salary due to him.

Fees and gratuities by prisoner to officers, &c., forbidden under penalty.

37. No fee or gratuity shall be paid or payable by any prisoner either on his entrance, commitment to, continuance in, or discharge from any convict station or prison, to any officer of or person employed therein, and any officer or person receiving or demanding any such fee or gratuity shall for every such offence forfeit any sum not exceeding ten pounds.

Breach of regulations by conveying letters, &c., and punishment of such breach.

38. Every person who contrary to any regulations made under this Act as aforesaid shall convey or attempt to convey any letter or other document or token, or any article whatever not allowed by such regulations into or out of any convict station or prison shall, on conviction, be liable to imprisonment with or without hard labour for any period not exceeding one month or to a fine not exceeding twenty pounds with the alternative of imprisonment with or without hard labour for any period not exceeding one month unless such fine be sooner paid.

Superintendents and other officers not to be interested in supply of any article to convicts or prisoners.

39. No superintendent, gaoler or other officer of any class employed in connection with any convict station or prison shall sell, nor shall any person in trust for or employed by him sell or have any benefit or advantage from the sale of any article to any convicts or prisoners, nor shall he directly or indirectly have any interest in any contract or agreement for the supply of any such article. Any person contravening this section shall upon conviction before the resident magistrate of the district be liable to a fine not exceeding one hundred pounds, or to imprisonment with or without hard labour for any period not exceeding six months unless such fine be sooner paid.

Penalty.

Discharge of convicts or prisoners in certain cases.

40. Any convict, or prisoner, whose term of imprisonment shall expire on Sunday, shall be entitled to his discharge on the Saturday next preceding, and any officer in whose custody he may be is hereby authorised to discharge him accordingly.

Medical certificate of cause of death of convict or prisoner in convict station or prison.

41. It shall be the duty of the resident magistrate of the district to require from the surgeon of every convict station or prison, or other medical practitioner, a certificate showing the cause of death of every convict or prisoner as the case may be, who may die at any convict station or within any prison, and if he should think it necessary, to hold an inquest on the body.

Arms which may be lawfully carried and used by officers in charge of convicts or prisoners.

42. It shall and may be lawful for the officers, constables, or guards who shall be in charge of any party of convicts or prisoners within or without the precincts of any convict station or prison to be armed with fire-arms loaded with powder and ball or shot; and if any such convict or prisoner shall attempt to escape, and it shall be absolutely necessary, in order to prevent such

escape that such officer, constable or guard should fire upon such convict or prisoner, it shall be lawful for him so to do, and if in so doing he shall kill or wound such convict or prisoner, he shall not be deemed guilty of any offence in so doing.

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43. Whenever any officer of a convict station or prison is suspended, removed from, or resigns his office, or dies, the officer so suspended, removed, or resigning, and his family and the family of every such deceased officer, shall quit the possession of the house or apartments in which he or they have previously resided by virtue of such office when required so to do by notice under the hand of the inspector of prisons or resident magistrate of the district; and if he or they refuse or neglect to give such possession within forty-eight hours after such notice as aforesaid has been given to him, the said resident magistrate, upon proof made of the service of such notice and of such refusal or neglect to comply therewith, may by warrant under his hand direct any police constable or other person named in such warrant to enter by force if necessary into such premises and eject or remove therefrom every such officer or any other person wrongfully retaining possession, together with any goods or articles there found.

Provisions for removal and ejection of officer suspended, removed, or resigning from premises occupied in convict station or prison.

44. So much of this Act and so much of any such regulations as aforesaid as relate to the treatment and conduct of convicts or prisoners shall be printed in legible characters, both in the English and Dutch languages, and fixed up in conspicuous parts of every convict station or prison, so that all persons may have access thereto.

Regulations in Dutch and English to be accessible to convicts or prisoners.

PART V.

MISCELLANEOUS.

45. When any periodical court or court of special justice of the peace holden at a place where there is no ordinary prison shall sentence a person to imprisonment with or without hard labour for any period not exceeding fourteen days, it shall be competent for such court to direct such imprisonment to be in the nearest lock-up in lieu of in any other prison.

Place of confinement of person under short sentence by periodical court or special justice of the peace.

46. [Repealed by Act No. 3, 1891, § 1.]

47. Any superintendent, gaoler, constable, or other officer of a convict station or prison who shall be convicted of assaulting or attempting to assault any convict or prisoner shall, in addition to any other punishment or penalty imposed, forfeit and vacate the office then held by him, and may not be re-appointed to the same or any similar office during a period of five years, in case he shall be sentenced to a fine of ten shillings or upwards or to any period of imprisonment.

Assaults on prisoners by constables, &c.

Penalty.

48. Any officer of a convict station or prison not being a superintendent, assistant superintendent, or surgeon, 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 by the visiting magistrate of the convict station or resident

Officer convicted of violation of duty, or contravention of regulations, punished by visiting or Resident Magistrate.

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magistrate of the district, be liable to a penalty not exceeding ten pounds, or, in default of payment, to imprisonment with or without hard labour for any period not exceeding three months.

What sentences
to be reviewed by
Judge.

49. Notwithstanding anything to the contrary contained in the tenth section of this Act, whenever under any provision of this Act any convict or prisoner shall be sentenced by any visiting or resident magistrate to corporal punishment exceeding fifteen lashes or imprisonment exceeding one month, the sentence shall not be carried into effect unless and until a Judge of the Supreme, Eastern Districts, or High Court, as the case may be shall have certified that such sentence is in accordance with real and substantial justice, and whenever such a sentence shall have been imposed, the record of the proceedings upon which such convict or prisoner was convicted and sentenced, shall forthwith be forwarded to the Registrar of the Superior Court, the Judges whereof shall have jurisdiction to review the proceedings in criminal cases in the court of the resident magistrate of the place where the convict station or prison is situated in which such convict or prisoner is confined.

Power of Govern-
nor to make regula-
tions for better
management of
convict stations
and prisons.

50. The Governor may from time to time make, alter and amend regulations

- (a) For the general government and management of convict stations or prisons, and for the classification of convicts or prisoners therein ;
- (b) For the regulation of the duties and conduct of the officers at such stations or prisons and the convicts or prisoners under their charge ;
- (c) For the mode of supplying food, the scales of diet, and the clothing and necessaries to such officers and the convicts or prisoners under their charge ;
- (d) For the safe custody of convicts or prisoners when at labour or otherwise ;
- (e) For rewards by mitigation or remission of sentence or otherwise to well conducted convicts and prisoners ;
- (f) For the granting and withdrawing of indulgences to convicts and prisoners ;
- (g) For the regulation of the duties of medical officers of convict stations and prisons ;
- (h) For the duties of resident magistrates or visiting magistrates in connection with convict stations and prisons ;
- (i) For prohibiting the supply to convicts or prisoners, and the introduction into any convict station or prison, of any article of food, drink or otherwise ;
- (j) For assigning and regulating duties to be performed by the Inspector of Prisons under this Act.

And may by such regulations impose a penalty for any breach

of such regulations or different penalties in case of successive breaches.

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51. Any person loitering about any convict station, prison or other place where convicts or prisoners may be for the purposes of imprisonment or labour, who refuses or neglects to depart therefrom upon being duly warned so to do, by any constable or other authorised person, shall be guilty of an offence; and upon conviction shall be liable to imprisonment with or without hard labour for a period not exceeding one month, or to a fine not exceeding five pounds with the alternative of imprisonment with or without hard labour for a period not exceeding fourteen days, in case such fine be not sooner paid.

Persons loitering in vicinity of convict station liable to fine and imprisonment.

AGREEMENTS FOR LABOUR OF CONVICTS.

52. Subject to regulations made under this Act, any resident magistrate may at his discretion, or when required so to do by the Minister, in cases of persons sentenced to imprisonment with hard labour for three months or any lesser period, or in all other cases of hard labour when required and authorised so to do by the Minister, contract with any divisional council or municipal or other public body, or with any company or individual, for the employment of such persons under sentence as aforesaid upon such terms and conditions as to safe custody and maintenance as he may deem fit, and thereupon the order of such resident magistrate setting forth the place where the employment shall be, shall constitute it a place outside the precincts of the prison of that district for the purpose of offences by prisoners, and any person named for that purpose in such order shall be taken to be an officer, constable, or guard in charge of prisoners.

Provisions for the employment of prisoner under short sentence by bodies corporate, companies or individual, subject to authority of Minister.

Effect of order of resident magistrate sanctioning such employment.

PART VI.

REPEAL OF EXISTING LAWS.

53. The laws enumerated in the Schedule hereto, and all other laws repugnant to or inconsistent with this Act, are hereby repealed except as to acts and things done or commenced, liabilities incurred, offences committed and proceedings taken before the taking effect of this Act.

Repeal of certain existing laws.

SCHEDULE.

No. 23—1888.
Schedule.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ord, No. 7, 1844 ;...	Ordinance for the discipline and safe custody of the convicts employed upon the public roads.	The whole.
Ord, No. 10, 1844 ...	Ordinance for empowering the Governor to appoint in all cases the places at which convicts sentenced to be imprisoned shall be confined.	The whole.
Ord. No. 1, 1845 ...	Ordinance for creating certain visiting Magistrates' Courts at Convict Stations in this Colony.	The whole.
Ord. No. 24, 1847 ...	Ordinance for improving the Gaols of this Colony.	The whole.
Act No. 9, 1858 ...	An Act to provide for the management of the public roads of the Colony.	Section 19.
Act No. 5, 1866-1867	Act for the better maintenance of discipline among persons under sentence of imprisonment with hard labour.	The whole.
Act No. 1, 1876 ...	Act for the better regulation of Convict Stations and Gaols.	The whole.
Act No. 13, 1886 ...	Act to amend in certain respects the Criminal Law and the Law of Evidence.	Section 9.

No. 24—1888.]

[August 21, 1888.

Act to amend the Act No. 31 of 1875, and the Act No. 1 of 1857.

[Repealed by Act 40, 1889.]

No. 25—1888.]

[August 21, 1888.

Act to render payable for the future on the same annual date, both House Duty and Hut-tax, in respect of huts situate within Native Locations, and to make other provisions for the payment and Collection of House Duty so payable by occupiers in respect of such huts.

[Repealed by Act 4, 1889.]

No. 26—1888.]

[August 21, 1888.

Act for applying a Sum not exceeding Ninety-two Thousand Two Hundred and Thirty-eight Pounds Three Shillings and Sixpence Sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 27—1888.]

[August 21, 1888.

ACT

To Repeal Act No. 17, 1875, being an Act to continue "An Act for Incorporating the South African Association," and to substitute another Act in lieu thereof.

WHEREAS by the 48th Section of Act No. 17 of 1875, being an Act to continue Act No. 9 of 1855, entitled "An Act for Incorporating the South African Association," it is enacted that the said Act shall continue in force for the term or period of twenty-one years from and after the 15th April, 1876; and whereas it is expedient to continue the provisions of the said Act, with such alterations and amendments as have by experience been found to be desirable: And whereas for this purpose it is expedient to repeal the Act aforesaid, and to re-enact such of the provisions thereof as it may be fitting to re-enact, together with all necessary alterations and amendments: Be it therefore enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

Preamble.

1. The Act No. 17 of 1875 is hereby repealed.
 2. Notwithstanding the repeal aforesaid, every right or claim of, or against the said Association, existing at the time of the taking effect of this Act, shall survive for or against the said Association, continued under this Act, and shall be judged of as if this Act had not been passed.

Act 17 of 1875 repealed.
 Repeal not to affect rights or claims existing at the time of taking effect of this Act.

3. The said Association shall carry on its business in the Cape Colony, or such other territories in South Africa as shall be decided upon by a meeting of members convened for that purpose, under the style or title of the "South African Association for the Administration and Settlement of Estates," but it shall always be sufficient in court, and thereout, to describe it by the short title of the "South African Association."

Style or title and short title of the Association.

4. The business of the said Association shall be the liquidation, administration and settlement of such estates and other property as they shall be duly appointed to liquidate or administer as executors, administrators, tutors, curators, trustees, or agents, either under and by virtue of any last will or other testamentary disposition, or by virtue of any order or decree of any competent court, or any power of attorney or other valid instrument.

Its object.

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Effect of charging
guarantee Commis-
sion.

5. In all cases in which the said Association shall, by virtue of any agreement or at the desire of testators, upon undertaking the administration of any money, bonds or other assets, have deducted from the gross amount or value thereof a commission by way of guarantee, they shall be bound to make good and pay any loss sustained by them on such moneys, bonds, or assets.

Rate of interest
allowed by Asso-
ciation, reduction
thereof, and how
capital may be in-
vested.

6. The said Association shall have the right and be allowed to pay interest half-yearly at a rate one per cent. per annum less than the current rate received by the said Association in this Colony on all moneys administered by or entrusted to them either as executors, administrators, guardians or curators; provided, however, that the board of directors of the said Association shall be allowed and they are hereby empowered to reduce the rate of interest on moneys so administered by them at any time when they shall see fit so to do, but such reduced rate not to be lower than that allowed by the Master of the Supreme Court in this Colony at the time such reduction shall be made; provided also that the said Association shall be at liberty to invest the capitals from which such interest is derived in their own funds and without giving special security; and provided, further, that in cases where persons appointing the said Association to administer such moneys shall specially desire the capitals to be separately invested, the said Association shall be at liberty to invest such capitals in the manner prescribed by the thirty-ninth section of this Act.

Special provision
as to interest al-
lowed to minors.

7. In cases where the said Association administer moneys belonging to minors in whatever capacity it may be, of which moneys the whole annual interest shall not be required to be applied towards the maintenance of such minors, the said Association shall be at liberty, four months after the 30th April, to add the balance of interest not so required to the respective capitals to bear interest from that date at one per cent. less than the current rate received by the said Association or at such rate as the board of directors of the said Association may decide to give in the manner and on the terms provided for in the preceding section.

Right to discount
Promissory Notes
given to Directors.

8. The board of directors of the said Association are hereby empowered to discount promissory notes at such rate as may be agreed upon, such promissory notes being made payable not later than six months after date, and being duly secured by shares of any of the accredited companies or associations of this Colony other than the Association hereby incorporated, or being duly secured by other valid securities, provided the advance made under such promissory notes be not more than one-half of the current value of shares or securities pledged, mining scrip being specially excluded.

Directors autho-
rised to invest in
Debentures, &c.

9. The board of directors of the said Association shall henceforth also be allowed and authorised to purchase, invest in, or lend on Government, Municipal and Divisional Council debentures, or landed property situate in this Colony, or on debentures of any

other public body authorised by law to borrow money, the moneys under their administration and belonging to minors, fidei-commis-sary heirs, or any other person or persons whomsoever.

10. All moneys administered by the said Association as general or special agents shall be invested at interest whenever practicable in the names of the persons to whom such moneys belong in order that the said Association may be enabled at all times to close their accounts with such persons.

11. Whenever the board of directors of the said Association shall find it impossible to securely invest fidei-commis-sary inheritances or moneys of minors under the administration of the said Association, or shall deem it for the interest of the said Association to relinquish the administration of such inheritances or moneys, they shall be allowed and are hereby empowered with the leave of the Supreme Court to pay over the same to the Master of the said Court, who shall give his receipt therefor, and thereupon the administration thereof shall pass over to the said Master: Provided, however, that the leave of the said Court shall not be granted save upon good cause shown to the satisfaction of the said Court, in an application to be made on behalf of the Association, of which application the Attorney-General and the guardian or other legal representative, if any, of such minor or minors, or the persons interested, shall have notice: Provided further that the paying over of such moneys to the Master as aforesaid shall not relieve the said Association from any liability attaching to them for any act performed by them in the administration of such moneys.

12. In order to facilitate the liquidation and distribution of estates, the board of directors of the said Association shall be allowed and they are hereby empowered to take over and purchase such of the bonds of such estates as they shall deem fit.

13. The capital stock of the said Association shall consist of the sum of twenty-nine thousand four hundred pounds sterling, which shall be divided into one hundred and sixty-eight shares of one hundred and seventy-five pounds sterling each.

14. No shareholder shall be capable of holding more than one share, save and except any shareholder who shall on the taking effect of this Act be in possession of two or more shares.

15. No shareholder entitled as aforesaid to hold two shares shall be capable of holding more than one share at any time, after he shall sell or assign to any person or persons either or both of his said shares.

16. Any shareholder may sell or dispose of his share or shares to any person desirous of purchasing the same, who shall be approved of by the directors for the time being: and thereupon transfer shall be made by endorsement upon the certificates, specifying the person to whom the same is to be transferred: provided, however, that no such endorsement shall be valid to transfer any interest in, or right or title to, any share or shares or dividend profit

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Investments of capital belonging to principals.

Right given to relinquish administration and pay over moneys to Master of Supreme Court.

Right given to take over bonds in estates.

Its capital stock.

Number of shares a person may hold.

Persons entitled to hold two shares not to hold more than one after selling either or both.

How shares may be sold.

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or advantage arising therefrom until such endorsement shall have been duly registered in the books of the said Association, and two directors shall have certified on the back of the said certificate such registration and that they consent to such transfer, and the person or persons to whom they are to be transferred shall have signed the Trust Deed.

And every shareholder in the said Association who shall have ceded and transferred all his share or shares and interest in the said capital stock to any other person in manner hereinbefore provided shall be exonerated and discharged from all liability, claim or demand whatsoever, to which he might be liable, and shall cease to have any rights or privileges which he might have had under and by virtue of the provisions of this Act in respect of such shares so transferred.

What in case of insolvency, assignment, &c., of shareholder's estate.

17. In case any shareholder shall either in his private or partnership estate become insolvent, or make an assignment to, or composition with, his creditors, or any of them, such shareholder, or his trustee or assignee shall be bound to deliver the share or shares of such shareholder to the directors to be disposed of as they shall see fit, and the net proceeds thereof, after deduction of commission and expenses, shall be paid to such shareholder, trustee or assignee, as the case may be, and such share shall be transferred in the manner prescribed in the last preceding section.

What in case of death of shareholder.

18. In case any shareholder shall die, then the executor or other legal representative of the estate of such deceased shareholder shall be bound to deliver his share or shares to the directors, to be by them disposed of as they shall see fit, and the net proceeds thereof, after deduction of commission and expenses, shall be paid to the executor of such deceased shareholder, and such share shall be transferred in the manner prescribed in the sixteenth section of this Act.

What proceedings necessary to become a member.

19. Any shareholder shall have the right to demand that his or her name be submitted to the ballot, as a member, at any ensuing general meeting, by giving notice to the directors to that effect, at least fourteen days before the day of holding such meeting; provided, however, that no person shall be admitted as a member who shall not have previously applied to the board of directors of the said Association in writing, to be so admitted, and shall not have acknowledged himself to be acquainted with the provisions of this Act and with the bye-laws of the said Association.

Time of general meetings.

20. A general meeting of the members of the said Association shall be held on the last Monday in the month of January, April, July, and October, in each year, for the consideration of any business, of which eight days' notice shall have been given.

Special meetings how called.

21. The directors for the time being shall call a special meeting of the members of the said Association, whenever required so to do by a requisition, in writing, signed by not less than fifteen members, and setting forth the object for which such meeting is

to be called. Such requisition shall be delivered to the secretary, at the office of the Association, and the meeting shall be called by the directors within five days after the delivery of such requisition, and a notice of such meeting shall be given to each member not less than eight days before the day of meeting.

22. The directors may of their own accord, at any time, upon a previous notice of eight days, as is in the last preceding section mentioned, call a special meeting of the members of the Association, for the purpose of considering and deciding upon any question or matter concerning the interests of the said Association, but in case of emergency the directors shall have the power to call such meeting on notice of forty-eight hours.

23. It shall not be competent at any general meeting, held under the provisions of this Act, to consider any business other than that for the consideration of which such meeting shall have been convened.

24. No meeting of members shall be constituted or be competent to enter upon any question or business whatever, unless twenty members shall be present, and all questions at any meeting shall be decided by a majority of members present.

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

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

27. The president, hereinafter in the twenty-ninth section of this Act mentioned, shall, when present, preside at all meetings, and, in his absence, the director next in seniority present at the meeting who shall stand highest upon the list of directors, shall take the chair; and whenever it shall happen that the votes of the members shall be equally divided, then the member presiding shall, besides his individual vote, also have a casting vote.

28. The affairs of the said Association shall be entrusted to, and carried on by, five directors, being male members of the Association residing in or within ten miles of Cape Town: Provided, however, that when by death or other reason, the seat of any director shall become vacant, the remaining directors shall have full power to carry on the business of the said Association, until the board shall be again composed of five members.

29. The said five directors shall annually choose from among themselves a president, who shall preside at all their meetings; and in case of an equality of votes, the president shall, besides his individual vote, also have a casting vote; but in case of the president's absence the director next in seniority, present at the meeting, shall preside and have a casting vote as aforesaid.

30. The following members shall be the first directors under this Act, that is to say:—The Hon. Alfred Ebden, Esq., M.L.C., Johannes Andries Bam, Marthinus Laurentius Wessels, Jacobus

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Directors may call special meetings and how in cases of emergency

What business may be considered at a meeting.

Quorum of twenty members necessary.

Meeting may be adjourned.

Each member to have one vote and no proxies allowed.

Who to preside at meetings.

Number of directors.

President how chosen.

First directors under this Act—deposit of director's share.

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Christoffel Overbeek and Rudolph Myburgh, of whom the said Alfred Ebden shall be president; and such directors shall remain in office until the 30th April, 1889; and thenceforth until some other directors shall be appointed in their room and stead: Provided that each of the said first directors under this Act shall within forty-eight hours after this Act shall have been promulgated deposit the certificate of one of his shares in this Association with the secretary, to be held during such director's term of office, and any such director who, after having been called upon in writing by the secretary, shall fail so to do shall be deemed to have vacated his office as such director.

Dates on which first directors to go out of office.

31. Upon the 30th April, 1889, the said Marthinus Laurentius Wessels shall go out of office as a director, and shall, unless re-elected, be replaced by another member to be chosen by the general meeting of members to be held on the last Monday in the said month of April, and upon the 30th day of April, 1890, the said Rudolph Myburgh shall in like manner go out of office, and shall, unless re-elected, be replaced by another member to be chosen at the general meeting on the last Monday of the said last mentioned month, and upon the 30th day of April, 1891, the said Jacobus Christoffel Overbeek shall go out of office, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid, and upon the 30th day of April, 1892, the said Alfred Ebden shall go out of office, and shall, unless re-elected, be replaced by another member, to be chosen as aforesaid, and upon the 30th day of April, 1893, the said Johannes Andries Bam shall go out of office, and shall, unless re-elected, be replaced by another member, to be chosen as aforesaid; and in like manner the senior director shall go out of office in each year, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid at the annual meeting to be held as aforesaid; Provided that any member elected under and by virtue of the thirty-eighth section of this Act, to supply any casual vacancy, shall, for the purpose of this section, be ranked in regard to seniority in the same place as that which was filled by the director by whom the vacancy was created. Directors vacating office as aforesaid shall be eligible to be re-elected.

Who may not be director. Directors to deposit shares with secretary.

32. No member shall be capable of being a director who shall hold any office of profit under the Colonial Government, or who shall be an uncertificated insolvent; nor shall any two members, carrying on business as co-partners in any firm, or related to each other in or within the second degree of consanguinity or affinity, both be capable of being directors at the same time; and every director shall within forty-eight hours after his election deposit the certificate of one of his shares in the said Association with the secretary to be held during such director's term of office, failing which his election shall be void.

No directors to obtain loans.

33. No loan shall be granted by the directors to any member of the board, personally, and no director applying for a loan for third parties shall be at liberty to vote on such loan.

34. The directors shall meet twice in each week, and oftener, if necessary, at the office of the said Association, in Cape Town, for the dispatch of business, and three directors shall form a quorum, and all questions or matters which shall come before the directors shall be decided by a majority of votes of the directors present.

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Meetings of directors and quorum.

35. All deeds, inventories, contracts or instruments other than receipts shall be made and executed by one of the directors for the time being, together with the secretary; but all liquidation and distribution accounts shall be signed by the secretary, or in his absence by the bookkeeper only, and every such deed, inventory, account, contract or instrument shall be as valid and effectual to all intents and purposes as if the same had been made and executed by all the directors for the time being: provided, however, that all cheques or drafts shall be signed by the secretary, or in his absence by the bookkeeper, and shall be countersigned by one of the directors.

Who to sign deeds, etc.

36. Any director who shall cease to be a member, or who shall be absent from the meetings of the board of directors for three months, unless such director shall be absent in the interests and on behalf of the said Association, by leave of the said board, or shall cede or pledge his share, or shall become insolvent or assign his estate, or make a composition with his creditors, shall thereby become disqualified, and his office shall cease and become vacant; provided that it shall not be competent for any director to sell or in any manner dispose of his share so as to cease to be a member, until he shall have obtained the consent so to do of a meeting of the members specially called for the purpose, anything in the sixteenth section of this Act notwithstanding.

Disqualifications for office of director.

37. In case any director shall become mentally incapacitated, or in case the conduct of any director shall at any time be such that his continuance in office shall appear to, at least, fifteen of the members of the said Association to be prejudicial to the interest of the said Association, and notice thereof shall by them be given to the directors, in writing, the directors shall forthwith call a meeting of the members for the purpose of determining whether such director shall continue in office, upon eight days' notice being given by the said directors to the said director and to the members severally, such notice to set forth the purpose for which such meeting is called; and it shall and may be lawful for the members present at such meeting, by a majority of votes not less in number than a majority of all the members of the Association at the time being, to remove such director from his office.

Disposal of share by director.

Mental incapacity or misconduct of directors.

38. In case any director shall die or desire to resign or shall vacate his said office, or shall be removed as aforesaid, or be or become disqualified under or by virtue of the thirtieth, thirty-second, thirty-sixth, or thirty-seventh sections of this Act, the surviving or other directors shall forthwith call a special meeting of the members for the purpose of electing a director in his place,

Mode of filling up vacancies caused by death, etc., of director.

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of which meeting, and of the purpose for which such meeting is called eight days' previous notice shall be given by the directors to the members severally; and it shall and may be lawful for the members present at such meeting to elect a director in his place and stead who shall continue in office until the expiration of the period for which such director so dying, resigning, being removed, or being disqualified has been elected, and no longer: Provided, however, that no member shall be elected as a director unless he shall have been duly nominated and seconded in writing, such writing to be delivered to the secretary, and unless at least eight days shall have elapsed after the date of such nomination, such nomination to be mentioned in the notice to members calling the meeting for the purpose of electing such director: Provided further that no director shall be allowed to resign, or be capable of resigning, until the members, at some general or special meeting shall have consented thereto.

Resignation of director.

Capital stock vested in directors and nature of investments authorised.

39. The capital stock of the said Association under the provisions of this Act, shall be vested in the hands of the directors, for the benefit of the said Association, to be by the said directors laid out and invested from time to time in the manner following:

- (1) In the purchase of or advance on the public stocks, funds or debentures of the Government of the United Kingdom of Great Britain and Ireland, or the Colonies of the Cape of Good Hope or Natal or any other British Colony, or of the Orange Free State or South African Republic.
- (2) Upon the debentures or mortgages of any Divisional Council, Municipality or incorporated body in South Africa duly authorised to borrow money.
- (3) Upon first mortgage of immovable property in South Africa.
- (4) On deposit or current account, with or without interest, in any bank or joint stock company or society in the Colony of the Cape of Good Hope.
- (5) In the purchase of immovable property, life policies or other securities for the protection of the interests of the Association hereby incorporated.

Directors and officers responsible for losses in certain cases.

40. All losses sustained by the said Association shall in the first instance be borne by the funds of the Association, but if it shall appear that such losses have been occasioned by the wilful or culpable neglect or *mala fides* of one or more of the directors or officers of the said Association such losses shall be made good to the said Association by such director or directors, officer or officers.

Annual statement.

41. The directors shall call a special meeting, to be held in the month of June or July in each year, of which meeting eight days' notice shall be given to the members severally, and the directors shall lay before such meeting, for its approval,—1st, a balance sheet of the books of the said Association; 2ndly, an abstract from the balance sheet, showing under appropriate headings, the

gross liabilities of the said Association, as also the capital and interests due to, and the other assets of the said Association, or under its administration; and 3rd, a detailed account of profit and loss during the past year; all which accounts shall be settled and balanced up to the last day of April in each year, and shall, previous to such meeting, be examined and compared by the auditor or auditors for the time being with the books of the said Association, and with the bonds and other securities in the hands of the directors, and shall, by such auditor or auditors, be attested as correct, and shall lie open for the inspection of the shareholders three days before such meeting: Provided that, in making up the accounts in this section mentioned, shareholders and members shall be allowed interest at not more than six per cent. upon £175 per share, provided the directors shall deem it expedient so to do, and provided there shall be sufficient profits to meet such interest.

42. As soon as the accounts in the last preceding section mentioned shall have been approved of by the meeting in the said section mentioned, the directors shall appropriate and divide the net profits of the said Association for the preceding year as exhibited in such accounts, whereof at least one-fourth part shall be set aside as a reserve fund, until such reserve fund shall reach the sum of not less than £50,000, to meet any loss that may be sustained by the said Association, and the remaining part, or so much thereof as may be deemed expedient, may be divided among the members in proportion to the shares possessed by each. Provided, however, that should any loss have been sustained, whereby the said reserve fund shall be absorbed and the capital stock be reduced below the aforesaid sum of £29,400; then no interest and no dividend shall be paid, so long as the capital stock shall remain less than the sum of £29,400.

Mode of dividing profits and provision as to reserve fund.

43. As often as any person shall be registered as the holder of any share, then, until he shall be elected a member of the said Association, he shall be entitled to receive interest at not more than six per cent. upon £175 per share (provided the directors shall deem it expedient, and provided there shall be sufficient profits to meet such interest), as the only profit or interest to be derived by such shareholder.

Shareholder not being member—what to receive.

44. It shall and may be lawful for the directors to purchase any share or shares which shall be offered, and to hold such share or shares in the said Association for the benefit of the said Association; and the said Association shall be entitled, in respect of such share or shares, to the same benefit and profits as any member is and shall be in respect of any share or shares held by him. And every such purchase of a share by the said directors shall be reported to the general meeting of members held next after such purchase, and every share so purchased shall be disposed of in such manner as such general meeting or any subsequent general meeting shall determine.

Directors authorised to purchase shares.

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- Election of auditors.

Directors may appoint secretary, etc.

Members to determine amount of remuneration to directors and auditors.

List of shareholders to be laid before every general meeting.

What fees directors to charge for administering estates.

How Association may sue and be sued.

45. The members assembled at the general meeting to be held on the last Monday in April in each year shall elect one or more members, not being directors, to serve as auditor or auditors for the ensuing year.

46. The directors may from time to time appoint a secretary, and such other officers as shall, to such directors, seem to be required, at such salary as they may fix from time to time, and suspend or dismiss such secretary or officers, or any of them, from time to time as they may think proper.

47. The members may, at the annual meeting to be held by virtue of the forty-first section determine the amount of remuneration which shall be paid to the directors and auditor or auditors.

48. An alphabetical list of the names, addresses and residences of all the shareholders in the capital stock, shall be made out, and laid upon the table at every general meeting of the members of the said Association, which list shall be filed and kept by the secretary at the office, in Cape Town, where any shareholder shall have liberty to inspect the same.

49. It shall be lawful for the directors, acting for and on behalf of the said Association, to charge the estates and properties administered by them with such fees and charges as shall be agreed upon, and when no fees or charges are agreed upon, then with such fees and charges as shall be fixed by the tariff of charges contained in the bye-laws for the time being; provided, however, that the first tariff of charges shall be that set forth in the Schedule to this Act, marked A, it being, however, in the power of the members of the said Association at any meeting for that purpose assembled to make all such alterations, and reductions in, or additions to such charges as they shall from time to time see fit, and such alterations, reductions, or additions, shall then be considered as substituted for and taking place of the charges set forth in the Schedule to this Act; provided, however, that such revised tariff be published in the *Gazette* of this Colony as in the fifty-first section mentioned: Provided, however, that nothing in this Act contained shall be construed so as to affect the liability of the said Association with regard to moneys placed under its administration before the passing of this Act.

50. The said directors, by and in the name of the secretary for the time being of the South African Association, shall and may prosecute, defend or continue any action for or in respect of any sum or sums of money, dues, titles, claims or demands whatsoever, of or relating to the affairs of the said Association, or any person or persons for whom the said Association shall act as agents, executors, or administrators, or order the discontinuance or nonsuit thereof, and shall and may compromise or submit to arbitration the matters in question, or otherwise act in any manner as they shall think fit and conducive to the benefit of the said Association, and shall and may, subject to the provisions of the Ordinances Nos.

40 and 73, or of any law or act which may hereafter be enacted or then be in force in that behalf, prosecute any criminal action for any crime or offence committed against or with intent to defraud the said Association, and no action, or other proceeding shall abate, discontinue, or be rendered ineffectual, by reason of the death, removal, or resignation of such secretary, but the secretary for the time being shall always be, and be deemed to be, prosecutor in any such action or proceedings, as the case may be.

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51. The directors are empowered and required forthwith to frame and establish all such bye-laws, rules, or regulations, as shall be necessary for the conduct of the said Association and the management thereof, and for regulating the administration of the estates, securities, moneys and other properties placed under their administration; provided that such bye-laws, rules and regulations shall not be contrary to this or any other Act: Provided, further, however, that all such bye-laws, rules, and regulations shall be laid before the next ensuing general meeting of the members for their confirmation, disallowance, or amendment: and in the event of such bye-laws, rules, and regulations being confirmed, with or without amendment, the same shall continue in force until they shall be repealed, or amended by any subsequent general meeting, of which meeting, and the object thereof, not less than fourteen days' previous notice shall be given to the several members, which notice the said directors may give, when and as often as they shall think fit, and which notice the said directors shall be bound to give, when and as often as any three members shall, in writing, inform the secretary of the said Association of their intention to move, at the next general meeting competent to entertain the question, that such bye-laws, rules, and regulations, or any of them, which such members specify, shall be repealed or amended: And as often as any such meeting shall repeal or amend any bye-law, rule, or regulation, the same shall be repealed or amended accordingly. And all such bye-laws, rules, and regulations, as shall in any way relate to the public business of the said Association, shall, within three weeks after the same shall have been passed or amended, be published in the *Gazette*, and when so published shall have the same force and effect as if herein inserted.

Bye-laws how to be framed and come into force.

52. The said Association may at any time hereafter when the Board of Directors shall so determine, undertake to insure buildings on farms mortgaged to the said Association against loss by fire, and in such event shall for that purpose frame separate books of account and of the profit and loss of such branch of the business which shall be called the Fire Insurance Branch.

Directors may set up insurance branch.

53. The Association hereby incorporated shall continue to exist so long as there shall be thirty members; but it shall and may be lawful for the whole of the members residing in this Colony at any time, by their unanimous vote at a special meeting duly held, and whereof one month's notice shall have been given by the

Duration of the Association.

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directors to the several members residing within the Colony, to declare that the said Association shall be dissolved, whereupon the same shall be dissolved accordingly, in such manner that the said Association shall not afterwards enter upon the administration of any estate or property; or should the members be at any time reduced to twenty-nine or less, and three months thereafter elapse without the election of any new member, so as to compose thirty members at the least, the said Association shall be deemed to be in like manner dissolved: Provided, nevertheless, in either event the members of the Association for the time being by their directors shall continue to administer such estates as they shall have previously entered upon, until the same shall be finally settled; and provided that the capital stock of the said Association shall remain vested in the directors then being, or thereafter to be elected by the members, until such estates and property shall be finally administered and settled, whereupon such directors shall liquidate the affairs of the said Association and distribute the remaining assets, if any, *pro rata* among the shareholders.

Short title of Act.

54. This Act may be cited for all purposes as "The South African Association Incorporation Act, 1888."

Schedule A.

SCHEDULE A.

The Association by the foregoing Act incorporated shall be authorised to make the following charges unless it be otherwise agreed upon :—

In Estates of Deceased Persons :

- 5 (Five) per cent. on the proceeds of movable property, book debts, interest collected, house-rent, and other receipts, not otherwise herein provided for.
- 2½ (Two and a half) per cent. on bonds, shares, and other securities, and on cash found in the estate.
- 2½ (Two and a half) per cent. on the proceeds of immovable property sold, and of life policies recovered.
- 1½ (One and a half) per cent. on the value of immovable property bequeathed, and 2½ (two and a half) per cent. on the appraised value of immovable and movable property, taken over by the surviving spouse, or any of the heirs.
- 5 (Five) per cent. for guaranteeing capitals administered by said Association as fidei-commissary inheritance, or otherwise, in cases where testators or others have desired such guarantee to be given, such guarantee commissions to be deducted from the capital guaranteed.

When appointed as executors with the surviving spouse, or conjointly with any other person or persons, the said Association shall be entitled to one moiety of the above charges. †

In Guardianships, Fidei-commissa, Trust Moneys, and Curatorships :—

- 5 (Five) per cent. on receipts of interest, dividends, house-rents or other income.
- 2½ (Two and a half) per cent. on property or moneys taken over from executors, guardians or others, by the said Association and administered by them, such charge to be deducted from the capital.
- 2½ (Two and a half) per cent. for transcribing inheritances, legacies, fidei-commissary inheritances, donations, and other bequests of whatever nature, from liquidation accounts of estates administered in this office, to the separate accounts of the parties concerned, such charge to be deducted from the capital.
- 1 (One) per cent. on the appraised value of entailed immovable property to be a charge against the income of such property or the estate from which it is derived.

When the said Association act as agents :

- 1½ (One and a half) per cent. on the receipt of moneys not being rents, interest or book-debts, provided that no such charge be made upon the receipt of the same capital more than once.
- 5 (Five) per cent. on the receipt of rents, interest, dividends, and book-debts.
- 2½ (Two and a half) per cent. upon cash advances.
- 1½ (One and a half) per cent. on the amount of all bonds, debentures or other securities placed under the administration of the said Association, if such bonds, debentures or other securities are withdrawn within one year after the administration shall have been entered upon, and not otherwise, provided no commission shall have been previously charged on the capitals of such bonds or debentures or other securities.

In other matters, not herein otherwise provided for, the said Association shall be entitled to charge their constituents in conformity with the Commercial Tariff for the time being established and published by the Chamber of Commerce of Cape Town.

No. 28—1888.]

[August 21, 1888.

ACT (1)

To provide for the better Protection of Forests.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be cited for all purposes as the "Forest Act, 1888," and all Acts, Ordinances or laws or parts thereof repugnant

Short title, repeal of existing laws.

¹ Amended by Act 20, 1902 (p. 4429).

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Definition of terms.

to or inconsistent with this Act, are hereby repealed.

2. In this Act:

- (a) "The Commissioner" shall mean the Commissioner of Crown Lands and Public Works.
- (b) "Forest Officer" shall mean any person duly appointed to be Superintendent of Woods and Forests, Conservator, Assistant Conservator, District Forest Officer, Inspector, Forest Clerk, Ranger, Forester, or Forest Guard.
- (c) "Forest Offence" shall mean any contravention of any provision of this Act or of any regulation or rule made hereunder.
- (d) "Tree" shall include not only timber trees, but trees, shrubs and bushes of all kinds, seedlings, saplings, and re-shoots of all ages.
- (e) "Stream" shall include all natural watercourses and artificial channels in which water flows, or has usually flowed.
- (f) "Timber" shall include trees when they have fallen or have been felled, and all wood, whether sawn, split, hewn or otherwise fashioned.
- (g) "Firewood" shall include parts of trees of all species made up into bundles, billets or loads; or cut up in the manner it is usual to cut wood for burning, and refuse wood generally.
- (h) "Forest Produce" shall include the following things when found in or when brought from a forest:—Game, fish, minerals, stones, earth, trees, timber, firewood, wattles, kraal-wood, branch-wood, slabs, chips, sawdust, plants, grass, reeds, thatch, rushes, bedding, peat, creepers, fibres, leaves, moss, flowers, ferns, fruit, seeds, roots, bulbs, galls, spices, bark, gum, resin, sap, charcoal, honey, wax, shells, skins, horns, ivory, and generally everything growing or contained within the forest.
- (i) "Cattle" shall include bulls, cows, oxen, horses, mares, geldings, mules, asses, pigs, ostriches, sheep, goats, and generally all domesticated animals.
- (j) "Private Forest" shall include all land owned by any body or private person, on which trees exist in such quantity that wood and arboreal products constitute the principal production of the soil.
- (k) "Crown Forest" shall consist of Demarcated Forest and Undemarcated Forest.
- (l) "Demarcated Forest" shall include such area as has been surveyed or demarcated and declared by Notice in the *Gazette* to be a demarcated forest, and shall include all pieces or portions of Crown land set aside as being forest, or the complement of a forest, or plantation, or intended for the site of a plantation, or for afforesting operations.

- (m) "Undemarcated Forest" shall include Commonages or Native Locations, or any other land on which the Crown retains a right to the timber growing therein or thereon, and all vacant Crown land on which trees are growing or have grown.
- (n) Subject to such alterations as may be made from time to time by Notice in the *Gazette*, "Reserved Trees" shall mean trees of the kinds enumerated in the Schedule to this Act.

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CHAPTER II.

FOREST TENURE, DEMARCATION, AND REGULATION.

3. The provisions of the law relating to the acquisition or resumption of land and rights of way for public purposes shall be applicable to areas ⁽¹⁾ required for the formation of forests, plantations or works of a like character which shall be undertaken at the cost of the Public Treasury; provided always that such acquisition or resumption shall be subject to the payment of compensation to be fixed in manner provided by the "Lands and Arbitration Clauses Act, 1882."

Law as to acquisition, &c., of land and rights of way for public purposes applied to areas required for forests, &c., provision for compensation.

4. Prior to the publication hereafter in the *Gazette* of any notice declaring an area to be a demarcated forest, copies of a plan of such forest and of the report of the person employed to carry out the demarcation shall be deposited for public inspection in the office of the Civil Commissioner of the division in which the forest is situated, and the Commissioner shall cause notice to be given once a month for a period of three months in the *Gazette* and in some newspaper circulating in the division of the intention to publish the said notice of declaration of demarcation.

Copies of plan and report to be deposited for public inspection before area declared of demarcated forest and three months' notice to be given.

5. In case no court of competent jurisdiction shall during a period of three months in the last section mentioned, make on the application of any person interested any order restraining such declaration, or in case of such restraint if such court shall within a period to be fixed by such order of restraint, decide against the objector or alter the limits of demarcation, the said notice of declaration fixing the limits of demarcation as originally fixed or as altered, as the case may be, shall be published, and thereupon the area to be so limited shall become a demarcated forest.

Unless restrained by judicial order declaration issues after three months.

6. Until the publication of any notice of demarcation as aforesaid the angles of boundaries may be shown by cairns or poles clearly numbered. As soon as such publication shall have taken place the said cairns or poles shall be replaced by beacons in manner provided by the Land Beacons Consolidated Act, 1865.

Cairns or poles at angles of area till declared; then beacons to be erected.

7. When any Crown lands are being surveyed for sale, it shall be the duty of land surveyors to shew on their plans and to report to the Commissioner the existence of any of the undermentioned descriptions of land—

Duty of Surveyors surveying Crown Lands for sale.

¹ This section applies also to any land on which there is any sand drift or upon which any sand drift originates. Act 20, 1902 § 5.

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- (a) Tracts stocked with wood (high forest, firewood, kilnwood, &c.).
- (b) Tracts where wood has been cut or burnt, and leaving traces still visible on the ground, stumps, charred debris, or vegetation peculiar to burnt places.
- (c) Land requisite for the pasturing of cattle employed in hauling wood, and for establishing a right of way.
- (d) Ridges and slopes immediately above wooded places.
- (e) Steep declivities near which the land is liable to be washed away by rivers.
- (f) Places on which wood would be useful to protect the soil from erosion by streams, rivers, or torrents.
- (g) Drifting sands and land required for the protection of sand-hills and coasts.

Rules by Commissioner in case of servitude, etc., over Crown Forest.

8. In case there be any ⁽¹⁾ servitude or right of grazing, wood cutting or otherwise upon any Crown Forest the Commissioner may make rules to regulate the use of the pasturage, trees, or forest produce.

Such rules and regulations may

- (a) Specify the species of wood which may be cut, the season for cutting, and the quantity to be cut.
- (b) Temporarily interdict grazing over specified areas in order to preserve the young trees growing on such areas.
- (c) Prescribe such annual succession of areas over which wood-cutting and grazing rights may be exercised as shall be deemed most favourable for the conservation of the forest.
- (d) Generally provide for the manner in which such servitude or right shall be exercised.

Regulations under last section to apply to other than Crown Forests, brought under Act under 12th section; but regulations must be published.

9. The regulations which may from time to time be made under the preceding section to secure the felling in due season only of the several varieties of timber trees in Crown Forests shall apply also to forests owned by private persons or by municipal and other bodies brought under the operation of this Act by the provisions hereinafter set forth in the twelfth section; provided, however, that such regulations, or any change therein, shall be published in the *Gazette* and in some newspaper published in or circulating in the divisions in which such forests may be situate fourteen clear days before the commencement of the season assigned for such felling, and provided also that nothing in this section contained shall be deemed to bar any owner of a forest from felling at any time trees not intended for purposes of sale or barter, and any person or municipal or other body contravening such regulations shall be liable to a fine of twenty pounds.

Power of Governor to prohibit exportation of certain woods: conditions as to export of wood: penalty for unauthorised export.

10. It shall be lawful for the Governor to declare that certain species of wood to be specified by proclamation shall not be exported from the Colony without special permission. Such proclamation shall contain conditions under which the wood shall be

¹ See § 3, Act 20, 1902. No alienation of any servitude without previous consent of Parliament.

felled, precautions for stacking, duration of seasoning, and the special care which must be exercised in order to obtain consent to export the species under consideration. Any person who shall export wood of a proclaimed species which does not bear a special mark to be affixed by a Government officer, or the shipment of which shall not have been specially authorised, shall be liable to a fine of one shilling per cubic foot on the wood so shipped.

11. On every undemarcated forest, outspan, commonage, or Crown land, on which, or beyond which, portions are reserved as Crown forest, there shall be free access by the shortest or other convenient way, for wagons, other vehicles and cattle for the conveyance, transport and hauling of forest produce, and for the hauling or slipping of timber by any person having a permit to convey transport or haul, forest produce or timber: Provided that on any commonage under control of a Municipality, Village or other Board of Management, outspanning may be charged at a rate not exceeding one penny per day for each head of cattle that may be depastured or outspanned on the commonage; but no such outspanning or depasturing shall be allowed for a longer period than five days under any one permit as aforesaid.

Access to Crown Forests provided for purpose of working the same; but rights of municipalities, &c., as to outspan on commonage protected.

12. It shall be lawful for the Governor by Proclamation in the *Gazette*, upon the application of the owner to bring under the operation of this Act, in so far as its provisions may be applicable, any forest or plantation or work of like character, belonging to any person or municipal or other body.

Act how applied to private or municipal forests.

13. When a sum of money shall have been contributed from the public revenue towards the planting of trees by any Divisional Council or Municipality, by virtue of Act No. 4 of 1876, or in any other manner to any other bodies or persons, the Commissioner may order such inspections as he may deem necessary, and may issue such rules and regulations for the protection and cultivation of such trees planted, as may appear desirable, and no person or public body shall under any circumstances be permitted to cut down or remove any tree so planted, except in conformity with instructions from the Commissioner, under such penalty as may be provided by the said rules and regulations. Trees planted on road sides not being private property and whether vested in any Divisional Council, Municipality, or other body, or not, shall be subject to similar control whether the public revenue has contributed towards planting them or not.

Regulations by Commissioner when public money granted for tree planting to local body.

14. The Governor may from time to time, by Proclamation in the *Gazette*, proclaim where it is for the public interest to do so, that such part as may be necessary of any forest, whether Crown or private, shall be preserved for any of the following purposes:—

Preservation of forests by proclamation for certain purposes.

- (a) For the maintainence of a water supply in springs, rivers, dams and tanks;
- (b) For the protection of roads, bridges, railways, and other lines of communication;
- (c) For the preservation of the public health.

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Regulations in aid of preservation of forests.

15. For the purpose of such proclamation it shall and may be lawful for the Governor to make regulations with regard to the part so preserved for:

- (a) The felling of wood;
- (b) The breaking up or clearing of land;
- (c) The manner in which pasturage shall be used;
- (d) The firing and clearing of the vegetation.

Penalty for contravention of regulations.

Any person who shall contravene any such regulation shall be liable to such penalties as by the said regulations may be prescribed, but in no case to exceed a fine of ten pounds for each offence.

CHAPTER III.

FOREST OFFENCES IN UNDEMARCATED FORESTS.

Forest offences in undemarcated forests; definition and penalty.

16. Any person who commits any of the following offences in an undemarcated forest shall be liable to imprisonment with or without hard labour for a term not exceeding twelve months, or to a fine not exceeding twenty pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding six months unless such fine be sooner paid, or to both such fine and such first mentioned imprisonment. In the case of offences against sub-sections (a) and (c) corporal punishment in any number of lashes or cuts not exceeding twenty-five may be added to or substituted for the said punishments or any of them:

- (a) Cuts, injures, or removes, any reserved tree or timber;
- (b) In violation of any regulation made by the Governor in that behalf cuts, injures, takes, destroys or removes wattles, saplings, or forest produce;
- (c) Lights or kindles, or assists to light or kindle, or aids or abets another in lighting or kindling any fire ⁽¹⁾ in consequence of the lighting or kindling of which any tree or part thereof or any timber or forest produce shall be burnt or injured or shall be in danger of being burnt or injured.
- (d) Leaves, without taking due precautions against its spreading or causing injury, a fire lighted or kindled by him or in the lighting or kindling of which he has assisted or aided and abetted.

Power to eject person in unauthorised occupation of undemarcated forests, and to seize crops, huts, &c.

17. Whenever any person without authority squats, resides, builds a hut or kraal, or makes any cleaning or cultivates land in as undemarcated forest, it shall and may be lawful for any officer in charge of such forest, to summon such person before the Resident Magistrate of the district, to show cause why he should not be evicted, and should such person so summoned fail to prove satisfactorily that he has such authority, his crops, huts and kraals may be seized or destroyed by such officer acting under an order of the said Resident Magistrate.

¹ Printed as amended by Act 20, 1902.

18. In commonages on Crown lands, in undemarcated forest, or other Crown lands, it shall be lawful for any forest officer to make such firepaths, and to burn such dangerous grass as may be necessary within a reasonable distance for the preservation from fire of any adjoining forest whether Crown or private.

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Provision for firepaths in undemarcated forests.

CHAPTER IV.

OFFENCES IN OR NEAR DEMARCATED FORESTS.

19. Any person who commits any of the following offences within the boundaries of a demarcated forest shall be liable to imprisonment with or without hard labour, for a period not exceeding three years, or to a fine not exceeding one hundred pounds with an alternative of imprisonment with or without hard labour for a period not exceeding twelve months, unless such fine be sooner paid, or to both such fine, or such first mentioned imprisonment, together with such compensation for damage done to the forest as the Court may direct to be paid. In the cases of the offences mentioned in sub-sections (a), (c) and (d), corporal punishment in any number of lashes or cuts not exceeding thirty-six may be substituted for or added to the punishments in this section mentioned or any of them.

Forests offences in demarcated forests: definition and penalty.

- (a) Cuts, injures, or removes any reserved or other tree;
- (b) In violation of any regulation made by the Governor in that behalf, cuts, injures, destroys or removes any firewood, wattles, saplings, or forest produce.
- (c) Fells, girdles, splits, saws, marks, tops, taps, uproots, cuts, burns, or otherwise damages any tree, or strips off the bark or leaves therefrom.
- (d) Lights, kindles, or assists to light or kindle, or aids or abets another in kindling or lighting any fire ⁽¹⁾ in consequence of the lighting or kindling of which any tree or part thereof of any timber or forest produce shall be burnt or injured or shall be in danger of being burnt or injured.
- (e) Leaves, without taking due precaution against its spreading or causing injury, a fire lighted or kindled by him; or in the lighting or kindling of which he has aided or abetted.
- (f) Injures, alters, or removes any beacon, boundary mark, or fence.

20. Any person ⁽²⁾ who commits any of the following offences within the boundaries of a demarcated forest shall be liable to a fine not exceeding ten pounds or to imprisonment with or without hard labour for any period not exceeding thirty days; unless such fine be sooner paid:

Minor forest offences in demarcated forests.

¹ Printed as amended by Act 20, 1902 (r. 4430).

² The provisions of this section are extended to undemarcated forests. See Act 20, 1902.

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- (a) Clears, cultivates, or breaks up any land for cultivation or for any other purpose.
- (b) Hunts, shoots, fishes, or destroys fish whether by the use of lines, nets, explosives, guns or other instruments, poisons, or fouls the water of any stream, sets traps or snares for the purpose of killing or capturing game; constructs ladders, or drives pegs in trees.
- (c) Trespasses wilfully in parts closed to trespassers.
- (d) Negligently lights or throws down any match or other lighted or inflammable material.
- (e) Contravenes any of the conditions on which a licence to work in the forest has been granted, or the conditions on which wood has been sold.
- (f) Contravenes any regulation relating to licences from time to time made; provided always that all such regulations be clearly stated on every licence issued.
- (g) Contravenes any of the conditions under which forest cultivators are given temporary cultivation permits for reforestation.

Offence of setting fire to tree, etc., within 1 mile from demarcated forest.

21. Any person who however lawful it may otherwise be, sets fire in the open air to any tree, wood, bush, or grass on private property within one mile of any demarcated forest, without giving notice of his intention to the field-cornet of the ward, or a forest officer, so as to allow a forest or other officer to be present at such firing, shall be liable to the penalties in the preceding section mentioned.

Offender may be cast in damages resulting from offence.

22. In all cases of cutting, injury or removal of trees, timber, or of forest produce; of forest fires, whether caused wilfully or negligently; of cattle trespass; or in any other way whatsoever, whereby any Crown forest is damaged or injured, the value of such damages or injuries may be assessed by the court, and be ordered by such court to be paid by the accused.

Share of fine to go to informer, other than forest officer.

23. The court may award an amount not exceeding one-fourth of the fine imposed for an offence under this Act, to the person not being a forest officer who may have supplied such information as may have led to the conviction of an offender.

CHAPTER V.

OFFENCES IN PRIVATE FORESTS.

Forest offences in private forests.

24. Any person found without lawful permission within the limits of any private forest or who without such permission shall light or kindle or assist or aid or abet in lighting or kindling any fire within ⁽¹⁾ or within one mile of such limits after the owner shall have notified in a local newspaper and by notice prominently placed in or near such forest, that persons shall not be allowed to enter such forest or

¹ Printed as amended by Act 20, 1902.

that fires shall not be lighted or kindled therein without his permission, shall be liable to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any period not exceeding one month unless such fine be sooner paid: Provided that nothing herein contained shall be taken to curtail any right of way or other right enjoyed by the public or any person.

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CHAPTER VI.

SPECIAL OFFENCES.

25. Any person who commits, or aids, or abets, any person who commits any of the following offences, shall be punished with imprisonment not exceeding a term of two years, with or without hard labour, or with a fine not exceeding fifty pounds, or with both such fine and such imprisonment:

Special offences with regard to forests; definition and penalty.

- (a) Counterfeits upon any timber or tree, or unlawfully affixes to any tree or timber, or forest produce, a mark used by forest officers to indicate that such timber tree or produce is the property of the Crown; or that it may be lawfully cut or removed.
- (b) Counterfeits or issues without due authority, any licence or pass for the cutting, removal, or sale of trees, timber, firewood or produce;
- (c) Alters, obliterates, or defaces any stamp, mark, sign, licence or pass, used or issued by the forest department.
- (d) Exercises compulsion upon any forest officer by violence or threats, or corrupts, or attempts to corrupt by promises, offers, gifts or presents any forest officer, for the purpose of obtaining a favourable report, affidavit, certificate or valuation, whether in respect of any place, employment, auction, sales, licences, or any other benefit whatsoever, or for the purpose of obtaining abstention on the part of any forest officer from any act which forms part of his duties.
- (e) Accepts, being a forest officer, any bribe or promise, or receives any gift or present in connection with the functions of his office.

CHAPTER VII.

FOREST OFFICERS.

26. All forest officers, of and above the rank of forester or forest guard, shall have the power of police constables in virtue of their office. Forest officers shall have the power to impound cattle trespassing within Crown forests, and shall be entitled to receive mileage and trespass money as by law provided in cases of trespass. Mileage and trespass money so received shall be accounted for in manner provided by any rule or regulation to be made under this Act by the Governor.

Forest officers invested with constabulary powers; and powers to impound cattle for trespass.

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Power of prosecution conferred on conservators, etc.

Forest officer not to be interested in timber trade.

27. Conservators of forests or officers acting as such, or officers duly authorised by conservators, shall have the power to appear in the Court of any Resident Magistrate for the purpose of prosecuting in all cases of contravention of this Act.

28. No forest officer shall, as principal or agent, trade in timber or forest produce, or be or become interested in any lease or mortgage of any forest, or in any contract for working any timber or produce whether in demarcated or undemarcated or private forest.

CHAPTER VIII.

GENERAL.

Clearing of belt near forest by burning after notice to forest officer or persons interested.

29. Whenever any forest officer or private proprietor of adjacent property shall deem it to be necessary for the prevention of forest fires to clear by burning a belt around or in the neighbourhood of any forest, notice of intention so to do shall be given to private proprietors interested or to the forest officer, as the case may be; and thereupon every such private proprietor and forest officer shall assist in such clearing in such manner as may be provided under any rule or regulation made under this Act by the Governor.

Production of authority for any act done within any forest.

30. It shall be lawful for, and it shall be the duty of every magistrate, justice of the peace, field-cornet, police, forest or other officer, or other person specially authorised to demand, as often as may be necessary, the production of the authority or licence for any act done or committed within any forest subject to the provisions of this Act; and in the event of such authority not being produced, then and there to restrain from further acts.

Seizure of trees, etc., in respect of which offence is suspected.

31. When there is reason to believe that a forest offence has been committed in respect of any tree, timber, or forest produce, such tree, timber, or forest produce may, if necessary, be seized by any forest or police officer.

Restitution of trees, etc., fraudulently removed, or payment of their value.

32. In case of the fraudulent removal of trees, timber, or other forest produce, the restitution of the property so removed, or its value, to be fixed by the court, shall be ordered in addition to the fines and damages adjudged.

Period fixed by court for removal of unauthorised buildings, etc.

In case of unauthorised establishments, buildings, enclosures, huts, kraals, or standing crops within forest limits, the court shall fix the period within which such buildings, huts, kraals, or crops shall be removed, and the places put into their former condition.

Unremoved buildings, etc., vest in the Crown.

In case such removal shall not have been effected within the prescribed period, all buildings, huts, kraals, or crops, found in the forest, shall become the property of the Crown and the forest department shall dispose of them as may be most beneficial to the forest.

Arrest without warrant of person suspected of offences under Act.

33. Any forest or police officer may, without warrant, arrest any person reasonably suspected of having been concerned in any

of the forest offences mentioned in sections sixteen, nineteen and twenty-five, or for any other offence contrary to the provisions of this Act, if the accused person refuses to give his name and residence, or gives a name and residence which there is reason to believe to be false, or if there is reason to believe he will abscond.

Every officer making an arrest under this section shall, without unnecessary delay take or send the person so arrested to be dealt with according to law.

34. Any forest or police officer who vexatiously and unnecessarily seizes property on pretence of its being liable to seizure under this Act; or who vexatiously or unnecessarily arrests any person; shall, upon conviction, be liable to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds, or to both such fine and such imprisonment.

35. When in any proceedings taken under this Act, a question arises as to whether any timber or forest produce is the property of the Crown, such timber or forest produce shall be presumed to be the property of the Crown until the contrary is proved.

36. Any person shall be an accomplice in a forest offence, and liable to the same punishment as the perpetrator or perpetrators of a forest offence:—(a) who by gifts, promises, threats, abuse of authority or power, machinations or culpable design, shall have instigated or compelled a forest offence, or given instructions for its committal; (b) who shall have procured arms, tools or instruments, knowing they were to be employed for the purposes of a forest offence; (c) who knowing or suspecting any person or persons to be guilty of a forest offence, shall lodge, conceal, or afford lodgings, or place of concealment to such person or persons; (d) who knowingly shall receive, in whole or in part, any forest produce suspected of having been removed from a forest.

37. It shall be the duty of every Conservator to forward to the Resident Magistrate of the district in which any demarcated forest is situated, the imprint of every mark whereby timber felled in, or removed from, such forest is distinguished. Such mark or imprint shall be registered in the Magistrate's office. The Conservator shall keep the Magistrate informed of all such changes of marks or stamps as it may be necessary from time to time to make.

38. (1) After due notice it shall be necessary for all owners, workers, or occupiers of any forest to register in the Conservator's Office, and to retain the use of a mark, whereby timber cut in or proceeding from such forest may be distinguished from any other timber. All unmarked timber or forest produce in course of conveyance without a permit signed by a Forest Official, or by a registered owner of private forest, shall be liable to seizure, and to detention pending enquiry, and should it afterwards appear that

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Penalty on forest or public officers for vexatious exercises of powers.

Presumption of ownership of wood, etc., in favour of Crown.

Accomplice in forest offence defined.

Timber mark for forest to be notified by conservator to Magistrate, and registered by the latter.

Special mark to be used by owners, etc.: unmarked timber liable to seizure, and presumed to be Crown property.

No. 28—1888.

such timber or forest produce had not been removed fraudulently, or in contravention of the provisions of this Act, no damages shall be recoverable on account of such seizure or detention.

All such unmarked timber or forest produce without a permit as aforesaid, shall, in the absence of proof to be furnished by the person in charge of such timber or forest produce, that the said timber or forest produce is private property, be deemed to be Crown property.

Person in possession of any part of tree in or near forest, liable to interrogation by forest officer; and unless possession proved lawful liable to fine of five pounds.

39. (1) Any person found within any forest or on any road in its vicinity, and having in his possession unstamped timber, wattles, fire wood or bark, without a permit as aforesaid, and who, on being required by any forest official or other person duly authorised, refuses, or is unable to give a satisfactory account of the manner in which he became possessed of such timber, wattles, firewood, or bark, may be taken by the party interrogating him before any Justice of the Peace; and if such person does not satisfy such Justice of the Peace that he came lawfully by the said timber, wattles, firewood or bark, he may be taken before the Resident Magistrate, and shall, on conviction, forfeit any sum not exceeding five pounds.

Penalties under Act not substituted for others, but no conviction twice for same offence.

40. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes a forest offence, or for being liable under such other law to any higher punishment or penalty than that provided by this Act, or the rules made thereunder; provided that no person shall be punished twice for the same offence.

Forest officers liable for damages resulting from connivance at offences against Act.

41. Forest officers convicted of having connived at, or knowingly concurred in, any contravention of any section of this Act, shall be held responsible for all damages resulting therefrom. But no suit or prosecution shall lie against any officer for anything done or omitted in good faith under this Act.

Expert evidence as to spoor, etc., admissible.

42. The evidence of experts with regard to spoor, foot prints, wheel tracks, drag marks, cut marks, and the condition of stumps left after illicit felling, shall be admissible in all cases tried under this Act.

Rules by Governor for working of Act to be proclaimed in the *Gazette*.

43. The Governor, by proclamation in the *Gazette* may from time to time, as may be necessary, make rules regulating the local application and working of this Act; and may alter, add to, and repeal such rules, which, so far as they are not repugnant to the provisions of this Act, shall be and continue of the same force and effect as if they formed a part of this Act.

Existing agreements as to forest management to continue.

44. Nothing in this Act contained shall invalidate any contract or agreement for the management of forests at present existing between the Government and any body or persons.

SCHEDULE.

Schedule.

RESERVED TIMBER TREES.

FORESTS.

ENGLISH NAMES.	KAFIR NAMES.	OTHER NAMES.	BOTANICAL NAMES.
1. Sneezewood	Umtati	Nieshout... ..	<i>Pteroxylon utile</i>
2. { Common, Bastard, or Outeniqua, Yellow- wood }	Umkoba	Geelhout... ..	<i>Podocarpus elongatus</i>
3. Real, or Upright, Yellowwood	Umceya	Regte Geelhout... ..	<i>Podocarpus latifolius</i>
4. Black Ironwood (real)	Igqwanxe	Zwart Yzerhout... ..	<i>Olea laurifolia</i>
5. Cape Box	Gala-gala	Buig myn niet	<i>Buxus MacOwani</i>
6. Assegai	Umgxina	Assegaihout	<i>Curtisia faginea</i>
7. White Pear	Umakana	Wit Peer	<i>Apodytes dimidiata</i>
8. Hard Pear	Umnono	Harde Peer	<i>Olinca Capensis</i>
9. Saffrowood	Umbonwana	Saffraanhout	<i>Eleodendron croceum</i>
10. Wild Olive	Umquma	Oljn, or Olyvenhout	<i>Olea verrucosa</i>
11. White Ironwood	Umzani	Wit Yzerhout	<i>Vepris lanceolata</i>
12. Kafir Plum	Umgwenye... ..	Kaffer Pruium	<i>Harpephyllum Kaffrum</i>
13. Umzimbeet	Umzumbit, or Umtiza	... ..	<i>Milletia Kaffra</i>
14. Cape Teak	Inama	Kajatenhout	<i>Strychnos Atherstonei</i>
15. { Wild Peach, or Natal Mahogany }	Umveti	{ Wilde Perske, or Blinkblaar ? }	<i>Kiggelaria Dregeana</i>
16. Cat-thorn	Umnnyamanzi	Katdoorn	<i>Acacia Kaffra</i>
17. Bogwood	Umkobeza	Wit Salie	<i>Nuzia sp.</i>
18. Septee	Imavet	Oudehout	<i>Halleria elliptica</i>
19. { Red Stinkwood, or Bitter Almond ... .. }	... ..	Rooi Stinkhout... ..	{ <i>Br a e j u m stellatifo- lium</i>
20. Red Pear	Iqumza	Rooi Peer	<i>Scolopia Ecklonii</i>
21. White Milkwood	Umqwashu... ..	Wit Melkhout	<i>Sideroxylon inerme</i>
22. Red Milkwood	Umtunzi	Rooi Melkhout	<i>Mimusops obovata</i>
23. Cape Beech	Isiqwane isqlati	Boekenhout	<i>Myrsine melanophleas</i>
24. Red Els	Umqwashube	Rooi Els... ..	<i>Cunonia Capensis</i>
25. Kamdeboo Stinkwood	Unvumvu	Kamdeboo Stinkhout	<i>Celtis rhamnifolia</i>
26. Boerboon	Umgxam	Boerboon	<i>Scotia latifolia</i>
27. Cape Plane	Umtensema	Rooihout	<i>Ochna arborea</i>
28. Thorn Pear	Iqumza elinameva... ..	Doorn Peer	<i>Scolodia Zeyheri</i>
29. Wild Chestnut	Umbaba	Kastanjehout	<i>Calodendron capense</i>
30. Horsewood	Uningambila	Paarde Pis	<i>Hippobromus alatus</i>
31. Knobwood	Umnungu mabele... ..	Paarde Pram	<i>Xanthoxylon Capense</i>
32. Essenwood, Dog Plum, or Cape Ash	Umkwenyuizinja	Esschenhout	<i>Eckbergia Capensis</i>
33. Silkbark	Umhama	Zydebast... ..	<i>Gelastrus acuminatus</i>
34. Red Currant	Umhlokoti	Kieriehout	<i>Rhus laevigata</i>
35. Gwarri... ..	Umgwali	Bosch Gwarre	<i>Euclea lanceolata</i>
36. Sallywood	Gwangi	Saliehout	<i>Buddleia Silviaefolia</i>
37. Cape Sumach ... ..	... ..	Berg-bast	<i>Osyris compressa</i>
38. Hard Pear ... ..	... ..	Harde Peer	<i>Cathstrum Capense</i>
39. Laurel Wood ... ..	... ..	Stinkhout	<i>Oreidaphne bullata</i>

ENGLISH NAMES.	KAFIR NAMES.	OTHER NAMES.	BOTANICAL NAMES.
40. Kamassie	<i>Gonioma Kamassi</i>
41. White Els	Witte Els	<i>Platylophus trifolius</i>
42. Stone Ess...	Klip Esch	...
43. Terblanz Wood	Terblanchehout...	...
44. Black Bark	Zwart Bast	...
45. Fatherland Red Wood	Vaderland Rooihout	<i>Royena lucida</i>
46. Clanwilliam Cedar	<i>Widdringtonia juniperoides</i>
47. Karee Boom	<i>Rhus lancea</i>
48. Camel Thorn	Kameel Doorn	<i>Acacia Giraffeia</i>
49. Ebony	<i>Euclea Pseudebenus</i>
50. Silver Tree	<i>Leucadendron argenteum</i>
51. Cape Willow	<i>Salix Gariepina</i>
52. Mimosa	<i>Acacia horrida</i>
53. Keurboom	<i>Virgilia Capensis</i>
54. Real Iron Wood...	...	Regte Yzerhout...	...
55. Red Wood	Rooihout	...
56. White Wood	Wittehout	...
57. Black Wood	Zwarthout	...
58. Red Candle Wood	Rooi Kershout	...
59. Buffalo Thorn	Buffelsdoorn	...
60. Buffalo Horn	Buffelhoorn	...
61. Coal Wood	Koolhout	...
62. Wagon Tree	Wagenboom	...
63. Black Heart	Zwarthart	...
64. Oak, Gum, Pine and all planted Trees.

No. 29—1888.]

[August 21, 1888.

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1889.
[Spent.]

No. 30—1888.]

[August 21, 1888.

ACT

For Constituting certain additional Fiscal Divisions.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, 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 law as may be repugnant to or inconsistent with this Act, are hereby repealed.

Districts of Sutherland, Philipstown, and Steynsburg may be proclaimed divisions.

2. Each of the districts of Sutherland, Philipstown, and Steynsburg, shall, from and after the date of any proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes.

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.

No. 30 1888.
Boundaries to be defined.

4. It shall be lawful for the Governor from and after the date of a proclamation issued for that purpose, and published in the *Gazette*, to sub-divide the division of Tulbagh into two divisions for fiscal purposes, to define the boundaries thereof, to retain the name of Tulbagh for one of such two divisions, which shall be deemed for all purposes of this Act to be the old or former division of Tulbagh, and to assign to the other such name as he may deem fit.

Sub-division of Tulbagh into two Divisions.

5. (1) From and after the sub-division of the present division of Tulbagh, into two divisions as aforesaid the sums payable under the twenty-third section of the Act No. 10 of 1864 to the Divisional Council of Tulbagh shall be payable to such of the said two divisions as the Governor shall by proclamation declare to be entitled to receive the same.

Governor to declare which of two new divisions to receive sums under Act No. 10 of 1864, Section 23.

6. [Repealed by Act 8, 1893.]

7. From and after the date of any proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division to which the whole or any part of any division so constituted for fiscal purposes only and named in such proclamation belonged, shall stand dissolved, and the provisions of Act No. 4 of 1865, entitled "An Act to consolidate and amend the several Acts relating to Divisional Councils," and of every other Act relating to Divisional Councils, shall apply to every new division constituted under this Act, and to the divisions to which any such new division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for any such divisions had ever been elected: Provided that the registered voters for any and every electoral division, which down to and next before the issuing of any such proclamation comprised any such division as aforesaid, or any part of any such new division, and which voters shall be resident within such new division shall be entitled to vote at any election of members of the Divisional Council of such new division.

Effect of Act on Divisions and Divisional Councils of Divisions affected by any such proclamation.

8. 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 any proclamation under this Act 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, just as though such newly constituted division

Provisions of Act 24 of 1858 to apply to new divisions.

¹ See § 2, Act 8, 1893.

No. 32—1888.

or divisions were named in the Schedule to the Act No. 12 of 1857.

No change of electoral divisions.

9. Notwithstanding the creation of such new divisions by virtue of any such proclamation as in this Act provided for fiscal and other purposes, every such new division and every part thereof shall continue for electoral purposes, to belong to and form part of whatever electoral division such new division or any part thereof belonged to, precisely as if this Act had not been passed and no such proclamation had been issued.

Short title.

10. This Act may be cited as the "Fiscal Divisions Extension Act, 1888."

No. 31—1888.]

[August 21, 1888.

Act to Amend the "Civil Service Act, 1885," the "Public Service Widows' Pension Act, 1879," the "Civil Service Widows' Pensions Amendment Acts, 1880 and 1882," and the "Civil Service Pension Fund Act, 1886."

[Repealed by Act 32, 1895.]

No. 32—1888.]

[August 21, 1888.

ACT⁽¹⁾

To make further provision for the Audit of the Public Accounts.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. The eighteenth and nineteenth sections of Act No. 30 of 1875 and so much of the thirty-fifth section of the Ordinance No. 105 as may be repugnant to this Act, are hereby repealed.

2. All persons in the public service of this Colony having the custody, receipt, or payment of public money or entrusted with the administration, control, and primary audit of Revenue or Expenditure, and all public bodies or persons whose accounts the Controller and Auditor-General may be directed by the Governor, under the provisions of the eighth section of the "Audit Act, 1875," or required by Act of Parliament, to examine, enquire into, or audit, save and except as provided by section 16 of Act 13 of 1883, shall periodically render accounts certified to be true and correct by the signature of the person whose duty it is to render such accounts, which signature shall be attested by at least one witness, of all moneys received and of all moneys disbursed, issued, or expended by them during the period to which such accounts relate; and such accounts shall be prepared in such manner and form, and transmitted at such times and to such departments or officers respectively, as may from time to time be prescribed in any regulations made under the provisions of the sixth section of the

Sections 18 and 19 of Act No. 30 of 1875 and portion of 35th Section of Ordinance No. 105, repealed.

Accounts rendered by persons or public bodies of public money received, administered, etc., and subject to audit, to be certified as correct by person rendering them.

Form of accounts to be prescribed from time to time.

¹ Amended by Act 19, 1899 (p. 4101). See footnote to Act 30, 1875 (p. 1393).

“ Audit Act, 1875,” and if any person shall wilfully and corruptly certify any such account, knowing the certificate or the account verified by it to be untrue in any material particular, he shall be deemed to be guilty of contravening this section of this Act, and shall upon conviction be liable to punishment by fine not exceeding one hundred pounds, or in default of payment of the fine, by imprisonment with or without hard labour for any period not exceeding six months, or to such imprisonment without the option of a fine.

No. 32—1888.
Punishment for wilful and corrupt certificate.

3. All persons in the last preceding section mentioned shall also, when and as often as they may be required so to do by the Controller and Auditor-General, without delay make out and transmit to him such other account and such returns as may be desired by him in order to enable him to perform his duties.

Other accounts and returns to be rendered when required by Controller and Auditor-General.

4. In conducting the examination of the vouchers relating to accounts of a public nature, which the Controller and Auditor-General may, as aforesaid, be directed by the Governor, or required by Act of Parliament to examine, enquire into, and audit, he may (if authorised by the Governor so to do) require the person or persons whose duty it is to prepare or render such accounts to certify thereon that the vouchers have been completely checked and examined and are correct in every respect, and, upon being satisfied that such vouchers bear evidence that this has been done and that they have been allowed and passed by the proper authorities, may admit the same as satisfactory evidence in support of the payments to which they relate: Provided that if the Governor should desire any such vouchers to be examined by the Controller and Auditor-General in greater detail, he shall cause such vouchers to be subjected to such a detailed examination as the Governor may think fit to prescribe.

Certificate of person examining vouchers of public accounts that vouchers have been examined and are correct: such certificate, supported by internal evidence of vouchers, may be admitted as satisfactory evidence of payments vouched

Detailed examination of vouchers if required by Governor.

5. The Treasury shall be divided into at least two branches, those of the Receiver-General and Paymaster-General.

Treasury divided into branches: Receiver - General and Paymaster-General.

6. The Assistant Treasurer shall be the Receiver-General of revenue, and all Civil Commissioners and the Agent-General of the Colony in England shall be Receivers of revenue.

Assistant Treasurer to be Receiver-General and Civil Commissioners and Agent-General to be Receivers of Revenue.

7. All accounts rendered by Receivers of revenue shall be included in, and their aggregate shall be styled, the Exchequer Account of the Colony.

Exchequer Account showing Receivers accounts.

8. The Assistant Treasurer shall also be the Paymaster-General of the Colony.

Assistant Treasurer to be Paymaster-General.

9. All taxes, duties, and other revenues, and the proceeds of all loans for the service of the general government, shall be payable to, and levied by, such persons as the Governor may direct, anything contained in Ordinance No. 43, bearing date the 28th of February, 1828, and Act No. 3 of 1876, to the contrary notwithstanding; and, when not collected by, shall be paid in to a Receiver of revenue, in accordance with regulations framed under the provisions of the sixth section of the “ Audit Act, 1875,” and,

Governor to direct who shall levy and receive taxes, revenue and proceeds of loans.

Money collected to be paid to Receiver of Revenue, and carried without deduction to credit of Exchequer Account.

No. 32—1888.

except in so far as may otherwise be directed in such regulations, all such revenues and proceeds of loans shall be carried without deduction to the credit of the Exchequer Account of the Colony.

Detailed examination of vouchers, in auditing heads of revenue referred to in Schedule may be dispensed with if accounts bear evidence of complete examination and proper certificates; but collection and account of moneys must be satisfactorily provided.

Governor may prescribe greater detail in respect of any accounts.

Power of Controller and Auditor-General not limited by 15th section of Audit Act nor 10th section of this Act.

How money may be issued out of Exchequer Account

Assistant Treasurer or other officer substituted for Treasurer-General for examination of wards books.

Deduction from salary of officer of amount duly surcharged against him; such deduction not to exceed 4 of salary payable.

10. In conducting the audit of such Heads of the Revenue of the Colony as are referred to in the Schedule to this Act annexed, the Controller and Auditor-General, on finding that the accounts rendered to him bear evidence that the accounts and vouchers rendered by Collectors and Sub-Collectors of Revenue have been completely checked, examined, and certified as correct by the proper departmental officers, and that due diligence is being exercised in the collection of outstanding revenue, may (unless the Governor shall otherwise direct, as to all or any of such heads of revenue) dispense wholly or partially with a detailed examination of the vouchers rendered by such collectors or sub-collectors, or with the submission to him and examination of the accounts rendered by such sub-collectors and by any collectors of revenue who may account through the receivers thereof; but he shall in all cases satisfy himself that the amounts certified as having been collected have been duly accounted for: Provided that if the Governor should desire any accounts of revenue to be examined by the Controller and Auditor-General in greater detail, he shall cause such accounts to be subjected to such detailed examination as the Governor may think fit to prescribe.

11. Nothing in the fifteenth section of the Audit Act, 1875, or in the last preceding section shall be construed so as to limit the power of the Controller and Auditor-General to examine any accounts or vouchers for revenue or expenditure in greater detail should he see fit to do so.

12. No money shall be issued out of the Exchequer Account of the Colony except:

- (a) on requisitions of Ministers, and of the Speaker of the House of Assembly under section 17 of Act 13, 1883, authorised and approved by the Controller and Auditor-General, under the 7th section of the "Audit Act, 1875," or
- (b) in accordance with regulations framed under the provisions of the "Audit Act, 1875."

13. The Assistant Treasurer, or such other officer as the Governor may appoint, shall be substituted for the Treasurer-General, for the purposes of the audit or examination of the wards book required by the thirty-fifth section of the Ordinance No. 105.

14 (1) Should any officer who has been surcharged by the Controller and Auditor-General, or by an "Accounting Officer" with the approval of the Controller and Auditor-General, fail to adjust or recover such surcharge within the time allowed for its adjustment or recovery in regulations framed by the Controller and

¹ See § 5, Act 14, 1892.

Auditor-General under the provisions of the sixth section of the "Audit Act, 1875," it shall be the duty of the person by whom the salary of such officer is paid to recover such surcharge by deducting the same from the next payments of salary to such officer: Provided always, that unless the Governor shall otherwise direct no such deduction from any one payment of salary shall exceed one-fourth of the amount of salary then due and payable to such officer.

No. 34—1888.

15. The audit provided by section 16 of Act 13 of 1883 shall extend to and include all accounts, payments or receipts belonging to the "Joint Parliamentary expenses" of both Houses of Parliament.

Audit under section 16, Act 13 of 1883, to include all "Joint Parliamentary expenses."

16. This Act shall be read as one with the "Audit Act, 1875," and may be cited for all purposes as the "Audit Act Amendment Act, 1888."

Short title.

SCHEDULE. (1)

Schedule.

Railway, Postal, Telegraph and Customs Revenue, Port and Harbour Dues, Rent (exclusive of Land Rent and Tolls), Fines, Forfeitures and Fees of Court (Judicial), Fees of Office, Sales of Government Property, Reimbursements, Excise Duty, and such other Heads of Revenue⁽¹⁾ as Parliament may by resolutions adopted by both Houses direct.

No. 33—1888.]

[August 21, 1888.

Act to amend and add to the Law for preventing the Spread of Scab Disease in Sheep and Goats.

[Repealed by Act No. 20, 1894.]

No. 34—1888.]

[August 28, 1888.

ACT

To Amend the Law regulating the Trade in and the Possession of Diamonds, and to make better provision for the Protection of Natives and the Inspection of Compounds at Mines within Griqualand West.

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. So much of the provisions of the Act No. 48 of 1882, of the Act No. 14 of 1885, and of any other law in force in this Colony or the Territory of Griqualand West, as may be repugnant to or inconsistent with, the provisions of this Act, shall be and is hereby repealed in so far as shall be necessary to give effect to the provisions of this Act.

Repealing clause.

¹ Transfer Duty and Succession Duty added to Schedule. See Government Notice No. 872 of 1894 in Gazette of 4th September, 1894. Any Department or Head of Revenue may be withdrawn, Act 19, 1899, § 2 (p. 4101).

No. 34—1888.

Constitution of
Special Court.Powers of certain
functionaries to
issue search war-
rants and to trans-
mit same by tele-
gram. Consequen-
ces and conditions
relating to such
search.

2. Every special court constituted under the provisions of Act No. 48 of 1882, shall consist, from and after a date to be fixed by the Governor by notice in the *Gazette*, (1) of three members, two of whom shall be Judges of the Supreme Court.

3. The resident magistrate in any district in this Colony and the chief of the police for the territory of Griqualand West may lawfully grant and issue a warrant under his hand for the arrest and search of any person and of the property, goods and effects in the possession of any person who shall be reasonably suspected of being in unlawful possession of any diamond, and any telegram from the person granting and issuing such warrant stating that such warrant has been granted and issued shall be deemed, *mutatis mutandis*, to be a warrant or writ within the meaning of the second section of the "Telegraphic Messages Act, (2) 1882," and shall be sufficient authority to any officer authorised by law to execute warrants of arrest to arrest and search the person therein named, and such property, goods, and effects as aforesaid, and if, upon any person arrested and searched under this section, or in or among such property, goods or effects as aforesaid, there shall be found any diamond, and such person shall fail to give satisfactory proof of the legality of his possession thereof, he shall be apprehended and lodged in the nearest gaol as upon a charge of unlawful possession of diamonds; provided, however, that no person arrested upon the authority of such a telegram as aforesaid shall, without an order of a Judge of the Supreme Court upon cause shown, be liable to be detained for the purposes of search only, longer than shall be reasonably necessary for effecting those purposes; and provided further that every person arrested or searched upon such telegram as aforesaid shall be entitled to claim and demand from the resident magistrate of the district where he is arrested or searched a certified copy of the warrant referred to in such telegram, as soon as may be, after the arrival of such warrant.

Powers of detec-
tive officers and
police to arrest and
search suspected
persons leaving the
territory of Griqua-
land West.

4. It shall be lawful for any detective officer, constable or policeman without warrant to arrest and search any person whom he may reasonably suspect to be in unlawful possession of any diamond, and to be on the point of leaving the territory of Griqualand West, and if any diamond shall be found in the possession of such person, and he shall fail forthwith to give satisfactory proof of the legality of his possession thereof, such person may forthwith be apprehended by any detective officer, constable or policeman, and conveyed in custody to the nearest gaol, there to be detained as though his arrest had been effected upon a warrant charging him with the unlawful possession of diamonds.

¹ The Special Court referred to in this section is now abolished. See Act 35, 1904 (p. 4764).

² No. 41.

5. Any Judge of the Supreme Court shall and may, upon application to him in Chambers by or on behalf of any person arrested for any offence, under the provisions of either of the Acts mentioned in the first section or of this Act, order that such person or any one thereto authorised by him or on his behalf, shall be allowed to take, use, pay, sell, exchange, give, pledge, or otherwise deal with or alienate so much of any money, or other property of which such person may be possessed, or to which he may be entitled, as shall be sufficient, in amount or in value, to provide such person with funds wherewith to meet the costs, charges, and expenses, incidental or likely to be incidental to his defence; and no exchange, gift, or alienation, made in accordance with or authorised by any order made by such Judge, shall be deemed and taken to be null and void, or in any way bad in law.

6. So soon as may be after the passing of this Act it shall be lawful for the Governor to appoint an officer to be styled Protector of Natives and Inspector of Compounds for the territory of Griqualand West, who shall within that territory be charged with the duty and invested with the power of inspecting from time to time all compounds and aiding in the enforcement of the provisions of the "Labourers' Wages Regulation Act, (1) 1887." Such officer shall at all reasonable times be admitted into any compound or mine by the owner or person in charge thereof, and shall have access to all parts thereof and shall be at liberty to inspect any goods, wares or merchandise sold or for sale therein and all books and accounts relating to such goods, wares or merchandise, and he shall have opportunity for free communication therein with all or any of the natives therein confined or working, and the said Protector of Natives and Inspector of Compounds shall be deemed and taken for all legal purposes to have full *locus standi in judicio*, and to represent every such native as aforesaid for the purpose of securing the due performance and observance of all duties towards such natives imposed by any law for the regulation of such compounds and for the purpose of protecting generally the rights of such natives; and it shall be lawful for the Governor from time to time to frame and publish in the *Gazette*, regulations defining more particularly the duties and powers of the said Protector of Natives and Inspector of Compounds, and the time, place, and manner, for and of the performance of such duties, and the exercise of such powers. Any person obstructing such officer in the discharge of his duty in connection with compounds as aforesaid, or refusing or neglecting to allow him to have access or to inspect as aforesaid shall upon conviction before the resident magistrate of the district be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

No. 34—1888.

Judge may allow alienation or pledge of defendant's property to provide funds for defence.

Appointment, powers and duties of Protector of Natives and penalty for obstructing him in execution of the same.

¹ No. 23.

No. 34. 1888.

Certain powers of Protector of Natives conferred on Registrar or Superintendent of Natives.

7. It shall be the duty of every registrar or superintendent of servants or natives within Griqualand West to protect in all cases wherein he should deem it fit to interfere, the interests of natives charged in any court within the limits wherein he shall be such registrar or superintendent with any contravention of the law relating to passes to natives, and, for that purpose he shall, *mutatis mutandis*, and as regards such contravention have similar *locus standi in judicio* and powers of representation to those employed by the officer in the last section mentioned. Such registrar or superintendent shall further have the power notwithstanding anything in the existing law to the contrary to grant and to renew passes to natives seeking employment for such time as he may deem necessary for the purpose under such regulations in that behalf as may be made by the Governor and published in the *Gazette*.

Authority for release of convict.

8. When the Governor shall direct the release of a convict, under the conditions mentioned in the third section of Act No. 48 of 1882, the authority for such release shall be a warrant under the hand and seal of the Attorney-General directed to the superintendent of the convict station or the gaoler of the gaol at which the convict shall be in custody.

Convicts violating conditions of release may be retaken.

9. If any convict shall violate any condition of his release he may be retaken without warrant by any constable or officer of the law proper for the execution of criminal warrants, and brought before the resident magistrate of the district.

And committed to undergo remainder of sentence.

10. The said resident magistrate may, upon proof of the violation of the condition, order that the convict be committed to prison pending the decision of the Governor. The Governor may, by warrant under the hand and seal of the Attorney-General, direct that the convict be committed to prison to undergo the remainder of his sentence, or such portion thereof as to the Governor shall seem fit. The remainder of the sentence shall be calculated from the date of arrest.

Proof of conditions of release.

11. A certificate thereof, under the hand and seal of the Attorney-General, shall be sufficient proof of the condition or conditions of the release, in any proceeding before a resident magistrate, under the last preceding section mentioned.

Governor may enter into agreement with other State or Colony, and make provision for expenditure incurred in carrying out provisions of the law.

12. The Governor may enter, when occasion shall require, into an agreement with the Government of any State or Colony wherein, at the request of the Government of this Colony, any law may have been put in force for the regulation of trade in diamonds, by which agreement provision may be made for payment out of the general revenues of this Colony to the Government of such State or Colony of any expenditure duly incurred in carrying out for the benefit of this Colony the provisions of such law as aforesaid. The funds necessary to defray such expenditure shall be recoverable in manner provided by section thirty-seven of the Act No. 14 of 1885.

13. For the purposes of this Act the terms employed shall have the meanings assigned to them in the sixty-second and sixty-sixth sections of the Act No. 48 of 1882.

14. This Act shall be read as one with the Act No. 48 of 1882, and the Act No. 14 of 1885, and be cited for all purposes as the "Diamond Trade Amendment Act, 1888."

No. 35—1883.

Interpretation clause

Short Title and Construction.

No. 35—1888.]

[August 21, 1888.

ACT

To Amend the Ordinance No. 1 of 1838. (1)

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. So much of the third section of the Ordinance No. 1 of 1838, and of any other law in force in this Colony as shall be repugnant to or inconsistent with the provisions of this Act, shall be and is hereby repealed.

Repugnant and inconsistent laws repealed.

2. Whenever a petition shall be received by the Governor, signed by a majority of not less than three-fourths of all the butchers licensed for the time being in any division, which petition shall pray that this Act shall be put in force in such division as aforesaid, then, and in every such case, it shall and may be lawful for the Governor to publish in the *Gazette* a proclamation declaring this Act so to be in force in such division, and from and after the date of such proclamation any butcher trading in such division who shall at any time on the Lord's Day vend any meat or keep open any shop, store or other place for the purpose of vending the same, shall be liable to the penalties prescribed by the second section of the Ordinance aforesaid, and all meat sold or offered for sale in contravention of this Act may be seized and forfeited in accordance *mutatis mutandis* with the provisions of the said section: Provided that it shall be lawful to supply meat for the purposes of any sea-going vessel, railway train, or travelling conveyance, when in the case of the last-mentioned conveyance the meat shall be required *bonâ fide* for the purposes of travellers.

On petition by licensed butchers Governor may proclaim Act in any division: after such proclamation sale of meat on Lord's Day prohibited under penalties.

Exception provided for.

3. Any person who shall personate any licensed butcher in signing any such petition as is referred to in the last section of this Act, shall on conviction be liable to a fine not exceeding fifty pounds sterling, or to imprisonment with or without hard labour for any term not exceeding three months.

Penalty for personation of butcher in signing petition.

4. This Act may be cited as "The Lord's Day (Observance Act, 1888."

Short Title.

¹ See Act 19, 1895 (p. 3,458).

No. 36--1888.]

[August 21, 1888.

ACT

To give fuller effect to the measures of relief provided by "The Quitrents Relief Act of 1887."

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

Reduction of quitrent under Act No. 27 of 1887, sec. 4, to take effect as from date of application for reduction.

1. Every holder of land the quitrent payable on which shall be or shall have been reduced by the Governor in accordance with the provisions of the fourth section of the Act No. 27 of 1887, commonly called "The Quitrents Relief Act of 1887," shall, as from the date of the application for reduction made under the said section to the Commissioner of Crown Lands and Public Works, be deemed to be and to have been lawfully entitled to such reduction in respect of all quitrent becoming due and payable after such date.

Payments made of quitrent due after application for reduction, and in excess of reduction granted to be refunded.

2. Any such holder of land who, after the date of such application for reduction as aforesaid, shall have paid or pay by way of quitrent becoming due and payable after such date any sum in excess of the amount which would have been payable if the quitrent payable had on such date been already reduced, shall be entitled to receive and recover from the Treasurer of the Colony the amount so paid in excess.

Short Title.

3. This Act may be cited as the "Quitrents Relief Act, 1888."

No. 37—1888.]

[August 21, 1888.

ACT

To impose Liabilities upon the Crown in regard to the Acts of its Servants. (1)

BE it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

Court by which claims against the Crown shall be cognizable.

1. Any claim against Her Majesty in Her Colonial Government which would, if such claim had arisen against a subject, be the ground of an action in the Supreme Court, shall be cognizable by the said (2) court, whether such claim shall arise or have arisen out of any contract lawfully entered into on behalf of the Crown, or out of any wrong committed by any servant of the Crown acting in his capacity and within the scope of his authority as such servant: Provided that nothing herein contained shall be taken to impose any liability upon the Crown for any acts or omissions of its servants in the Postal or Telegraph Services of this Colony.

Who shall be defendant, in suit against the Crown.

2. In any action or other suit which shall be instituted by virtue of the last preceding section, it shall be competent for the

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

² The Eastern Districts Court, the High Court, any Circuit Court or Court of Resident Magistrate having jurisdiction. In suits against Railway Department action may be brought in any district through which railway passes. See Act 35, 1904 (p. 4763).

plaintiff, applicant or petitioner, as the case may be, to sue as nominal defendant or respondent such one of Her Majesty's Ministers as shall for the time being preside over the department to which the servant of the Crown alleged to have committed the breach of contract or wrong shall have belonged.

No. 38—1888.

3. No execution or attachment, or process in the nature thereof, shall be issued against the defendant or respondent in such suit as aforesaid, or against any property of Her Majesty, but it shall be lawful for the Treasurer of the Colony to pay out of the colonial revenue such sum of money as shall by the judgment of the Supreme Court be awarded to the plaintiff, applicant or petitioner.

Power of Treasurer of Colony to satisfy judgment.

4. It shall be lawful for the Supreme Court to remove such suit as aforesaid into the Eastern Districts Court, High Court of Griqualand, any Circuit Court or any Resident Magistrate's Court, and thereupon all and singular the provisions of this Act shall apply to the court into which such suit shall have been removed.

Supreme Court may remove suit to another Court.

5. This Act may be cited as the "Crown Liabilities Act, 1888."

Short Title.

No. 38—1888.]

[August 21, 1888.

ACT

To grant and confirm certain Rights, Powers and Privileges to the De Beer's Consolidated Mines (Limited) for the Public Supply of Water.

WHEREAS it is desirable that the inhabitants of the Municipality of Beaconsfield and the Diamond Mines and Mining Areas of Kimberley, De Beer's, Du Toit's Pan, Bultfontein and such other Diamond Mines and Mining Areas as may be from time to time declared, should be supplied with an ample supply of good water:

Preamble

And whereas the De Beer's Consolidated Mines (Limited), a Joint Stock Company registered in this Colony with Limited Liability, has undertaken such supply of water by means of water pipes, sluits, cuttings, reservoirs or otherwise from the Vaal River; and whereas it is expedient and necessary that certain rights, privileges and powers should be granted to and conferred upon the said De Beer's Consolidated Mines (Limited) to enable the said company to carry out and effect the objects aforesaid:

Be it enacted by the Parliament of the Cape of Good Hope, in Parliament assembled, as follows:—

1. It shall and may be lawful for the company at or near a certain point upon the Vaal River situate upon the farm "Nooitgedacht" and within the division of Kimberley, distant about fifteen miles from Kimberley, to take, collect, impound, divert, appropriate, and convey such a supply of water from the said river as the company may require for the purposes of this Act, and to conduct, lead, and carry such water across the said farm "Nooitgedacht," the farm "Wildestekuil," the farm or estate "Voor-

Point of Intake to be upon the Farm Nooitgedacht.

No. 8—1888.

uitzigt," and the farm "Bultfontein" to the township of Beaconsfield, the Diamond Mines of Kimberley, De Beer's, Du Toit's Pan and Bultfontein, and the respective mining areas thereof, to such other mines or mining areas as may from time to time be declared.

Powers of the
company defined.

2. For the purposes of this Act the company is hereby authorised and empowered to do all and each of the following acts and things in respect of land lying adjacent or convenient to the line marked in the plan deposited in the office of the Civil Commissioner for the division of Kimberley, on the introduction of this Act, as the line of pipes, but not outside the limits of deviation where shown on the said plan, that is to say:

- (a) To enter upon, take possession of, use, hold, and appropriate any such land.
- (b) To dig and make excavations and cuttings in, and make and construct mounds, walls, slopes, banks, bridges, and culverts upon the said land.
- (c) To place, make, construct, and lay down upon, in, and under such land, reservoirs, dams, pipes, canals, aqueducts, and any other construction or work suitable or adapted for the impounding, storing, diverting, appropriating, cleaning, purifying, taking, or conveying water.
- (d) To take, raise, and carry away stones, clay, gravel, and other materials upon and from such land.
- (e) To build and erect buildings, store-houses, engine-houses, sheds, machinery, and any other requisite for construction or maintenance of the said water pipes and works.
- (f) From time to time to do all and each of the aforesaid acts and things and such other acts and things as may be necessary in order to improve or maintain the works made and constructed for the purposes of this Act.

Provided, however, that in respect of every such act and thing done by the said company in respect of such land without agreement made and entered into with the owner, lessee, or occupier thereof before or after the passing of this Act, and without the consent of the Governor in respect of the farm or estate called "Vooruitzigt,"

- (g) The Governor or owners of such land, as the case may be, shall be entitled to claim compensation from the company.
- (h) The lessee or occupier shall be entitled to receive compensation for disturbance of his possession or occupation, and for any injury that he may sustain by reason of the act or thing done;

And provided further

- (i) That no such act or thing as aforesaid shall be done by the company without the consent of the Governor or of the owner as the case may be in respect of any such land which shall be cultivated, planted or built upon.

3. For the purposes of this Act and within the limits of the said Municipality of Beaconsfield and the mines, mining areas and other places as aforesaid, the company is authorised and empowered to lay down, make, and construct pipes, conduits, or other appliances for the supply of water, and to attach hydrants upon, under, and along any public road, street, or thoroughfare, and upon, under, and along any ground set apart in the diagram or conditions of sale of any land as a public road, street, or thoroughfare, and further at the request of the owner or of the occupier with the consent in writing of the owner of any dwelling-house, building, or other property, to lay down, make, and construct communicating pipes, conduits, and other appliances, and to attach hydrants for the supply of water to such house, building, or other property from the first-mentioned pipes, conduits, or other appliances for the supply of water upon, under, along, or across any such public road, street, or thoroughfare, or such ground as aforesaid, without making or being liable to make any compensation in respect thereof except in the case of damage to railways or tram-lines, water, or gas pipes already laid: Provided that there shall be no unnecessary interference with or obstruction, injury or damage to any pipes or other works of the Kimberley Waterworks Company, Limited: Provided, further, that the De Beer's Consolidated Mines (Limited) shall not use any of the trenches or excavations of the Kimberley Waterworks Company (Limited) for the purpose of laying their pipes or mains.

4. All compensation claimable from the company under the provisions of this Act shall be assessed and determined by reference to arbitration, and the provisions of the "Lands and Arbitrations (Clauses Act, 1882," shall in so far as they are not inconsistent with any of the provisions of this Act apply to every arbitration under this Act: Provided however that no person shall, without an order of the Supreme Court, or High Court of Griqualand West, be entitled to claim such compensation unless he shall have given notice to the company of his intention to make such claim within four weeks after the company shall have given him notice of its intention to do the act or thing in respect of which such compensation is claimed.

5. The right to and property in all and singular the works constructed by the company under the provision of this Act and in all and singular the appurtenances to such works, and also in all land appropriated for the purposes of this Act, shall be vested in the company: Provided, however, that the company shall not by reason of anything in this Act contained be deemed or taken to be or to become entitled to any precious stones or minerals which may be found or discovered upon or under land used, possessed, or acquired by it under the provisions of this Act, but all rights to such precious stones and minerals shall remain the same as if this Act had not been passed; and provided, further, that no land

No. 38—1888.

The Company authorised to lay down, make and construct pipes, conduits or other appliances for the supply of water in certain cases without making compensation, except in the case of damage to railways, tram lines, water or gas pipes already laid; and no unnecessary damage to be done to existing Waterworks Company.

Pipes and mains not to be laid in trenches of existing Company.

All claims for compensation to be submitted to arbitration under the Lands and Arbitration Clauses Act of 1882.

The rights to and property in the works and land acquired under this Act to be vested in the company, except as to land vested in London and South African Exploration Company.

No. 38 -1888.

vested in the London and South African Exploration Company (Limited) shall under any provision of this Act be capable of being or be deemed to be appropriated by the De Beer's Consolidated Mines (Limited), but any such land required and used by the last mentioned company for any of the purposes of this Act shall, for those purposes only, be deemed and taken to be subject in favour of the lastmentioned company and its assigns to a servitude enforceable at all times against the firstmentioned company and its assigns.

Right of way secured to the company for the purpose of carrying out the provisions of this Act.

6. It shall at all times be lawful for the company, its directors, engineers, contractors, agents, or servants to have free and convenient access and right of way to every portion of the works constructed, and all land or other property used, possessed, or owned by it under the provisions of this Act for the purpose of altering, adding to, repairing, reconstructing, relaying, supervising, or maintaining the said works or any part or portion thereof, or generally in order to carry out the purposes of this Act.

All damage done to roads, streets, thoroughfares to be repaired by the company, and within a reasonable time, and thereafter maintained by the company in a proper condition.

7. Whenever any work constructed or any act done by the company in the exercise of the rights, powers, and privileges conferred upon it by this Act, shall interfere with or disturb the free and safe passage along or the accustomed use of any public road, street, or thoroughfare, it shall be lawful for the Divisional Council of Kimberley or the Municipal Council of Beaconsfield, as the case may be, to require the company within a reasonable time either to restore such public road, street, or thoroughfare to its former condition, and repair all damage, or to construct such works as shall prevent any danger or inconvenience to persons using such public road, street, or thoroughfare, and any such works so constructed as last mentioned shall be maintained in proper condition by the company.

-The company to have the right of supplying the inhabitants of Beaconsfield with water, without prejudice to rights of Kimberley Waterworks Company (Limited), or other persons.

8. The company shall have the right to supply the inhabitants of the said Municipality of Beaconsfield and the Municipal Council thereof with running water according to their requirements: provided, however, that nothing in this Act contained shall be deemed or taken to prejudice in any way any rights or privileges lawfully vested in the Kimberley Waterworks Company (Limited), or any other person or body corporate regarding the sale or supply of water either within or beyond the limits of the said municipality.

The Council of Beaconsfield Municipality and the Mining Boards of any of the mines entitled to water free of charge.

9. The Council of the said Municipality of Beaconsfield or the Mining Boards of any of the mines may at any time when and after the company is prepared and ready to supply them with water, claim and demand the right to attach and connect hydrants with and lay down, make, and construct communication pipes or conduits to the main pipes or conduits then laid down, made, or constructed by the company, and at as many places as the said Council or Mining Boards shall deem advisable, and the said Council shall be entitled to take by means of such hydrants, pipes,

and conduits, and for the use of the said Council, a quantity not exceeding one million gallons of water in the whole per annum free of charge.

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10. No rate or tax shall be levied or imposed by the Council of the Municipality upon the pipes, conduits, or other appliances for the supply of water laid down, made, or constructed within the Municipality of Beaconsfield by the company.

No rate to be levied by the Municipality of Beaconsfield upon the pipes or other appliances connected with the supply of water.

11. So soon as may be after the company is prepared and ready to supply water, it shall be lawful for the said company and it is hereby required to frame a tariff of charges shewing the terms upon which filtered and other water will be supplied by the said company, and to make regulations shewing at what times, in what manner, and under what conditions the inhabitants of the said Municipality of Beaconsfield and others may obtain a supply of water: Provided that such tariff and regulations or any alteration thereof shall be published in the *Gazette* from time to time and also in one or more of the newspapers published in Kimberley or Beaconsfield: And provided that in no event shall the company be entitled to charge or to recover by legal proceedings any sum exceeding nine pence for one hundred gallons of water, any agreement with any person or body corporate to the contrary notwithstanding.

The company to frame tariff of charges and regulations for the supply of water.

12. If any person supplied with water by the company under the provisions of this Act shall, for twenty-one days after lawful demand, fail or neglect to pay the amount fixed by the tariff of the company, for water supplied to him, the company may lawfully cut off the supply of water to such person, and may by legal proceedings recover not only the amount due for water supplied but also any expense or costs incurred in and about the cutting off of such supply.

The company authorised to cut off the supply of water and enforce payment of amount due according to tariffs from persons failing to pay for water supplied.

13. Any person who shall wilfully injure, damage, disturb, obstruct or interrupt any building, erection, conduit, aqueduct, reservoir, dam, watercourse, drain, ditch, pipe, or pipes, or other work or works forming portion of the works contemplated by this Act, or obstruct, hinder, or prevent the forming, constructing, completing, or maintaining of the said works, shall upon conviction be liable to a fine not exceeding ten pounds sterling, or to imprisonment with or without hard labour for any period not exceeding two months, unless such fine be sooner paid, or to both such fine and such imprisonment for such period as aforesaid.

Penalty for injuring waterworks &c.

14. Any person who shall bathe or wash himself in any dam or reservoir belonging to the company, or in any stream flowing into such dam or reservoir, or wash, throw, or cause to enter therein, any dog or other animal, or place or throw any rubbish, dirt, filth, or noisome thing into any such dam, reservoir, or stream, or dip, wash, or cleanse therein any wool, leather, or skin of any animal, or any clothes or other thing, or in any way

Penalty for polluting water.

No. 38—1888.

Certain provisions of Act 19 of 1861, applicable to the bye-laws under this Act.

How offences under this Act to be dealt with.

Offences under this Act not to affect existing laws.

Plans of the Waterworks to be deposited with Civil Commissioner Kimberley, and Surveyor-General, and open for inspection on payment of fee.

Time prescribed for completion of work under this Act.

Time extended.

contaminate the same, shall for each such offence upon conviction be liable to the penalty prescribed by the preceding section.

15. The provisions of the first, second, and twenty-first sections of the Act No. 19 of 1861 shall, *mutatis mutandis*, be applied to such bye-laws as the company may frame for the regulation of the conduct of the persons employed by the company for the purposes of this Act, including persons engaged hereafter by the company, to supervise or attend to the distribution of water.

16. Every offence against the provisions of this Act, including every offence against the company's bye-laws framed in accordance with the last section, shall be cognisable and tried by criminal process in the Court of the Resident Magistrate of the district wherein such offence was committed, and of every fine imposed by any such court, one-third shall be paid to the Government, one-third to the said Municipality of Beaconsfield, and one-third to the company.

17. Nothing in the thirteenth and fourteenth sections of this Act contained shall be deemed to exempt any offender from any civil or criminal liabilities to which he would have been subject if those sections had not been enacted; provided, however, that no person shall be put upon his trial, both under this Act and under any other law in respect of the same act or thing done by him.

18. Forthwith after the passing of this Act, the company shall deposit with the Civil Commissioner of Kimberley and the Surveyor-General of this Colony, and the said Civil Commissioner and the Surveyor-General shall receive and permanently hold and keep as of record in their several offices, true copies of the plan deposited with the Clerk of the House of Assembly, for the purposes of this Act, and any person shall at all reasonable times be entitled to inspect either of such plans, when so held and kept as aforesaid, upon payment of a fee of two shillings and sixpence for each inspection.

19. The company is hereby bound and required to commence the works to be constructed for the purposes of this Act within one year, and to complete the said works so as to be prepared and ready to supply water to the said Council and inhabitants of the said Municipality of Beaconsfield and the said Mines and Mining Areas within three years from the date of the passing of this Act, and failing either the due commencement or the due completion of the said works within the time specified, all and singular the rights, powers and privileges by this Act conferred on the company shall cease and determine, unless before the expiration of the period either of one year or of three years aforesaid the Governor shall see fit to extend the time for either the commencement or completion of the said works, upon proof that the company is unable through no negligence or fault on its part either to commence or complete the said works within the

periods respectively specified: Provided that no extension of time shall be granted until after the expiration of three months from the date of a notice to be published in the *Gazette*, setting forth the intention to apply for such extension.

No. 38—1888.

20. The secretary for the time being of the De Beer's Consolidated Mines (Limited) shall be the proper party to prosecute for all contraventions of this Act or any bye-law or regulation duly promulgated thereunder, and his oath as to his appointment shall be sufficient evidence of the fact, and it shall not be necessary in any such proceedings to prove the registration of the said company under the Limited Liability Laws of this Colony.

Prosecutions under this Act to be at the instance of the Company's Secretary.

21. The word company appearing in this Act shall mean the De Beer's Consolidated Mines (Limited).

Interpretation Clause.

22. This Act may be cited as the "De Beer's Consolidated Mines (Limited) Water Supply Act, 1888."

Short title.

SPECIAL SESSION.

No. 39—1888.]

[March 12, 1889.]

Act to amend the law regulating the Imposition of Customs Duties, to provide for the entry by this Colony into a South African Customs Union, and to make provision for the free importation into this Colony of products of South Africa, and for the equitable distribution of Customs Duties collected on goods.

[Repealed by Act No. 1, 1889.]

No. 1—1889.]

[June 7, 1889.]

ACT

To Amend the law regulating the imposition of Customs Duties, to provide for the entry by this Colony into a South African Customs Union, and to make provision for the free importation into this Colony of certain articles, and for the equitable distribution of Customs Duties collected on Goods. (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. [Repealed by Act 6, 1898.]

¹ See Acts 18, 1890 (p. 2817); 8, 1897 (p. 3710); 6, 1898 (p. 3852); 5, 1903 (p. 4547). Extended by Proclamation No. 342 of 1894, to East and West Pondoland and to the Native Territories.

No. 1- 1889.

Acts No. 13 and No. 22 of 1884, No. 8 of 1886, No. 18 of 1887, No. 39 of 1888 repealed, together with other repugnant or inconsistent laws.

Schedule B sets forth articles imported free of duty.

Rebate of duties upon goods removed overland through Cape Colony to colony, &c., not a member of the Union.

Power of Governor to make regulations for the purposes of this Act.

2. The Act No. 13 of 1884, intituled an "Act for altering the duties of Customs in the Colony of the Cape of Good Hope"; Act No. 22 of 1884, intituled an "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"; Act No. 8 of 1886, intituled an "Act to define Railway Materials for the purposes of the Customs Tariff Amendment Act, 1884"; Act No. 18 of 1887, intituled an "Act to exempt Machinery imported for manufacturing purposes from the liability to Customs Duties"; Act No. 39 of 1888, commonly called the "Customs Union Tariff Act, 1888"; and so much of any other Act as may be repugnant to or inconsistent with the provisions of this Act, shall be and are hereby repealed.

3. [Repealed by Act 6, 1898.]

4. The goods, wares and merchandise mentioned in the Schedule B, hereunto annexed, shall be admitted into this Colony free of Customs duty.

5. (2) Whenever any goods imported or warehoused on importation into this Colony shall be removed overland to any colony, state or territory outside the Customs Union, it shall be lawful for the Governor to grant a rebate of the Customs duties payable on the said goods; provided, however, that no such rebate shall be granted until after notice thereof shall have been given in the *Gazette*. And provided further that, in the case of goods intended for Southern Rhodesia, and as to which, by the law in force in Southern Rhodesia, the duties prescribed by the Customs Union Tariff are imposed, it shall be lawful, in lieu of such rebate, to pay over to the Government of that territory eighty-five per centum of the full Custom Union duties collected on such goods, in conformity with the agreement set forth in the Schedule to the Rhodesia Customs Duties Collection Act, 1899.

6. (1)

7. The Governor may make and alter, by notice published in the *Gazette*, regulations for the removal and conveyance to and across the borders of the Colony, of the goods referred to in this Act, for the rebate of duties, and for the payment to any other colony, state or territory, of its share of the Customs duties collected by the officers of this Colony.

¹ This Section repealed by Act 8, 1897. See also Act 5, 1903, § 12, (p. 4549).

² Printed as amended by Act 4, 1899 (p. 4027).



8. (1) Any person who shall contravene any regulation made and published as in the preceding section mentioned, shall be liable to a fine not exceeding three hundred pounds sterling, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding twelve months, or to both such fine and such imprisonment; and all goods moved in contravention of any such regulation, and all vehicles and animals made use of in the removal of such goods, shall become liable to be forfeited to the Colonial Treasury.

No. 1--1889.
Penalty for con-
travention of
regulations.

9. [Repealed by Act 8, 1897.]

10. This Act may be cited as the "Customs Union Tariff Act, 1889."

Short title.

SCHEDULE A. (1)

[Schedule A. is repealed by Act 8, 1897. Pages 2636 and 2637.]

¹ See § 2 Act 18, 1890, (p. 2817).

2638

CUSTOMS UNION TARIFF.

SCHEDULE B.

No. 1—1889.
Schedule B.

FREE.

[Superseded by Schedule A. Act 8, 1897.]

No. 2—1889.]

[June 28, 1889.

No. 2—1889.

ACT

To Repeal the Ordinance No. 13 of 1874, of the Province of Griqualand West, and to make other provision for the payment of fees of office and fees to practitioners in civil cases in the Courts of Resident Magistrates in the said Province.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

1. So much of the Ordinance No. 13 of 1874, of the Province of Griqualand West as has not heretofore been 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.

Griqualand West Ordinance 13 of 1874, repealed.

2. From and after the passing of this Act the fees to be taken by officers of and by practitioners in every Court of a Resident Magistrate having jurisdiction in the Province of Griqualand West shall, in respect of every civil case in such court, be the same as and none other than the fees which would be taken and allowed if such Court were a Court of a Resident Magistrate having jurisdiction in the Colony of the Cape of Good Hope, and not in the said Province.

Fees in Resident Magistrate's Courts in Griqualand West to be same as in other parts of Colony.

No. 4—1889.
Existing rights
saved.

3. Notwithstanding the repeal of the said Ordinance as aforesaid, every agent who at the time of the passing of this Act shall have passed the examination required by the Proclamation of His Excellency Sir Henry Barkly, K.C.B., the Governor of Griqualand West, being Proclamation No. 26 of 1872, dated the 23rd day of September, 1872, and who shall be lawfully entitled to practise before any Court of a Resident Magistrate in the said Province, shall, so long as he shall continue so entitled, and shall practise before such Court, be empowered to take fees in accordance with the tariff prescribed by Schedule B of the said Ordinance, and any messenger now in office shall, during his tenure of office, be empowered to take the fees to be taken by the messenger under Schedule A of the said Ordinance as though the said Ordinance had not been repealed.

No. 3—1889.]

[June 28, 1889.

Act to apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the year ending the 30th day of June, 1890.
[Spent.]

No. 4—1889.]

[June 28, 1889.

ACT

To Repeal the House Duty Act No. 20, 1878, as amended by Act No. 29, 1882, and by Act No. 21, 1888, and the Hut Tax and House Duty Amendment Act, No. 25, 1888.

BE it enacted by 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 Acts
No. 20, 1878, No. 29,
1882, No. 21, 1888,
and No. 15, 1888,
except as to House
Duty for 1888 or
any previous year.

1. The Acts No. 20, 1878, No. 29, 1882, No. 21, 1888, and No. 15 of 1888 are hereby repealed: Provided that in regard to all House Duty due and in arrear in respect of the year 1888 or any previous year the said Acts No. 20, 1878, No. 29, 1882, and No. 21, 1888, shall be deemed and taken to remain in force.

Hut tax to con-
tinue under Act No.
37, 1884.

2. Notwithstanding anything in this Act contained, Hut Tax on huts in Native Locations shall continue to be paid in accordance with the provisions of the "Native Locations Act, 1884."

Short title.

3. This Act may be cited as the "House Duty Repeal Act, 1889."

No. 5—1889.]

[January 3, 1890.

ACT

To Amend the Post Office Savings Banks Acts and to afford additional facilities for the Deposit of Money with the Post Office, and for the Disposition, Management and Investment of the same.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

SAVINGS BANK.

1. The third, eighth, ninth and nineteenth sections of the "Post Office Savings Banks Act, (1) 1883," and the Schedules thereunto annexed, marked "A" and "B" respectively, are hereby repealed, and the following sub-sections numbered respectively 1, 2, 3, 4, and Schedules hereunto annexed, marked "A" and "B" respectively, shall be substituted in lieu thereof:

Repeal of sections 3, 8, 9 and 19 and of Schedules A and B of "Post Office Savings Bank Act, 1883."

- (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.

Deposits up to £500 capital authorised, not to exceed £100 in any one year, but not to exceed £600 capital and interest.

- (2) 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.
- (3) 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.

Interest calculated to 30th June, becomes capital.

Particulars to be specified by depositor, and declaration to be subscribed.

No. 5-1889.

Accounts, to be annually laid before Parliament of all deposits.

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.

- (4) 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.

SAVINGS BANK CERTIFICATES.

Provision for certificates of £100 in respect of sums transferred from ordinary to special deposit account: certificate not transferable, but redeemable in accordance with regulations.

2. It shall be lawful for the Postmaster-General, subject to the conditions hereinafter set forth, to issue any number of Savings Bank certificates not exceeding ten, of the value of one hundred pounds sterling each, bearing interest 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, to any depositor in the Post Office Savings Bank who, having like sums at the credit of his ordinary deposit account, may desire to transfer such sum or sums from such ordinary deposit account to a special deposit account represented by such certificates and bearing the interest specified thereon; and such certificate shall not be transferable, but shall be evidence of the depositor's claim upon such special deposit account to the amount specified in such certificate with the interest due thereon, and shall be redeemable upon such previous notice as may be expressed thereon under and by virtue of such regulation in that respect as may from time to time be made by the Governor under the authority of this Act: (1) Provided that no reduction of the rate of interest which the Governor may decide upon shall apply to any certificate issued before such reduction is decided upon, until after the expiration of three months from the day upon which notice of such reduction shall be given in writing either personally served upon or transmitted in course of post to the last known address of the holder of such certificate.

Name of holder of certificate not to be disclosed except to Master of Supreme Court, Postmaster-General or officers in aid of Act; but authority of Auditor-General not limited.

3. The officers of the Postmaster-General who may from time to time be authorised to issue or repay such certificates shall not disclose the name of any holder of a certificate, nor the amount deposited or withdrawn except to the Master of the Supreme Court, 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.

Separate accounts and investment of deposits.

4. The Postmaster-General shall keep separate accounts of all moneys deposited and paid under the provisions of this Act,

¹ Regulations published in Gazette 3rd January, 1890.

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, and may from time to time realise or vary any such investments.

5. Every Savings Bank certificate issued under the authority of this Act shall be signed by the Postmaster-General and by the Assistant Treasurer of the Colony, and shall be registered in the office of the Controller and Auditor-General.

6. Savings Bank certificates shall be issued only to depositors in the Post Office Savings Bank, and all transactions in connection therewith so far as the deposit of sums of money and the repayment thereof are concerned shall be effected through the intermediary of the Savings Bank Department of the Post Office.

7. Interest on certificates shall be payable on the first day of January and the first day of July in each year, and the amount due to each holder of a certificate shall, on those dates respectively, be placed to the credit of the account standing in the name of the said depositor in the books of the Post Office Savings Bank.

8. Interest shall be calculated from and including the first day of the month next following the date upon which an application shall be received for the transfer of an amount from the ordinary Savings Bank account of a depositor to whom a Savings Bank certificate shall be issued, and shall cease on the last day of the month next preceding that in which the amount of such certificate shall be re-transferred to the Savings Bank account of such depositor.

9. There shall be payable upon the issue of every certificate a fee not exceeding one shilling, which fee shall be attached to the certificate in a postage stamp or stamps of equivalent value.

10. Certificates may be issued to a trustee on behalf of another person, or for the benefit of a minor, or in the joint names of two or more persons, and the regulations under which such investments shall be received and the amounts thereof repaid, shall in all respects, except as herein otherwise provided, be similar to the regulations for the time being under which like deposits are received and repaid by the Post Office Savings Bank.

11. The trustee of any Friendly, Charitable or Provident Society, or any other Society, Club, or Fund which may for the time being be authorised to deposit its funds in the Post Office Savings Bank under the authority of the Post Office Saving Banks Act, ⁽¹⁾ 1883, or of the Post Office Savings Banks Act Amendment Act, ⁽²⁾ 1886, shall be permitted to invest any portion of such funds in certificates under the same regulations as ordinary depositors: provided, however, that in no case shall the total amount so invested exceed the sum of one thousand pounds sterling, as provided in the case of ordinary depositors.

No. 5 1889.

Certificates to be signed by Postmaster-General and Assistant Treasurer, and registered with Auditor-General.

Certificates only to depositors: transactions through Savings Bank Department.

Interest on certificates on 1st Jan. and 1st July.

Interest how calculated in case of transfer from ordinary to special deposit account.

Fee of 1s. on every certificate.

To whom certificates may be issued under the regulations of Post Office Savings Bank.

Investments of funds not exceeding £1,000 by trustees of certain Societies, Clubs or Funds.

¹ No. 6, (p. 2022).

² No. 4, (p. 2326).

No. 5—1889.

Repayment on de-
cease of depositor
subject to regula-
tions.

Special deposit
account not to be
computed in calcu-
lating maximum
deposit allowed, but
no interest on excess
over maximum in-
cluding amount of
such account.

Difference between
Postmaster General
and person claiming
to be entitled to
money under any
certificate to be re-
ferred for final deci-
sion to Judge of
Supreme Court.

Power of Governor
to make regulations
on all matters inci-
dental to operation
of Act: Copies of
regulations
to be laid before
Parliament.

Accounts to be
annually laid before
Parliament of
moneys received
and paid in respect
of certificates.

12. The repayment of amounts to the representatives of deceased depositors shall in all cases be subject to the regulations in force for the time being of the Post Office Savings Bank in that respect.

13. In computing the maximum amount allowed to be deposited by a depositor in the Post Office Savings Bank, any deposit for investment in Savings Bank certificates, and any sum credited to the account of a depositor in respect of any such certificates, shall not be reckoned, and it shall be lawful to credit the account of a depositor with any such deposit or sum: Provided that if after such deposit or sum has been credited, the aggregate sum standing to the credit of a depositor exceeds the maximum amount which otherwise is allowed to be deposited in the Post Office Savings Bank either in any one Savings Bank year or in the aggregate, such excess shall bear no interest but shall be applied to the purpose for which it was deposited or be paid over to the depositor.

14. In case any difference shall arise between the Postmaster-General and any holder of a Savings Bank certificate, or any executor, administrator, next of kin, or creditor, or trustee of a holder of a Savings Bank certificate, 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 represented by Savings Bank certificates, 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 enquire 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.

15. Except as may be herein otherwise specially provided, the Governor may make and, from time to time as he shall see occasion, alter, by notice published in the *Gazette*, regulations for superintending, inspecting and regulating the mode of keeping and examining the certificate accounts of depositors, and with respect to the issue of certificates, and to the repayment of certificates with 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.

16. An account of all moneys received and paid under the authority of this Act in respect of investment in Savings Banks certificates, and of the expenses incurred during the Savings Bank year ended the 30th day of June, together with a statement in

connection therewith of the total amount due at the close of such year to all depositors in respect of their investments in such certificates, shall be laid before both Houses of Parliament within thirty days after the commencement of each annual session thereafter.

No. 5—1889.

17. This Act shall have effect from and after the date of the promulgation thereof.

Operation of Act.

18. This Act may be cited as "The Post Office Savings Banks Additional Facilities Act, 1889," and shall be read as one with the "Post Office Savings Banks Act, (1) 1883," and the "Post Office Savings Banks Act Amendment Act, (2) 1886."

Short title of Act and connection with other Acts.

"A." (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 the 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.

¹ No. 6.
² No. 4.

No. 5-1889.
Schedule A.

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 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.” (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.” (FACE OF FORM.)

G.P.O.—No. 297.
S.B.—No. 2.

No. 5-1889.
Schedule B.

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 Depart-
 ment, 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 a 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 open be under seven years of age,
 the date on which he will attain that age must be stated here.

No. 5—1889.
Schedule B.

Seven years of age on the day of
18....., before which day the deposits cannot be withdrawn.

“ 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 of 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.
..... } Occupation.
..... } Signature.

No. 6—1889.]

[June 28, 1889.]

Act for applying a further Sum not exceeding One Hundred and Seventy-seven Thousand One Hundred and Ninety-Nine Pounds Sterling for the Service of the year ending the 30th June, 1889.

[Spent.]

No. 7—1889.]

[June 28, 1889.]

ACT

To Authorise the Proclamation of certain Main Roads.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

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 roads generally described and set forth in the Schedule hereunto attached, to be main roads within the meaning of the “Public Roads Act, 1858,” and of every other law of the Colony, and thereupon the said roads throughout their entire length shall be deemed and taken to be main roads declared by Act of the Legislature.

Governor empowered to proclaim certain Main Road

SCHEDULE.

Schedule.

IN THE DIVISION OF KIMBERLEY.

1. From the boundary of the Municipality of Kimberley through the farms Kenilworth, Smooks Pan, Eerste Aanleg, Bul Pan, Witpan, Zoutpanfontein, Slypklip, Kransvogel Vlei, Leuw Poort, Koodos Dam, Spion Heuvel, Doornfontein, through the village of Warrenton, thence to a junction with the road from Doornfontein to Blignaut's Pont next described.

2. From a Junction with the Warrenton road on the farm Doornfontein, thence *via* Blignaut's Pont to the boundary of the Colony and Free State near the Vaal River passing over farms Grasbult, School Plaats, Pont Drift and Drie Hoek.

No. 8—1889.]

[June, 28, 1889.

ACT

To Make further provision for the Apprenticeship of Juvenile Offenders. (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:—

Juvenile offenders may be apprenticed until 21 years of age.

1. Whenever any child under the age of sixteen years shall be convicted of any offence in terms of the fourth section of the Reformatory Institutions Act, (2) 1879, it shall be lawful for the court before which such conviction shall take place to direct that, in lieu of any of the punishments in the said section mentioned, such child shall be apprenticed to some fit and proper person, who shall be willing to instruct and employ such child in some useful calling, trade, or other occupation, including domestic service and service as a farm abourer, until such child shall have attained his twenty-first year or for some shorter period.

Act 15 of 1856 to apply.

2. All and singular the provisions of Act No. 15 of 1856, relating to apprentices, save and except such provisions as are repugnant to or inconsistent with the provisions of this Act, shall, in so far as they are applicable, apply to persons directed to be apprenticed under this Act.

Contract executed before Resident Magistrate.

3. It shall be lawful for any Judge of the Supreme Court, before whom any child shall be convicted as aforesaid, to direct that the contract of apprenticeship shall be executed before a Resident Magistrate to be nominated by such Judge.

Resident Magistrates to be tutors of all minors apprenticed under this Act.

4. The Resident Magistrates of the Colony shall be *ex officio* the tutors of all minors apprenticed under this Act and residing within their respective districts instead of their parents, or tutors, testamentary or dative, and shall, upon proof of the unfitness, inability or unwillingness of any master to retain the custody of any such minor, cancel the contract of apprenticeship and apprentice the minor to some other fit and proper person.

Wages to be deposited in Savings Bank.

5. Whenever any wages shall be payable to any minor apprenticed under this Act such wages shall be deposited in his name in such Post Office Savings Bank as the Magistrate shall direct, and shall not be handed over to such minor until the lawful expiration of his apprenticeship, unless the Magistrate shall for special reasons otherwise direct.

How apprentice may be transferred to another person.

6. No master shall assign or transfer to any other person any minor apprenticed under this Act without the consent of the Resident Magistrate of the district in which such master shall reside, but the consent of the minor or of his parents shall not be necessary.

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories. See also Acts 4, 1892, (p. 2946), 38, 1895 (p. 3563), and 4, 1905, (p. 4808). This latter Act makes provision for detention, otherwise than in gaol. of Juvenile Offenders awaiting apprenticeship.

² No. 7.

7. Any minor apprenticed under this Act who shall desert from his master's service during his term of apprenticeship shall be liable, upon conviction before any Court of Resident Magistrate, to be imprisoned with or without hard labour for any period not exceeding twelve months, or to receive twenty cuts with a cane, or to both such imprisonment and whipping.

No. 9—1889.
Punishment for desertion.

8. It shall be lawful for the Supreme Court, Eastern Districts Court, or High Court of Griqualand or any Circuit Court, within their respective jurisdictions, upon the application of any minor apprenticed under this Act, or of any parent or relative within the fourth degree of consanguinity of such minor, to order the cancellation of any such contract of apprenticeship, as aforesaid, and, if need be, to direct a fresh contract to be entered into before such Magistrate as shall be nominated by such court.

How contract may be cancelled.

9. Every Resident Magistrate shall, before approving of any contract of apprenticeship, make full inquiry as to the fitness of any master to whom the minor is proposed to be apprenticed, and may by advertisement in the *Gazette* and some newspaper circulating in his district, give notice in the English and Dutch languages, that application may be made to him by farmers or other persons wishing to have the convicted offender apprenticed to them. Such notice shall state the name and age of the offender, the offence of which he stands convicted, and the day upon which such applications will be heard before such Magistrate.

Enquiry as to fitness of master.

10. It shall be lawful for the Resident Magistrate, pending the publication of such notice or pending such inquiry as in the last preceding section mentioned, whether the offender shall have been tried before him or shall have been sent by some Judge of the Supreme Court to be apprenticed by him, to direct that such offender shall be detained in prison or be admitted on bail until the contract shall be finally executed.

Notice to be given for applications.

Detention of offender until apprenticed.

11. This Act may be cited for all purposes as the "Juvenile Offenders Apprenticeship Act, 1889."

Short title.

No. 9—1889.]

[August 13, 1889.

ACT

For the Prohibition of Lotteries. (1)

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. This Act may be cited for all purposes as the "Lotteries Prohibition Act, 1889."

Short title.

2. The Proclamation of date the 19th day of May, 1789, published on the 27th day of May in the said year, and so much of any other law as is repugnant to or inconsistent with the

Repugnant laws repealed.

¹ Extended by Proclamation No. 80 of 1890 to all the Native Territories.

No. 9—1889.

provisions of this Act shall be and the same are hereby repealed, but nothing herein contained shall be deemed in any way to affect the provisions of the Act No. 28 of 1860 or of the thirteenth subsection of the seventh section of the Act No. 27 of 1882, commonly called the "Police Offences Act, 1882"; or any Art Union legalised in the United Kingdom or in any British Colony.

Definition of terms.

3. In this Act the following terms shall bear the meanings herein assigned to them, to wit:—

"Lottery" means every lottery in the common and received acceptation of that term, and more particularly every scheme, arrangement, system, plan, or device by which any prize or prizes, is or are, or is or are intended to be, gained, won, drawn for, thrown or competed for, by lot, dice, or any other mode of chance, either with or without reference to the happening of any uncertain event other than the issue or result of the application or employment of such lot, dice, or mode of chance;

"Prize" means money or any other matter, article, or thing, including lands, houses, goods, wares, merchandise, or other property, movable or immovable, and including any right to claim money and any right of ownership, possession, use, usufruct or occupation of lands, houses, goods, wares, merchandise or other property;

"To subscribe" means to pay over or deliver, with or without the intervention of an agent, to any person whatsoever, any sum of money or any article, matter or thing, movable or immovable, whether or not such article or thing be in itself of any pecuniary value, for and in consideration of and with a view to receiving from any person or persons whatsoever any right, or the recognition of any right, to participate in or any chance of securing, gaining, or winning any prize in any lottery;

"Subscription" means the money, article, matter or thing subscribed, including the proceeds of such article, matter, or thing if sold or disposed of for money, and including any other article, matter, or thing received therefor by way of exchange or otherwise;

"Ticket" means any symbol, sign, token, warrant or list, or any other means or device of whatsoever nature or kind purporting or intended to confer upon or recognise in any person whatsoever any right or claim to compete for or receive any prize or to have any interest in any lottery.

4. Any person who shall personally or by any representative authorised by him, or as the representative of any other person or persons known or unknown

(a) establish, commence or be a partner or otherwise beneficially interested in any lottery, or

(b) manage, conduct, or in any way assist in managing or conducting any lottery, or

Persons in any way taking part in a lottery to be liable to a penalty.

- (c) sell or dispose of, or offer to sell or dispose of, or take or purchase or have any interest in any ticket in any lottery, or
- (d) knowingly allow any house, room, or other premises under his control to be used in any way by any person for the management and conduct of any lottery or for any business purpose connected therewith,

No. 9—1889.

shall be guilty of an offence against this Act, and shall be liable upon conviction for the first offence to a fine not exceeding two hundred pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding six months, unless such fine be sooner paid, and for any subsequent offence against this Act to a fine not exceeding five hundred pounds, or to imprisonment with or without hard labour for any term not exceeding twelve months, unless such fine be sooner paid, or to both such fine and such imprisonment.

5. No publisher, proprietor, or other person having the control and management of any newspaper or public print, and no proprietor or other person having the control and management of any printing press, shall, by way of advertisement or otherwise, print or publish, either in such newspaper or public print or otherwise, any notice of any lottery intended to be held in this Colony or elsewhere, and any person contravening this section, shall upon conviction be liable to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding one month, unless such fine be sooner paid.

Persons advertising or printing advertisements of a lottery liable to a penalty.

6. Every person who shall personally or by any servant or agent distribute or deliver or cause to be distributed or delivered to any person in this Colony any hand-bill or other document, conveying in print, writing, or in any other way, notice of and information with regard to any lottery, shall be liable on conviction to a fine not exceeding fifty pounds for each act of distribution or delivery, or in default of payment of such fine to imprisonment with or without hard labour for any period not exceeding one month, unless such fine be sooner paid.

Persons distributing or causing to be distributed notices of a lottery liable to a penalty.

7. Every subscriber to any lottery may by action in any competent court recover from any person or persons managing or conducting or beneficially interested in any lottery, or from any one of such persons, or from any person who shall have received his subscription, the full amount of such subscription or the value thereof, whether the prizes in such lottery have or have not been distributed before such action is brought.

Subscribers to a lottery may recover their subscriptions from the promoters.

8. No transfer, delivery or alienation of any prize shall be claimable by any subscriber to any lottery in any legal proceedings, nor shall transfer of any immovable property won as a prize be lawful or be permitted by any Registrar of Deeds in this Colony; provided, however, that any subscriber who has gained and

Prizes in a lottery not recoverable by law, and transfer of immovable property won in a lottery declared illegal.

No. 10—1889.

actually received any prize shall not be liable to be called upon to return or restore the same or the value thereof to any person other than the Assistant Treasurer of the Colony who may sue for and recover such prize or its value in any competent court, claiming a declaration of forfeiture under this section of such prize or its value.

Persons engaged in a lottery are liable under this Act although such lottery be got up outside the Colony.

9. No person shall be deemed to be exempt from liability, in any proceedings whether civil or criminal, under any provision of this Act, in respect of any act or thing done or authorised or permitted by him to be done within this Colony with respect or in relation to or in connection with any lottery, merely by reason that the management, conduct, or business of or concerning such lottery is in whole or in part carried on at some place or places beyond the borders of this Colony.

When to take effect.

10. This Act shall come into operation on the thirtieth September, 1889, and not sooner.

No. 10—1889.]

[July 30, 1889.

ACT

To authorise and empower the Malmesbury Board of Executors and Trust Company to undertake the business of a Fire Assurance Company.

Preamble.

WHEREAS by Act No. 9 of 1865, and Act No. 34 of 1884, a certain company was incorporated and still subsists and carries on business as a body corporate under the name and title of "The Malmesbury Board of Executors and Trust Company":

And whereas it is expedient to authorise and empower the said company to add to its existing business the business of undertaking the insurance of immovable and movable property of all kinds against loss or damage by fire.

And whereas it is expedient for the purpose of obtaining the aforesaid object in certain respects to amend the aforesaid Act No. 9 of 1865 and Act No. 34 of 1884:

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:—

Malmesbury Board of Executors and Trust Company authorised to undertake business as a Fire Assurance Company, and to amend or add to its Deed of Settlement accordingly.

1. Notwithstanding anything to the contrary contained in the Act No. 9 of 1865, or the Act No. 34 of 1884, the company incorporated by the said Acts shall be, and is hereby authorised and empowered

(a) To undertake and carry on in all its branches the business of a fire insurance company, and to insure against loss or damage by fire immovable and movable property of all kinds:

(b) To make, by way of a supplementary Deed of Settlement, or otherwise, such alterations or amendments of and such additions to the Deed of Settlement of the said company, now registered in accordance with the sixth section of Act No. 9 of 1865, as may be from time to time required for carrying out the objects and purposes of this Act, and of the Act No. 9 of 1865, and the Act No. 34 of 1884, and may be approved of by shareholders or members of the said company in manner provided in the said Deed of Settlement.

No. 11—1889.

2. No such alterations, amendments, or additions to the aforesaid Deed of Settlement, and no supplementary Deed embodying such alterations, amendments, or additions shall be of legal force or validity unless and until the same shall have been approved of as aforesaid and a copy thereof shall have been signed by at least three directors for and on behalf of the shareholders or members, and registered in accordance with the provisions of the said sixth section or of the seventh section of the Act No. 9 of 1865, and no such alterations, amendments or additions as aforesaid, shall be of legal force and validity in so far as they shall be repugnant to the provisions of this Act.

Alterations, &c., of Deed of Settlement to be duly registered, and not to be repugnant to this Act.

3. Nothing in this Act contained shall be deemed to alter or affect the continued corporate existence or the rights or liabilities of the said company, but, notwithstanding anything to the contrary contained in the Act No. 9 of 1865, especially the second section thereof, or in the Act No. 34 of 1884, especially the third section thereof, the said company shall be and continue to be identically the same body corporate, composed of the same members or shareholders, but carrying on business under the name and title of "The Malmesbury Board of Executors and Trust and Fire Assurance Company."

Corporate existence and rights and liabilities of company continued under change of name.

4. This Act shall be read as one with the Act No. 9 of 1865, and the Act No. 34 of 1884, and may be cited for all purposes as "The Malmesbury Board of Executors and Trust and Fire Assurance Company Act, 1889."

Act to be read with Acts No. 9 of 1865, and No. 34 of 1884, and short title of Act.

No. 11—1889.]

[July 30, 1889.]

ACT

To Provide for the Supply of Water in the Woodstock Municipality.

WHEREAS it is expedient to make provision for the supply of water in the Woodstock Municipality, and for that purpose to confer upon the Woodstock Municipal Council certain rights, powers and privileges over and above the rights, powers and privileges already by law, and especially by Act No. 45 of 1882, vested in and conferred upon the said Council: Be it therefore

Preamble.

No. 11—1889.

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:—

Rights, powers, &c., under this Act to be supplementary to other rights, powers, &c., conferred by law on the Woodstock Municipal Council.

1. The rights, powers and privileges by this Act vested in or conferred upon the Woodstock Municipal Council, hereinafter called the said Council, shall for all legal purposes be deemed and taken to be so vested and conferred in supplement of and not in derogation from any rights, powers or privileges vested in or conferred upon the said Council by the Act No. 45 of 1882, or any law in force in this Colony.

Power of Council to enter into agreements for the supply of water, and to enforce the proper performance thereof.

2. It shall be lawful for the said Council for such period, subject to such terms and conditions, and for such considerations as to the said Council shall seem fit in the interest of the inhabitants of the said Municipality, to make and enter into any agreement with any person or body corporate for the supply of water to or within the limits of the Woodstock Municipality, whether the sources of such supply shall be situate within or beyond the said limits: Provided that the said Council shall have supervision and control over the distribution and supply of water within the said limits, and shall have the power and be subject to the duty of representing in legal proceedings all and every ratepayer or inhabitant in the said Municipality in enforcing against any party to any such agreement the due and proper performance thereof, and the due and proper supply of water to any such ratepayer or inhabitant.

Management of waterworks and all right and property in materials, stock, &c., vested in Council.

3. Subject to the terms of any such agreement as aforesaid, the general management of all matters connected with or relating, or incidental to the construction, maintenance and working of the waterworks constructed under the provisions of this Act within the limits of the said Municipality, and also the right to and property in all and singular the materials, stock, land, and everything appertaining to the said waterworks, shall be vested in the said Council.

Powers of construction and maintenance.

4. The said Council is hereby empowered to construct and make, or cause to be constructed and made, within the limits of the said Municipality, all such works as may in the opinion of the said Council be necessary or expedient for the purpose of impounding, storing, diverting, appropriating, taking, or conveying the said water, whether by reservoirs, dams, watercourses, or leadings, pipes, conduits, drains, ditches, wells, or other means, and to erect such buildings as may be deemed requisite for the purposes of the said works for securing an adequate supply of water for the purposes of this Act.

Power to enter upon and use lands, and provision for compensation to owners or occupiers.

5. The said Council is hereby empowered to occupy, enclose, take, and use for the purposes of this Act, land set apart as commonage lands for the said municipality, and also to enter upon, occupy, and use any land the private property of any person or persons whomsoever, for the purpose of making and effecting, maintaining, supervising and repairing a suitable connection

between any house and any supply pipes, watercourse, conduit, reservoir, or water-house: Provided, however, that the Council shall make full compensation to any owner or occupier of any land so taken or used under the provisions of this Act.

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6. The said Council is hereby empowered, within the limits of the said Municipality, to lay down and construct pipes, conduits, or any other appliances for the conveyance of water under, across, or along any public road, street or thoroughfare, or under, across, or along any ground set apart in the diagram or conditions of sale of land as a public road, street or thoroughfare, without making or becoming liable to make any compensation; provided that if the said Council shall in any way disturb the surface or otherwise interfere with the free and accustomed use of any such road, street, thoroughfare, or ground, the said Council shall so soon as may be make provision either to restore such road, street, thoroughfare, or ground to its former condition, or for the safe, free and convenient use thereof by all persons entitled to such use.

Powers to lay pipes, &c., along public roads, &c., subject to duty to restore.

7. It shall at all times be lawful for the said Council and its engineers, contractors or workmen, and with carts or carriages, to have free access and right of way to, over, and along the works constructed or to be constructed, 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 making, repairing, relaying, or supervising the said works, or for any other purpose whatsoever incidental to carrying out the purposes of this Act.

Rights of access.

8. Any person who shall wilfully injure, damage, obstruct, or interrupt any building, erection, conduit, reservoir, dam or 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, or any agreement made as aforesaid, or any of them shall, upon conviction, be liable for each offence to a fine not exceeding twenty-five pounds sterling, or to be imprisoned with or without hard labour for any period not exceeding three calendar months, or to both such fine and such 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 injuring Council's property and works.

9. 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 under this Act or any such agreement as aforesaid, 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

Penalties for defiling water.

No. 11--1889.

wool, leather, or skin of any animal, or any clothes or other thing whatsoever, shall for every offence be liable to a fine not exceeding five pounds sterling, or to be imprisoned with or without hard labour for any period not exceeding twenty-one days or to both such fine and imprisonment.

Offences how
prosecuted.

10. All offences against any of the provisions of this Act may be prosecuted before the Court of the Resident Magistrate of Cape Town, or before any Periodical or other competent Court, which may hereafter be established, having jurisdiction within the said Municipality.

Tariff of charges:
bye-laws, &c.

11. The said Council is hereby empowered from time to time to frame, publish, alter and amend a tariff of charges, and to make bye-laws, rules and regulations, by which the supply of water by private or other waterleadings, for domestic, irrigating, industrial, or other purposes, shall be regulated within the limits of the said Municipality, and the payment for such supply shall be in accordance with such tariff: Provided, however, that the charge per diem for the first fifty gallons, supplied or ready to be supplied, per diem, to any house shall not exceed threepence.

Power and duty
of Council to
supply water to
every house: com-
pulsory supply of
fifty gallons per
diem to be paid for
by owner.

12. The said Council may from time to time, and shall at any time upon the application of the owner of any house situate within the limits of the said Municipality, make, construct, and lay down pipes, conduits, or any other appliances suitable for the conveyance and supply, and for the measurement of the supply of water to any such house, and the owner of any such house, to which not less than fifty gallons of water per diem shall be supplied or ready to be supplied, shall be liable quarterly, on and after the 31st of March, the 30th of June, the 30th September, and 31st of December in any year, to pay to the said Council such sum for such water supplied or ready to be supplied, as shall be fixed by any tariff framed in accordance with the last preceding section of this Act, which sum shall be deemed to be due in respect of the last preceding quarter of any year on the day terminating such quarter as aforesaid, and shall be recoverable by legal proceedings in any competent Court: Provided, however, that the owner of any such house who shall under this section be deemed to be liable to pay for such water supplied or ready to be supplied to such house during any quarter, shall be the person or persons in whose name the land upon which such house is built shall be registered on the day terminating such quarter as aforesaid, and that nothing herein contained shall be deemed or taken to invalidate, alter or affect any agreement entered into between the owner and occupier or occupiers of any such house: Provided, further, that no owner shall be deemed either to be exonerated from the payment of the whole or any part of any such sum merely by reason that any of the water in respect of which such sum is claimed has not in fact been supplied, if it was ready to be supplied, or to claim that water not supplied, but which was ready to be supplied as aforesaid,

shall be supplied upon payment of any such sum: and provided lastly, that for all water supplied over and above the amount of fifty gallons per diem aforesaid, the owner or any occupier of any house to whom such water is supplied shall be liable to pay the amount fixed by such tariff as aforesaid.

No. 11—1889.

13. The said Council may authorise any person, for the purpose of inspection and repair, to enter upon any house supplied with water by the said Council, between the hours of ten a.m. and four p.m., and to cut off the supply to any such house after twenty-four hours' notice in writing shall have been given of the intention to do so; provided, however, that such supply shall not, under this section, be cut off for any period longer than may be actually required, for the purpose of detecting waste or making necessary repairs.

Right to enter and cut off supply in order to effect inspection and repairs.

14. If any person shall, for one week, after lawful demand, fail to pay any sum due for water supplied under the provisions of this Act, the said Council is hereby empowered to enter upon the premises to which the water not paid for has been supplied, and to cut off the supply until the sum due be paid.

Right to cut off for default of payment for water.

15. The cost of all house connection effected under the twelfth section of this Act with shut-off cocks and suitable house fittings and of all repairs, shall be borne by the owner of the house to which, the water is supplied and paid to the said Council; but if, with the consent of the said Council, the connection is effected by the owner of any such house, the materials for the same shall be purchased from or approved by the said Council, and shall be laid down by the workmen or contractors of the said Council, or under the control of any person approved of by the said Council: Provided, always, that where the water is supplied by meter the work up to and including the meter shall be done by the servants of the said Council, and the work and the fittings on the consumers' side of the meter may be done by the owner in such way as he may deem fit subject to any regulations and bye-laws framed by the said Council.

Cost of house connection to be borne by owner.

16. The said Council may devote any available and surplus sum, raised by way of rates under the provisions of the Act No. 45 of 1882, to carrying out the purposes of this Act, and shall specially account for all money received and expended under the provisions of this Act in a separate account to be annually prepared, which shall lie at the office of the Council for the inspection of ratepayers during the month of March in each year.

Surplus rates devoted to purposes of Act: separate accounts to be kept.

17. The costs, charges and expenses of obtaining the passing of this Act shall be paid out of the revenue of the said Municipality derived from rates.

Costs, &c., of obtaining Act paid out of municipal revenue.

18. This Act may be cited as the "Woodstock Municipality Water Supply Act, 1889."

Short title.

No. 12—1889.]

[August 13, 1889.

ACT

To Amend the Law regarding Registration and abandonment of
Claims in Diamond Mines.

[The whole of this Act is repealed by Act 11, 1899 (p. 4060) except in so far as its provisions apply to Mines and Alluvial Diggings on private property the title to which contains no reservation of precious stones and minerals in favour of the Crown, and which were on the 6th October, 1899 duly proclaimed Mines and Diggings within the meaning of Section 79 of Act 19, 1883.]

No. 13—1889.]

[August 9, 1889.

Act to apply a Sum not exceeding Thirty-four Thousand Eight Hundred and Twenty-eight Pounds Thirteen Shillings and Sixpence sterling, for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 14—1889.]

[August 9, 1889.

ACT

To Amend the Thirteenth Section of "The Merchandise Marks Act, 1888."

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 15—1889.
Definition of
“goods of foreign
manufacture.”

Sub-section 4 of
sec. 4 of Act No. 12
of 1888 amended.

Short title.

1. The words “goods of foreign manufacture” in the first sub-section of the thirteenth section of the Act No. 12 of 1888, commonly called “The Merchandise Marks Act, 1888,” shall be taken to mean all goods manufactured, made, or produced at any place outside the limits of this Colony.

2. The fourth sub-section of the said thirteenth section shall be read and construed as though after the word “Colony” where it first occurs, were inserted the words “or elsewhere,” as though instead of the word “a” before the word “place” where it last occurs in the said sub-section, were substituted the word “the,” and as though at the end of the said sub-section were added the words “or elsewhere, as the case may be, wherewith the name on such goods is identical, or whereof it is a colourable imitation.”

3. This Act shall come into operation on a day to be fixed by the Governor, not being any day before the 31st day of August, 1889, and may be cited as “The Merchandise Marks Amendment Act, 1889.”

No. 15—1889.]

[August 9, 1889.

ACT

To Authorise the Expropriation of Land for the purpose of Roads in the Divisions of Stutterheim, Cathcart, and Komgha.

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:—

Expropriation of
land for roads in
divisions of Stutter-
heim, Cathcart and
Komgha.

1. Notwithstanding anything to the contrary contained in any law, it shall be lawful for the Governor at any time after the passing of this Act, to take or expropriate, for the purpose of giving road facilities to certain landholders in the divisions of Stutterheim, Cathcart, and Komgha, such land as he may deem to be necessary for that purpose.

What roads may
be proclaimed.

2. The roads in the last section referred to are all or any of the roads referred to in the report of J. Newey and A. E. Murray, dated the 6th day of April, 1889 (G. 36—'89), and shown in the plan annexed to the said report.

Compensation for
taking, &c., of land
to be assessed by
Road Board.

3. Compensation in respect of the taking or expropriation as aforesaid shall be claimable in all cases in which such compensation would by law be claimable from a divisional council in connection with the construction, maintenance, or repair of any divisional road, and such compensation shall be assessed, in accordance with the provisions of the Lands and Arbitrations Clauses Act, 1882, but by a Road Board constituted under the provisions of the following section of this Act.

Constitution of
Road Board.

4. A Road Board shall be constituted by the Governor by proclamation in the *Gazette*, which shall have the power of arbitrators under the Lands and Arbitrations Clauses Act, 1882,

for the purpose of assessing such compensation as aforesaid, and the said board shall be composed of two members appointed by the Governor, not more than one of whom shall be in the service of the Government, and one member appointed by the divisional council of that one of the aforesaid three divisions in which the land shall be situated, in respect of the taking or expropriation of which compensation shall be claimed.

5. This Act may be cited as the "Gaika Location Roads Act, 1889."

No. 17-1889.

Short title.

No. 16-1889.]

[August 9, 1889.]

ACT

To Repeal the 31st Section of the Regulation of Railways Act, 1861, and to make other provisions in lieu 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:—

1. The thirty-first section of the Act No. 19 of 1861, commonly called "The Regulation of Railways Act, 1861," shall be and is hereby repealed.

Section 31 of Act No. 19 of 1861 repealed.

2. ⁽¹⁾ Where any railway in the Colony, whether already constructed or to be hereafter constructed, crosses any public thoroughfare, street or road, the Company owning or working such railway shall comply with and be subject to all such rules and regulations with regard to such crossings and the manner of approaching the same as may from time to time be made by the Governor, and every such Company shall be liable to the penalties provided by the twenty-eighth section of the aforesaid Act of 1861 for every contravention of any such rule or regulation.

Provision for rules and regulations with respect to the crossing of public roads by any railway.
Penalty for contravention.

3. This Act may be cited as "The Regulation of Railways Amendment Act, 1861."

Short title.

No. 17-1889.]

[August 13, 1889.]

ACT

To Abolish Tolls on Bridges over the Orange and Great Kei Rivers.

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. The ninth and tenth sections of the Act No. 6 of 1877, commonly called the "Kei Bridge and Natal Telegraph Act, 1877," the second, third, fifth, and sixth sub-sections of the first

Act No. 6 of 1877, sections 9 and 10, Act No. 15 of 1871, section 1, sub-sections 2, 3, 5, 6, and the schedule, together with other

¹ Printed as amended by Act 31, 1896 (p. 3635). Extended by Proclamation 379, 1905, to all Native Territories.

No. 18—1889.
 repugnant or in-
 consistent laws re-
 pealed ; but Con-
 vention with O.F.
 State of 2nd Feb.,
 1875, not impaired.

section of and the Schedule to the Act No. 15 of 1871, and the Act No. 12 of 1884, together with so much of any other provision of the Act No. 15 of 1871, or any other law in force in this Colony as shall be repugnant to or inconsistent with the provisions of this Act shall be and is hereby repealed in respect of the toll-bars and tolls referred to in this Act: provided that nothing in this Act contained shall be deemed or taken to impair or affect the validity of a certain Convention made and entered into by and between the Governor of this Colony and the President of the Orange Free State and published in the *Gazette* under the Proclamation No. 4, dated the 2nd day of February, 1875.

No tolls for the
 future at or near
 bridges over
 Orange or Kei
 Rivers.

2. From and after the promulgation of this Act, every toll bar established within this Colony for the purpose of taking tolls at any of the bridges referred to in either of the aforesaid Acts shall be abolished, and thereafter no toll-bar shall be established and no tolls shall be taken at or near any of the said bridges.

Short title.

3. This Act may be cited for all purposes as the "Orange and Kei Rivers Free Bridges Act, 1889."

No. 18—1889.]

[August 9, 1889.

ACT

To provide for Constructing, Equipping and working a Line of
 Railway in the Orange Free State.

[Lapsed.]

No. 19—1889.]

[August 9, 1889.

ACT

To reduce the Annual Quitrent on Land purchased under the Act No. 5 (1) of 1870.

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. From and after the 1st day of January, 1890, the annual quitrent of one pound sterling for every hundred pounds of the purchase amount of land purchased under the provisions of the Act No. 5 of 1870, shall, notwithstanding anything to the contrary contained in the first sub-section of the first section of the said Act, or in any other law, be reduced to an annual quitrent of ten shillings for every hundred pounds as aforesaid, in respect of payments of quitrent becoming due on or after the said 1st day of January, 1890.

Reduction of quitrents from and after 1890, under Act No. 5 of 1870, from 1 per cent. to ten shillings per cent. of the purchase amount.

2. This Act may be cited as the “Quitrents Reduction Act, 1889.”

Short title.

No. 20—1889.]

[August 9, 1889.

ACT

To Amend “The Cattle (2) Removal Act, 1870.”

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. The several sections hereinafter mentioned of Act No. 14 of 1870, commonly called “The Cattle Removal Act, 1870,” shall be amended in the following way, to wit:

Amendment of certain sections of Act No. 14 of 1870, as to the 10 mile limit.

- (1) From the second section shall be expunged the words “distant therefrom more than ten miles”;
- (2) From the fifth section shall be expunged the words “and if he shall know that such stock have been removed ten miles or more from the place from which the same were removed”;
- (3) From the ninth section shall be expunged the words “or if the stock so driven shall not have been removed ten

¹ See Act 15, 1887 (p. 2461).

² Page 1172.

No. 20—1889.

Arrest of person driving or having custody or possession of stock liable to be seized or impounded under Act No. 14 of 1870.

Detention of arrested person as upon suspicion of theft.

Inquiry by resident magistrate as to owner of stock seized.

Detention of arrested person pending inquiry for not more than 4 weeks.

Release of detained person after 4 weeks or sooner, unless charge preferred against him.

Penalty for wrongful arrest of any person under colour of this Act.

When stock not deemed to be removed from place to place.

miles," and the words "or that such stock have been removed ten miles or more."

2. Any Field-cornet, police officer, justice of the peace, or landed proprietor on his own land, or any road adjoining such land, authorised under the provisions of the fifth section of the said Act, as amended by this Act, to take possession of any stock, shall be and is hereby further authorised and empowered without warrant to arrest the person who shall be driving the said stock, or in whose custody or possession the said stock may be found, and to bring or cause to be brought such person to the nearest gaol, there to be detained and dealt with, subject to the provisions of this Act, as though such arrest had been effected upon a charge of some criminal offence duly made against such person.

3. The resident magistrate of the district wherein the gaol is situate in which such person as aforesaid may be detained, shall forthwith cause inquiry to be made in order to ascertain the owner of or other person interested in the stock in respect of driving or of the custody or possession of which such person has been arrested, and unless such magistrate shall be sooner satisfied as the result of such enquiry that such person at the time of arrest had the authority of the owner of the said stock or of some person having an interest therein, in driving, or in being in custody or possession of the said stock, such magistrate may either cause such person to be so detained as aforesaid until the expiration of four weeks from the date of arrest, or admit such person to bail.

4. After the expiration of four weeks as aforesaid, the said magistrate shall order and direct the release of such person, unless there shall have been laid information against such person charging him with some crime or offence in respect of which his detention is by law warranted; provided that every such person so detained as aforesaid shall, notwithstanding that such period of four weeks shall not have expired, be entitled to claim his release so soon as the said magistrate shall be satisfied that in driving, or in being in custody or possession of the said stock, such person was acting with the authority of the owner of the said stock or of some person having an interest therein.

5. The provisions of the tenth section of the said Act shall *mutatis mutandis* apply to every person who shall wilfully and maliciously and without probable cause, arrest or detain, or cause to be arrested or detained, any other person under colour of the provisions of this Act.

6. No stock shall be deemed to be removed within the meaning of the said Act or of this Act merely by reason that such stock shall be found moving from place to place within the limits of any land or immovable property to the occupation whereof, or to the use whereof for purposes of grazing stock or allowing them to drink water, the landholder or other person owning or interested in the said stock is entitled.

7. This Act shall be read as one with "The Cattle Removal Act, 1870," and may be cited for all purposes as "The Cattle Removal Amendment Act, 1889."

No. 22—1889.
Effect and short
title of Act.

No. 21—1889.]

[August 13, 1889.

ACT

To provide for the Payment of Costs by persons convicted of Breach of Regulations framed by Village Boards of Management, to prevent or impose restrictions upon the keeping of Ferocious and Troublesome Dogs or other Animals.

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. From and after the passing of this Act it shall be lawful for any Resident Magistrate or Special Justice of the Peace, before whom any person shall be lawfully convicted of a contravention of any lawful regulation framed under the provisions of the Act No. 29 of 1881, for the purpose of preventing or imposing restrictions upon the keeping of ferocious or troublesome dogs or other animals, to make the payment of costs by such person a part of the sentence against him.

Payment of costs
by person contra-
vening regulations
of Village Boards
of Management as
to the keeping of
dogs, &c.

No. 22—1889.]

[August 13, 1889.

ACT

To Authorise the raising of a Public Loan ⁽¹⁾ of Three Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port.

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. It shall be lawful for the Governor to raise by public loan a sum not exceeding three hundred thousand pounds sterling for the purpose of prosecuting and improving the harbour works of Table Bay, and of effecting improvements at the Docks in respect of the storage of goods and the landing and shipment of cargo.

Power to raise
loan of £300,000, for
improvement of
Table Bay Harbour
Works, &c.

2. The application of the moneys to be raised as aforesaid for the above purposes 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

Application of
moneys by Har-
bour Board.

¹ See § 66, Act 36, 1896 (p. 3675).

No. 23—1889.

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 law.

Interest on this loan not charged to revenue of Board but to general revenue of Colony.

3. The interest from time to time payable in respect of any moneys borrowed under the authority of this Act shall not be chargeable upon the revenues of the said Harbour Board but upon the general revenue of this Colony.

Short title.

4. This Act may be cited as "The Table Bay Harbour Loan Act, 1889."

No. 23—1889.]

[August 13, 1889.]

ACT

To authorise a Company, to be styled "The Metropolitan and Suburban Railway Company (Limited)," to construct a Line of Railway from Cape Town to Sea Point.

Preamble.

WHEREAS it is desirable and expedient that a company should be formed under the Limited Liability Act No. 23 of 1861, for the purpose of constructing, equipping, maintaining and making a line of railway from Cape Town to Green Point and Sea Point:

[Authority for the purchase by Government of the line constructed under this Act was given by Act 44, 1905, Section 4 *et seq.* (p. 4971). See also Act 13, 1905 (p. 4831).]

No. 24—1889.]

[August 13, 1889.]

ACT

To release the Harbour Board of Port Elizabeth from liability in respect of the Interest payable upon certain Cape of Good Hope Consolidated Stock.

[Repealed by Act 36, 1896. Pages 2669 to 2674.]

No. 25—1889.]

[August 13, 1889.

Act to extend the provisions of the "Scab Acts" to Field-cornetcies adjoining areas or districts wherein the said Acts are in force.

[Repealed by Act No. 20, 1894.]

No. 26—1889.]

[August 13, 1889.

ACT

To extend the provisions of the Act No. 4 of ⁽¹⁾ 1876, so as to confer upon Village Boards of Management, authority in terms of the said Act to plant and cultivate Trees.

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. Within the local limits of any community for which there now is or may hereafter be a Board of Management lawfully constituted under the provisions of the "Villages Management Act, 1881," such Board shall have and exercise all the powers and functions which by the Act No. 4 of 1876 are conferred upon Divisional Councils, or the Commissioners of any Municipality or Town Council.

Village Boards of Management to have powers as to tree planting in accordance with Act No. 4 of 1876.

2. The Divisional Council of the division in which such community is situated shall be required for the purposes of this Act to exercise the rating power conferred upon such Council by the sixteenth section of the Act No. 29 of 1881, as though the said purposes had been set forth and specified in the said Act, and every sum received by any such Board as aforesaid from such

Rates for the purposes of this Act how levied, and money how held and accounted for.

¹ Page 1400.

No. 27—1889.

Short title.

Council shall be held and accounted for by such Board in accordance with the provisions of the said Act.

3. This Act may be cited as the "Villages Tree Planting Act, 1889."

No. 27—1889.]

[August 13, 1889.

ACT

To amend the Law for the Prevention of Vagrancy and Squatting. (1)

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:—

Meaning of terms
under Vagrancy
Acts.

1. For the purposes of the Act No. 23 of 1879, commonly called the "Vagrancy Act, 1879," and of this Act, the following terms shall bear the following meanings:—

"Farm" means any land not situated within the local limits of of any municipality or corporate town, or any area within which the "Villages Management Act, 1881," is or hereafter may be in force;

"Squatter" means any person who, not being a servant or apprentice of the owner of any farm, and not being himself the owner or lawful occupier of such farm, is notwithstanding permitted by such owner or lawful occupier to possess or occupy any hut, house, or other building in or upon such farm;

"Owner" includes

- (a) The registered owner or person entitled to the beneficial ownership of any land;
- (b) The lessee of any Crown land or private land;
- (c) The lawful occupier of any land;
- (d) Any person placed in lawful possession or occupation of any land as the duly authorised representative, agent, or manager, for and on behalf of the registered owner or person entitled to the beneficial ownership of such land, or for and on behalf of any lessee thereof;

but does not include, in respect of the hut, house, or other building possessed or occupied by him,

- (e) Any person who, either as a servant or apprentice of the owner or occupier of any land, or as a squatter, is in possession or occupation of any hut, house, or building upon such land.

2. The words "without lawful excuse (the proof of which excuse shall lie on such person)" shall be and are hereby expunged

Section 4 of Act
No. 23 of 1879
amended.

¹ Amended by Act No. 20, 1891 (p. 2875). See also Act 34, 1895 (p. 3599). Extended by Proclamation No. 347 of 1894 to Griqualand East and to other Native Territories, including Pondoland, by Proclamations 212 and 229 of 1896, and 33, 1897.

from the fourth section of the "Vagrancy Act, 1879," and in their place and stead shall be read the following words, to wit, "without the permission of the owner (the proof of which permission shall lie on such person)," and no servant or apprentice of any owner of any land, and no squatter upon the land of any owner shall for the purposes of the said section be deemed to be qualified merely by the possession or occupation of any hut, house, or building on such land to give permission for and on behalf of such owner.

No. 27--1889.

3. After the words "shall be liable" where they first occur in the said section shall be inserted the words "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"; and after the words "shall be liable" where they next occur in the said section the words "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"; and after the words "in the case of the first conviction, and" in the said section the words "to a fine of 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."

Fines and penalties to be imposed.

4. Every person shall be deemed to be an idle and disorderly person within the meaning and for all the purposes of the aforesaid Act and of this Act, and shall upon conviction be liable to the penalties provided by the fourth section of the aforesaid Act, who shall be found without the permission of the owner of any farm (the proof of which permission shall lie on such person)

Addition to definition of "idle and disorderly person" in sec. 4 of Act No. 23 of 1879.

- (a) loitering upon any road crossing such farm; or
- (b) in or loitering at or near any hut, house or other building, upon any farm, whether such hut, house or other building shall or shall not be in the possession or occupation of any servant or apprentice of the owner of such farm, or in the possession or occupation of any squatter.

5. Every owner of a farm shall be and is hereby authorised, for the purpose of searching for any idle and disorderly person, to enter without warrant and make search in any hut, house or other building upon such farm, which shall be in the possession or occupation of any servant or apprentice of such owner, or in the possession or occupation of any squatter, and any idle and disorderly person found by such owner in any such hut, house, or other building, may be apprehended without warrant and dealt with in manner provided in the fifth section of the aforesaid Act.

Power of owner of farm without warrant to search for and apprehend idle and disorderly persons in huts, &c., occupied by servant or squatter.

6. This Act shall be read and construed as one with the "Vagrancy Act, 1879," and may be cited for all purposes as the "Vagrancy Law Amendment Act, 1889."

Effect and short title of Act.

No. 28—1889.]

[August 13, 1889.

ACT

To provide for Acquiring, Constructing, Equipping, and Working certain Lines of Railway and for certain Additional Works on Existing Railways.

BE it enacted by 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 railways specified in Schedules shall, when expedient, be constructed and equipped.

1. The Governor shall, as soon as may seem to him expedient, after the passing of this Act, cause to be acquired or to be constructed and equipped, the several railways set forth in Schedules A, B, and C to this Act, 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; provided that the line of railway mentioned in Schedule A shall only be constructed in the event of the Government of the Orange Free State signifying before the 31st July, 1890, that the Volksraad of that State has authorised an extension from Bethulie Bridge to some point on the Norval's Pont-Bloemfontein Line: Provided also that if the railway set forth in Schedule C to this Act be not acquired before the 30th day of November, 1889, the authority granted by this Act for the acquisition of the said railway shall lapse.

Additional works authorised.

The Governor shall likewise cause to be constructed as aforesaid, the additional works in Schedule D to this Act set forth.

Expenditure authorised: (a) for Railways, £401,225; (b) for additional works, £341,071.

2. For the purposes of acquiring, and of constructing and equipping the said railways and providing rolling stock, as in the said Schedules A, B, and C set forth, it shall be lawful for the Governor to expend a sum not exceeding £401,225, and for the purpose of constructing the additional works in the said Schedule D set forth, a sum not exceeding £341,071.

Provision for above expenditure, £162,296 by debentures or stock; £355,000, under Act No. 20 of 1888; £225,000 under Act No. 20 of 1883.

3. (1) For the several purposes aforesaid, it shall be lawful for the Governor to raise a sum of £162,296 sterling, 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; and further to apply a sum of £355,000 out of the moneys authorised to be raised under Act No. 20 of 1888, Schedule B, and a further sum of £225,000 out of the moneys authorised to be raised under the provisions of the "Temporary Loans Act," being the Act No. 20 of 1883.

£190,000 authorised under Act No. 1884, sec. 1, sub-sec. 4, to be a charge against general revenue.

4. So much of section 3 of Act No. 25 of 1884 as deals with the amount of one hundred and ninety thousand pounds

¹ See Act 17, 1891, § 5.

(£190,000), authorised under sub-section 4 of section 1 of Act No. 25, 1884, being a portion of the sum of two hundred and eighty-two thousand pounds (£282,000) in the said section mentioned, is hereby repealed, and the said sum of one hundred and ninety thousand pounds (£190,000) is made a charge against the general revenue of the Colony.

No. 28—1889,

5. This Act may be cited as the "Railways Extension and Additional Works Act, 1890."

Short title.

SCHEDULE A.

Schedule A.

No.	Description.	Amount.
1	A Line from Burghersdorp to Bethulie Bridge with Rolling Stock	£263,725

SCHEDULE B.

Schedule B.

No.	Description.	Amount.
1	An Extension of the Kalk Bay Line from its present terminus at Kalk Bay to Simon's Town, with Rolling Stock	£37,500

SCHEDULE C.

Schedule C.

No.	Description.	Amount.
1	The Purchase of the Line from Worcester to Ashton, known as the Cape Central Railways	£100,000

SCHEDULE D.

No. 30--1889.

Schedule D.

Additional New Works to be constructed in connection with Railways already constructed.

No.	Description.	Amount.
1	Additional Fencing of Existing Lines	£5,000
2	Additional Rolling Stock, Engines, Carriages & Trucks	225,000
3	Workshops, Works and Water Supply, Locomotive Department	25,441
4	Stations, Sidings and improved accommodation for Passengers	45,180
5	Coal Sheds	45,180
6	Stores, Warehouses and Offices	4,500
7	Accommodation for Railway Employés	18,700
8	Additional Cost of Norval's Pont Bridge on Colesberg Extension (one half of £30,000)	15,000
	Total	£341,071

No. 29—1889.]

[August 13, 1889.

Act to amend the Pounds Ordinance No. 16 of 1847.

[Repealed by Act 15, 1892.]

No. 30--1889.]

[August 13, 1889.

ACT

To amend the Law relating to Masters, Servants, and Apprentices. (1)

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. Every Special Justice of the Peace shall, within the local limits by law fixed and determined for his jurisdiction, have and be entitled to exercise over and in respect of any person with regard to any offence wherewith such person shall be charged against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, the same jurisdiction, power and authority as if he were a Resident Magistrate; provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender, subject to the provisions of the said Acts, in any higher or more severe manner than by fine, not exceeding two pounds, or by imprisonment, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for

¹ See Acts 15, 1856; 18, 1873; 28, 1874; 7, 1875. Extended by Proclamation No. 206 of 1893 to Transkei, Tembuland, East Griqualand & Port St. Johns: by Proclamation 340, 1894 & 33, 1897 to Pondoland and by Proclamation 180, 1905 to Walfish Bay.

Jurisdiction of special justices of the peace extended to all offences against Masters and Servants Acts.

any period not exceeding one month: Provided, further, that the provisions of the third to the eleventh sections inclusive, and of the thirteenth section of the Act No. 10 of 1876 shall *mutatis mutandis* apply to regulate, limit and define the jurisdiction of and the procedure to be adopted by every Special Justice of the Peace under the authority of this section.

No. 30—1889.

2. Notwithstanding anything to the contrary contained in the seventh section of the Act No. 18 of 1873, as amended by the third section of the Act No. 7, 1875, the provisions of the second to the sixth sections inclusive and the ninth sections respectively of the said Act No. 18, 1873 (as the last-mentioned section is amended by this Act) shall extend and apply to any man-servant employed as a domestic servant or to perform any bodily labour in manufactures, or as a boatman, porter, groom, stablekeeper, gardener, or other occupation of a like nature.

Offender against Section 7 of Act No. 18 of 1873 may be imprisoned without option of fine.

3. Notwithstanding anything to the contrary contained in the ninth section of the Act No. 18 of 1873, or in the first section of the Act No. 7 of 1875, it shall be lawful for the master of any servant or apprentice, if he shall have reasonable and probable cause to suspect such servant or apprentice of having committed any offence against any provision of any of the Acts commonly called the "Masters and Servants Acts 1856 to 1875," as amended by this Act, to order and require such servant or apprentice forthwith to proceed in his, the said master's, company before the nearest Resident Magistrate or Special Justice of the Peace having jurisdiction in the district or place where such master so suspects that such offence has been committed, there to answer a charge of having committed such offence; and any servant or apprentice who shall neglect or refuse to obey any such order made by his master, having such reasonable and probable cause of suspicion as aforesaid, shall be liable to be arrested by his master without warrant, and conveyed in custody before such Resident Magistrate or Special Justice of the Peace as aforesaid, to be by him dealt with according to law; provided that no servant or apprentice shall be bound or obliged to obey such order as aforesaid, unless or until he shall be informed of the nature of the charge which his master intends to prefer against him.

Servant or apprentice reasonably suspected of offence against Master and Servants Acts must accompany master before Magistrate: if he refuses is liable to arrest.

4. This Act may be cited for all purposes as the "Masters and Servants Act, 1889," and shall be construed as one with the "Masters and Servants Acts, 1856 to 1875," which, with this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1889."

Effect and short title of Act.

No. 31—1889.]

[August 13, 1889.]

Act to amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

[Lapsed.]

No. 32—1889.]

[August 13, 1889.

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1890.

[Spent.]

No. 33—1889.]

[August 13, 1889.

ACT

To amend the Law with regard to Wild Ostriches.

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⁾

Repeal of Act No. 12 of 1870, and Act No. 15 of 1875, except as to proceedings commenced before the passing of this Act.

1. The Act No. 12 of 1870, together with any Proclamation issued under the provisions of the said Act, and the Act No. 15 of 1875, commonly called the "Wild Ostriches Act, 1875," as well as 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: Provided, however, that any proceedings actually commenced against any person before the passing of this Act for or in respect of any offence against any provision of either of the aforesaid Acts shall be continued until the final end and determination thereof, as though this Act had not been passed.

Licence to kill ostriches on unoccupied Crown lands.

2. The several Civil Commissioners throughout the Colony are hereby authorised to issue to any person applying therefor, a licence to kill wild ostriches upon unoccupied lands belonging to the Crown, which licence—

- (1) Shall be in such form as the Governor shall direct, and shall be covered with stamps of the value of twenty pounds sterling,
- (2) Shall be in force one year from the date thereof, or for such longer period as the Governor may sanction, and as may be specified in such licence,
- (3) Shall authorise the holder thereof to kill, catch, capture, hunt, or shoot at wild ostriches upon unoccupied land belonging to the Crown, and to take and remove any eggs found thereon, being the eggs of any wild ostrich:

Provided that every person who shall at the date of the passing of this Act be a holder of any licence under the Act No. 12 of 1870, shall be during the time specified in such licence entitled to the privileges of the holder of a licence under this section, but to no other or greater privileges.

Offence of killing &c., wild ostriches, or taking, &c., eggs in or from private land: fine to be paid to occupier of land where offence committed.

3. No person, other than the owner or occupier of any land, not being unoccupied land belonging to the Crown, shall, without the authority or consent of such owner or occupier, kill catch, capture, hunt or wound any wild ostrich upon such land, or take, remove, interfere with, or disturb the eggs of any such ostrich

¹ Amended by Act No. 30, 1890 (p. 2826).

found in or upon such land, and any person who shall be convicted of a contravention of this section shall be liable to a fine not exceeding twenty pounds sterling, and in default of payment to imprisonment with or without hard labour for any term not exceeding six months.

4. The provisions of the last preceding section shall *mutatis mutandis* apply to every person who shall, without a licence under this Act, kill, catch, capture, hunt, wound, or shoot at any wild ostrich upon any unoccupied land belonging to the Crown, or take, remove, interfere with, or disturb the eggs of any wild ostrich, found in or upon such land: Provided, however, that all fines under this section shall be recovered for the benefit of the Colonial Treasury, subject to the payment of an amount not exceeding one-half of such fine to any informer through whose information any offender shall be convicted.

5. For the purposes of this Act the Secretary of every Divisional Council, acting under the authority of the said Council, shall be deemed to be the occupier of every main and divisional road and of every public outspan place in each division, the Secretary of every Municipal Council or Board of Commissioners acting under the authority of the said Council or Board shall be deemed to be the occupier of all land vested in such Council or Board, or to the use or occupation of which the inhabitants in the municipality have acquired a common right, and the Secretary of every Board of Management constituted under the Villages Management Act, 1881, shall when acting under the authority of the said Board, be deemed to be the occupier of all lands to the use or occupation of which the inhabitants within the local limits under the management of such Board have acquired a common right.

6. This Act may be cited as the "Wild Ostriches Act, 1889."

No. 34—1889.

Similar offence by unlicensed person in respect of unoccupied Crown lands: fine paid to treasury, subject to payment of portion to informer.

Secretaries to represent Divisional and Municipal Councils, & Boards of Management, for the purposes of this Act.

Effect and short title of Act.

No. 34—1889.]

[August 13, 1889.]

ACT

To establish a Public Holiday on the First Monday in October. (1)

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. The first Monday in the month of October in each and every year shall be a public holiday throughout the Cape Division, and it shall be lawful for the Governor, by Proclamation in the *Gazette*, to declare and make known that from and after the date of such proclamation, the first Monday, or any other day in the

Public holiday on first Monday in October, in Cape division and other divisions where holiday proclaimed.

¹ Extended by Proclamation No. 210 of 1889 to all the Native Territories.

No. 35—1889.

Act No. 3 of 1856 to apply in divisions where the holiday established by this Act is observed, to the said holiday.

Short Title.

month of October in each and every year, shall be a public holiday throughout any other division of this Colony.

2. Throughout any division in which the aforesaid day shall at any time be a public holiday under this Act, the provisions of the Act (1) No. 3 of 1856 shall be in force as though the aforesaid day were in the first section of the said Act specifically referred to as a holiday.

3. This Act may be cited as the "Public Holiday Act, 1889."

No. 35—1889.]

[August 13, 1889.

ACT

To amend the "Aliens Naturalization Act, 1883."

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:—

Amendment of second schedule to Act 2 of 1883.

1. The form in the second schedule to the Act No. 2 of 1883 is hereby amended by the addition of the following question:—

(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?

Amendment of section 4 of Act 2 of 1883.

2. In the fourth section of the Act No. 2 of 1883, all the words after the word "until" down to the end of the said section, shall be and are hereby expunged, and in place and stead thereof shall be inserted the following words, to wit:—

"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."

Fee for naturalization.

3. In the eleventh section of the Act No. 2 of 1883 the words "two shillings and sixpence" shall be substituted for the words "one pound."

ACT

For the Regulation of the Business of Pawnbrokers. (1)

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:—

Preliminary.

1. This Act shall come into effect on the 1st day of January, 1890, and may be cited as the Pawnbrokers' Act, 1889. Short Title.

2. In this Act—

“Pawnbroker” includes every person who carries on the trade or business of taking movable property in pawn or pledge: Interpretation of terms.

“Pledge” means an article pawned with a pawnbroker:

“Pawner” means a person delivering an article for pawn to a pawnbroker:

“Shop” includes dwelling-house and warehouse, or other place of business, or place where business is transacted:

“Unfinished” goods or materials” includes any goods of any manufacture or of any part or branch of any manufacture, either mixed or separate, or any materials whatever plainly intended for the composing or manufacture of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith and before the same are completed or finished for the purpose of wear, use or consumption:

“Constable” includes any peace officer.

3. In order to prevent evasion of the provisions of this Act, the following persons shall be deemed to be persons carrying on the business of taking movable property in pawn (that is to say), every person who keeps a shop for the purchase or sale of movable property; or for taking in movable property by way of security for money advanced thereon, and who purchases or receives or takes in movable property, and pays or advances or lends thereon any sum of money not exceeding ten pounds with or under an agreement or understanding expressed or implied, or to be from the nature and character of the dealing reasonably inferred, that such movable property may be afterwards redeemed or repurchased on any terms; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan respectively within this Act. Extension of Act to keepers of certain shops.

4. The provisions of this Act relating to pawnbrokers shall extend to and include the executors of deceased pawnbrokers, except that an executor shall not be answerable for any penalty personally Executors of pawnbrokers.

¹ See Act 10, 1895 (p. 3439), as to pawning of Seaman's property. See Act 3, 1870 (Naval Seamen). For definition of pawnbroker for licensing purposes see Act 38, 1887 (p. 2506).

No. 36--1889.

or out of his own estate, unless the same is incurred by his own act or neglect.

Agents, servants, apprentices, &c., of pawnbrokers.

5. For the purposes of this Act anything done or omitted by the servant, apprentice, or agent of a pawnbroker in the course of or in relation to the business of the pawnbroker shall be deemed to be done or omitted (as the case may be) by the pawnbroker; and anything by this Act authorised to be done by a pawnbroker may be done by his servant, apprentice, or agent.

Cessionaries, assigns, or executors of pawnners.

6. The rights, powers, and benefits by this Act reserved to and conferred on pawnners shall extend to and be deemed to be reserved to and conferred on the cessionaries or assigns of pawnners and to and on the executors of deceased pawnners; but any person representing himself to a pawnbroker to be the cessionary, assign or executor of a pawner shall, if required by the pawnbroker, produce to the pawnbroker the cession, assignment, letters of administration, or other instrument under which he claims.

Application of Act in respect of loans.

7. This Act shall apply—

- (1) To every loan by a pawnbroker of forty shillings or under:
- (2) To every loan by a pawnbroker of above forty shillings and not above ten pounds, except as in this Act otherwise provided in relation to cases where a special contract respecting the terms of the loan (as authorised by this Act) is made between the pawner and the pawnbroker at the time of the pawning.

Nothing in this Act shall apply to a loan by a pawnbroker of above ten pounds, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the loan or pledge; and notwithstanding any thing in this Act, a person shall not be deemed a pawnbroker by reason only of his paying, advancing, or lending on any terms any sum or sums of above ten pounds.

Exception of loans before commencement of Act.

8. Nothing in this Act shall apply to a loan made by a pawnbroker before the commencement of this Act, or to the pledge on which such loan is made, or to the pawnbroker or pawner in relation to such loan or pledge.

General Obligations of Pawnbrokers.

Pawnbrokers to keep books, &c., as in schedule.

9. A pawnbroker shall keep and use in his business such books⁽¹⁾ and documents as are described in the first schedule to this Act, in the forms therein indicated or to the like effect, and shall from time to time as occasion requires enter therein in a fair and legible manner the particulars indicated in and in accordance with the directions of that schedule, and shall make all inquiries necessary for that purpose.

If a pawnbroker fails in any respect to comply with the requisitions of this section he shall be guilty of an offence against this Act.

¹ See § 5, Act 10, 1895 (c. 3440).

A pawnbroker shall observe the following rules:—

- (1) He shall always keep exhibited in large characters over the outer door of his shop his Christian name and surname or names, with the word pawnbroker:
- (2) He shall always keep placed in a conspicuous part of his shop (so as to be legible by every person pawning or redeeming pledges, standing in any box or place provided in the shop for persons pawning or redeeming pledges) the same information as is by the rules of the first schedule to this Act required to be printed on pawn-tickets.

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Pawnbrokers to keep names over doors and tables of rates, &c., exhibited in shops.

If a pawnbroker fails in any respect to comply with the requisitions of this section he shall be guilty of an offence against this Act.

Pawning; Redemption; Sale.

1. A pawnbroker shall on taking a pledge in pawn give to the pawnbroker a pawn-ticket, and shall not take a pledge in pawn unless the pawnbroker takes a pawn-ticket.

Pawn tickets to be given for pledges.

2. A pawnbroker may take profit on a loan on a pledge, at a rate not exceeding that specified in the second schedule to this Act.

Profit and charges allowed to pawnbrokers.

A pawnbroker may demand and take the charges specified in the same schedule in the cases and according to the rules therein stated and prescribed.

A pawnbroker shall not, in respect of a loan on a pledge, take any profit, or demand or take any charge or sum whatever, other than those specified in the same schedule.

A pawnbroker shall, if required at the time of redemption, give a receipt for the amount of loan and profit paid to him; and such a receipt shall not be liable to stamp duty unless the profit exceeds twenty shillings.

3. Every pledge shall be redeemable within twelve months from the day of pawning, exclusive of that day, within which every pledge shall continue to be redeemable.

Pledges redeemable for one year.

4. A pledge pawned for ten shillings, or under, if not redeemed within the year of redemption, shall become and be the pawnbroker's absolute property.

Pledges for 10s. or under not redeemed in time forfeited.

5. A pledge pawned for above ten shillings shall further continue redeemable until it is disposed of, as in this Act provided although the year of redemption has expired.

Pledges above 10s. redeemable until sale.

6. A pledge pawned for above ten shillings shall, when disposed of by the pawnbroker, be disposed of by sale by public auction, and not otherwise; and the regulations in third schedule to this Act shall be observed with reference to the sale.

Sale by auction of pledges above 10s.

A pawnbroker may bid for and purchase at a sale by auction, made or purporting to be made under this Act, a pledge pawned with him; and on such purchase he shall be deemed the absolute owner of the pledge purchased.

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Offences by
auctioneers.

17. If an auctioneer does anything in contravention of the provisions of this Act relating to auctioneers, or fails to do anything which he is required by this Act to do, he shall be guilty of an offence against this Act.

Power to inspect
sale book.

18. At any time within three years after the auction at which a pledge pawned for above ten shillings is sold the holder of the pawn-ticket may inspect the entry of the sale in the pawnbroker's book, and in the filled-in catalogue of the auction (authenticated by the signature of the auctioneer) or in either of them.

Pawnbroker to
account for surplus
within three years,
subject to set off.

19. Where a pledge pawned for above ten shillings is sold, and appears from the pawnbroker's book to have been sold for more than the amount of the loan and profit due at the time of sale the pawnbroker shall, on demand, pay the surplus to the holder of the pawn-ticket in case the demand is made within three years after the sale, the necessary costs and charges of the sale being first deducted.

If on any such demand it appears from the pawnbroker's book that the sale of a pledge or pledges has resulted in a surplus, and that within twelve months before or after that sale the sale of another pledge or other pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus and shall be liable to pay the balance only after such set off.

Offences as to
pledges for above
10s.

20. If with respect to pledges for loans of above ten shillings a pawnbroker—

- (1) Does not *bonâ fide* according to the directions of this Act sell a pledge pawned with him:
- (2) Enters in his book a pledge as sold for less than the sum for which it was sold, or fails duly to enter the same:
- (3) Refuses to permit any person entitled under this Act to inspection of an entry of sale in the pawnbroker's book, or of a filled up catalogue of the auction, authenticated by the auctioneer's signature, to inspect the same:
- (4) Fails without lawful excuse (proof whereof shall lie on him) to produce such a catalogue on lawful demand:
- (5) Refuses to pay on demand the surplus to the person entitled to receive the same:

he shall in every such case be guilty of an offence against this Act and shall be liable on conviction thereof in a court of Resident Magistrate to a fine not exceeding ten pounds

Special Contracts.

Power to make
special contracts
subject to restric-
tions.

21. Notwithstanding anything in this Act, a pawnbroker may make a special contract with a pawner in respect of a pledge of which a pawnbroker makes a loan of above forty shillings, provided always, that—

- (1) The pawnbroker at the time of the pawning shall deliver to the pawner a special contract pawn-ticket, signed by the pawnbroker:

- (2) A duplicate of the special contract pawn-ticket shall be signed by the pawner.

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The provisions of this Act, save as far as the application thereof is excluded by terms of the special contract, shall apply thereto.

A special contract pawn-ticket, or the duplicate thereof, shall not be subject to stamp duty.

Delivery up of Pledge.

22. The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and, subject to the provisions of this Act, the pawnbroker shall accordingly (on payment of the loan and profit), deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

Holder of pawn-ticket entitled to redeem.

23. A pawnbroker shall not (except as in this Act provided) be bound to deliver back a pledge unless the pawn-ticket for it is delivered to him.

Production of pawn-ticket on redemption.

24. When a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable, on application within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit, and twenty-five per cent. on the amount of the loan.

Liability of pawnbroker in case of fire.

A pawnbroker shall be entitled to insure to the extent of the value so estimated.

25. If a person entitled and offering to redeem a pledge, shows to the satisfaction of a court of Resident Magistrate that the pledge has become or has been rendered of less value than it was at the time of the pawning thereof by or through the default, neglect, or wilful misbehaviour of the pawnbroker, the court may, if it thinks fit, award a reasonable satisfaction to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the courts direct.

Compensation for depreciation of pledge.

26. The following provisions shall have effect for protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce:

Protection of owners and of pawners not having pawn-tickets.

- (1) Any person claiming to be the owner of a pledge but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration, which the pawnbroker shall deliver to him:
- (2) If the applicant delivers back to the pawnbroker the declaration duly made before a justice of the peace by the

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applicant, and by a person identifying him, the applicant shall, thereupon have, as between him and the pawnbroker, all the same rights and remedies as if he produced the pawn-ticket: Provided that such declaration shall not be effectual for that purpose unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day of which the form is delivered to the applicant by the pawnbroker (exclusive of a day or days on which the pawnbroker is prohibited from carrying on business):

- (3) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid:
- (4) The pawnbroker is further hereby indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has actual or constructive notice that the declaration is fraudulent or false in any material particular.

If any person makes a declaration under this Act, either as an applicant or as identifying an applicant, knowing the same to be false in any material particular, he shall on conviction be liable to the punishment attaching by law to perjury.

27. In each case the following cases,—

- (1) If any person is convicted under this Act of knowingly and designedly pawning with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same:
- (2) If any person is convicted of feloniously taking or fraudulently obtaining any goods and chattels, and it appears to the court before which he is tried that the same have been pawned with a pawnbroker:
- (3) If in any legal proceedings it appears to any court that any goods and chattels brought before it have been unlawfully pawned with a pawnbroker:

the court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or of any part thereof, or without payment thereof, or of any part thereof, as to the court, according to the conduct of the owner and the other circumstances of the case, seem just and fitting.

28. If a pawnbroker, without reasonable excuse (proof whereof shall lie on him) neglects or refuses to deliver a pledge to the person entitled to have delivery thereof under this Act, he shall be guilty of an offence against this Act, and a court of Resident Magistrate may, if the court thinks fit, with or without imposing a penalty, order the delivery of the pledge on payment of the amount of the loan and profit.

Delivery to owner of property unlawfully pawned.

Summary order for delivery of pledge to person entitled.

General Restrictions on Pawnbrokers.

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29. If a pawnbroker does anything of the following things,—
- (1) Takes an article in pawn from any person appearing to be under the age of twelve years or to be intoxicated;
 - (2) Purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker;
 - (3) Employs any servant or apprentice or other person under the age of sixteen years to take pledges in pawn;
 - (4) Carries on the business of a pawnbroker on a Sunday, Good Friday, or Christmas Day, or a day appointed for public fast, humiliation, or thanksgiving;
 - (5) Under and pretence purchases, except at public auction, any pledge while in pawn with him;
 - (6) Suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it;
 - (7) Makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purpose, sale or disposition thereof within the time of redemption;
 - (8) Sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as authorised by this Act;

Prohibition of purchasing pledges: taking pledges from children, etc.

he shall be deemed guilty of an offence against this Act.

Unlawful Pawning and taking in Pawn.

30. If any person knowingly and designedly pawns with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same, he shall in addition to any punishment to which he may be sentenced by any Court of Law for such offence, be liable to pay to the owner of such property any sum not exceeding the full value of the pledge, upon application by such owner to the Court before which such trial shall take place.

Unlawful pawning of goods not property of pawner

31. If any person does any of the following things,—

- (1) Offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article;
- (2) Wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article;
- (3) Not being entitled to redeem and not having any colour of title by law to redeem, a pledge, attempts or endeavours to redeem the same:

Proceedings where persons offering articles in pawn do not give a good account of themselves, etc.

he shall be guilty of an offence against the Act.

In every such case, and also in any case where, on an article being offered in pawn to a pawnbroker he reasonably suspects that

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it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker may seize and detain the person and the article, or either of them, and shall deliver the person and the article or either of them (as the case may be) as soon as may be into the custody of a constable, to be dealt with according to law.

Prohibition of taking in pawn linen, clothing, unfinished goods, etc., in certain cases.

32. If a pawnbroker knowingly takes in pawn any linen or apparel or unfinished goods or materials intrusted to any person to wash, scour, iron, mend, manufacture, work up, finish or make up, he shall be guilty of an offence against this Act, and shall be liable, on conviction thereof in a court of Resident Magistrate to a fine not exceeding double the amount of the loan, and the pawnbroker shall likewise restore the pledge to the owner thereof, in the presence of the court, or as the court directs.

Search warrant for linen, etc., unlawfully pawned.

33. If the owner of any linen, or apparel, or unfinished goods, or materials intrusted to any person as aforesaid, and unlawfully pawned with a pawnbroker, or the owner of any other article unlawfully pawned with a pawnbroker (the last-mentioned owner having on oath satisfied a Resident Magistrate that his goods have been unlawfully obtained or taken from him), makes out on oath before such magistrate that there is good cause to suspect that a pawnbroker has taken in pawn the linen, apparel, goods, materials, or article aforesaid, without the privity or authority of the owner, and makes appear to the satisfaction of the magistrate probable ground for such suspicion, the magistrate may issue his warrant for searching, within the hours of business, the shop of the pawnbroker.

If the pawnbroker, on request by a constable authorised by the warrant, refuses to open the shop and permit it to be searched, a constable may break it open within the hours of business, and search as he thinks fit therein for the linen, apparel, goods, materials, or article aforesaid, doing no wilful damage; and if any pawnbroker or other person opposes or hinders the search, he shall be guilty of an offence against this Act.

If on the search any linen, apparel, goods, materials, or article aforesaid, is or are found, and the property of the owner thereof is made out to the satisfaction of a court of Resident Magistrate, the court shall cause the same to be forthwith restored to the owner thereof.

Licences.

Licence under tariff 15 of Act No 21 of 1884, to be ten pounds.

34. In tariff 15 of Act No. 20 of 1884, the amount, twenty-five pounds, the licence duty required to be paid by a pawnbroker for a licence under the said Act, shall be taken to be and shall be read as ten pounds. Such licence, no matter at what period of the year the same may be taken out, shall expire on the 31st December then next. When any such licence shall be issued upon or after the first day 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. The provisions of the sixth section of Act No. 13 of 1870, shall *mutatis mutandis* apply to all persons who should under the provisions of this Act take out and possess a licence.

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35. A separate licence shall be taken out and paid for by every pawnbroker for each pawnbroker's shop kept by him.

Separate licences required for each shop.
Effect on licences on conviction.

36. If a pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods knowing them to be stolen, the court before which he is convicted may, if it thinks fit, direct that his licence shall cease to have effect, and the same shall so cease accordingly.

37. After the passing of this Act a pawnbroker's licence shall not be granted to any person except on the production and in pursuance of the authority of a certificate granted under this Act; save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, assignees, or successors, to obtain such a certificate.

Licences not to be granted without certificate.

Any licence granted in contravention of this section shall be void.

38. Certificates under this Act shall be granted by the Resident Magistrate of the district in which the applicant desires to carry on business.

Certificates to be granted by magistrates.

39. A certificate under this Act shall be in the form given in the fourth schedule of this Act, or to the like effect, and shall be in force for one year from its date.

Form and duration of certificate.

40. A person intending to apply for the first time for a certificate under this Act shall proceed as follows, to wit,—

Notice of first application.

Twenty-one days at least before the application he shall give notice by registered letter sent by post of his intention to the Resident Magistrate of the district in which he intends to carry on business, and shall in the notice set forth his name and address and shall cause a like notice to be affixed and maintained for the said period at the court of the said Resident Magistrate.

41. An application for a certificate shall not be refused, except on the following grounds, or one of them:

Grounds of refusal of certificate.

- (1) That the applicant has failed to produce satisfactory evidence of good character.
- (2) That the shop in which he intends to carry on the business of pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character.
- (3) That he has not complied with the last preceding section.

42. If any person forges a certificate, or tenders a certificate knowing it to be forged, he shall, on conviction thereof, be liable to the penalties for the crime of forgery.

Forgery of certificate.

A licence granted in pursuance of a forged certificate shall be void; and if any person makes use of a forged certificate, knowing it to be forged, he shall be disqualified from obtaining at any time thereafter a pawnbroker's licence.

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*Penalties and Legal Proceedings.*General penalty
for offences.

43. If a pawnbroker or other person is guilty of an offence against this Act, in respect whereof a specific penalty is not prescribed by this Act, he shall be liable, on conviction thereof in a court of Resident Magistrate, to a penalty not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for any term not exceeding one month.

Application of
penalties.

44. Penalties recovered under this Act, not directed to be otherwise applied, may be applied under direction of the court in which they are recovered, as follows:

- (1) Where the complainant is the party aggrieved, one moiety of the penalty may be paid to him or such other proportion thereof as the court may deem sufficient to compensate such party.
- (2) Where the complainant is not the party aggrieved, there shall be paid to him no part or such part only of the penalty as the court thinks fit.

Amends for frivolous
informations.

45. Where an information or complaint of any offence against this Act is laid or made before a court of Resident Magistrate and is not further prosecuted, or if any such information or complaint is further prosecuted, but it appears to the court by which the case is heard that there was no sufficient ground for the making of the charge, the court shall have power to award such amends, not exceeding the sum of five pounds, to be paid by the informer or complainant to the party informed or complained against for his loss of time and expenses in the matter, as to the court seem meet; and every sum so awarded shall be recoverable as penalties under this Act are recoverable.

Penalty on common
informers
compounding in-
formations.

46. If any person lodges an information for an offence alleged to have been committed against this Act by which he was not personally aggrieved, and afterwards directly or indirectly receives without the permission of the Resident Magistrate having jurisdiction, any sum of money or other reward for compounding, delaying, or withdrawing the information, he shall be guilty of an offence against this Act.

Detention of persons
offering forged
pawn-tickets, etc.

47. If any person utters, produces, shows, or offers to a pawnbroker a pawn-ticket which the pawnbroker reasonably suspects to have been counterfeited, forged, or altered, the pawnbroker may seize and detain the person and the ticket, or either of them, and shall deliver the person and the ticket, or either of them (as the case may be) as soon as may be into the custody of a constable, to be dealt with according to law.

Production of
book, etc., before
justices.

48. A pawnbroker shall at any time, when ordered or summoned by a court of competent jurisdiction, attend before the court and produce all books and papers relating to his business which he is required by the court to produce.

If he fails to do so, he shall be guilty of an offence against this Act.

49. Where a pawnbroker is guilty of an offence against this Act, any contract of pawn or other contract made by him, in relation to his business of pawnbroker, shall nevertheless not be void by reason only of that offence nor shall he by reason only of that offence lose his lien on or right to the pledge or to the loan and profit; but nothing in this section shall restrict the operation of any provision of this Act providing for the delivery of any movable property, or the restoration of any linen, apparel, goods, materials, or article to the owner, under the order of any court.

50. If any person is sued or prosecuted for anything done by him in pursuance or execution or intended execution of this Act, he may plead generally that the same was done in pursuance or execution or intended execution of this Act, and give the special matter in evidence.

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Contracts not void on account of offences.

Protection of persons executing Act.

THE FIRST SCHEDULE.

First Schedule.

Forms of Books and Documents.

I.—PLEDGE BOOK.

	of			of			Pawnbroker.		
	£	s.	d.						18
For date of Redemption.									
For Profit charged.									
For Amount of Loan.									
For No. of Pledge in the Month.									
For Name of Pawner.									
For Address of Pawner.									
For Name of Owner, if other than Pawner.									
For Address of Owner, if other than Pawner.									
For List of Articles Pawned as described on Pawn-Ticket.									

Rule.

All entries in the last five columns respecting each pledge shall be made on the day of the pawning thereof or within four hours after the end of that day.

II.—PAWN TICKET.

A.—*For loan of ten shillings or under.*

Pawned with [John Smith] pawnbroker,

[20, Plein-street, Cape Town],

this [17th] day of [March, 18],

by [Henry Williams] of [12, St John-street, Cape Town],

for the sum of [ten] shillings.

[One Black Broek Coat.]

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*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

*The pawnbroker is entitled to charge,—
 For this ticket One penny
 For profit on each two shillings or part of two shillings
 lent on this pledge for not more than one calendar
 month One penny
 And so on at the same rate per calendar month.
 After the first calendar month any time not exceeding
 fourteen days will be charged as half a month, and
 any time exceeding fourteen days and not more than one
 month will be charged as one month.

This pledge must be redeemed within twelve calendar months and seven days from the date of pledging. At the end of that time it becomes the property of the pawnbroker.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost, mislaid, or stolen, the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

B.—For loan of above ten shillings and not above forty shillings.

Pawned with [John Smith], pawnbroker,

[20, Plein-street, Cape Town],

this [18th] day of [March, 18 .]

by [Henry Williams], of [20, St. John-street, Cape Town],

for the sum of [eleven] shillings,

[One Grey Tweed Coat.]

*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

*The pawnbroker is entitled to charge,—
 For this ticket... .. One penny.
 For profit on each two shillings or part of two shillings
 lent on this pledge for not more than one calendar
 month One penny.
 And so on at the same rate per calendar month.

After the first calendar month any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

C.—For loan of above forty shillings.

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Pawned with [John Smith], pawnbroker.

[20 Plein-street, Cape Town],

this [19th] day of [March, 18],

by [Henry Williams], of 12, St. John's-street, Cape Town],

for the sum of [fifty] shillings.

[One Shooting Coat.]

*The pawnbroker is entitled to charge—

For this ticket One penny.

For profit on each two shillings and sixpence or part of two shilling and sixpence lent on this pledge for every calendar month or part of a calendar month One penny.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound to pay the value of the pledge after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration to be made before a justice of the peace, or the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

*The following is to be printed on the ticket, on the front or back, or partly on the front and partly on the back.

III.—SALE BOOK OF PLEDGES FOR LOANS OF ABOVE TEN SHILLINGS.

[Date and place of sale.]

Name and place of business of Auctioneer.

For No. of Pledge as in Pledge Book.	For date of Pawning.	For Name of Pawner.	£	s.	d.	For Amount for which Pledge sold as stated by Auctioneer.

IV.—DECLARATION WHERE PLEDGE CLAIMED BY OWNER.

TAKE NOTICE if this declaration is false the person making it is punishable as for perjury.

Unless this printed form is taken before a justice of the peace and declared to and signed and delivered back to the pawnbroker not later than the day of _____, the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, A.B., of _____, in pursuance of the Pawnbrokers' Act, 1889, do solemnly and sincerely declare that the Article [or articles] described below is [or are] my property, and that I believe they are pledged at the shop of _____

The article [or articles] above referred to is [or are] the following:—

And I, C.D., of _____, in pursuance of the same Act, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be A.B., of _____, of _____, 18 .

Declared before me, this _____ day of _____, 18 .
E. F., Justice of the Peace.

V.—DECLARATION WHERE PAWN TICKET LOST, &c.

TAKE NOTICE if this declaration is false the person making it is punishable as for perjury.

Unless this printed form is taken before a justice of the peace and declared to and signed and delivered back to the pawnbroker not later than the day of _____, the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, A.B., of _____ in pursuance of the Panbrokers' Act, 1889, do solemnly and sincerely declare that _____ pawnbroker, the article [or articles] pledged at the shop of _____ described below being _____ property, and received a pawn-ticket for the same, which has since been _____ by _____ and that the pawn-ticket has not been sold or transferred to any person by _____ or to _____ knowledge or belief.

The article [or articles] above referred to is [or are] the following:—

And I, C.D., of _____, in pursuance of the same Act, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be A.B. of _____

Declared before me, this _____ day of _____, 18 ,
E. E., Justice of the Peace.

VI.—RECEIPT.

						[Date]
Received on redemption of pledge No.	...	...	...	...	...	_____
Amount of loan	...	...	...	...	...	_____
Profit	...	...	...	...	...	_____
Total	...	...	...	...	...	_____
						[A.B.] Pawnbroker.

VII.—SPECIAL CONTRACT.

No. 36—1880.

SPECIAL CONTRACT UNDER ACT OF PARLIAMENT.

Pawned with [*John Smith,*] pawnbroker,
 [20, *Plein-street, Cape Town,*]
 this [17th] day of [*April, 18 .*]
 by [*Henry Williams,*], of [12, *St. John's-street, Cape Town,*],
 for the sum of [*forty-eight shillings,*]
 [*One Marble Clock.*]

TERMS OF THE SPECIAL CONTRACT.

* The pawnbroker charges—

For this ticket
 Profit at the rate per calendar month of
 After the first calendar month any time not exceeding fourteen
 days will be charged as half a month, and any time
 exceeding fourteen days and not more than one month will
 be charged as one month

* The following is
 to be printed on
 the ticket, on the
 front or back, or
 partly on the front
 and partly on the
 back.

The charge for storage of this pledge will be per calendar
 month, or any part of a month, in addition to the charges above mentioned.

This pledge is pawned for the period of ... † months.

† Not less than
 three.

After the expiration of that time the pledge may be sold by auction by the
 pawnbroker. But it may be redeemed by the pawner at any time before the
 day of sale.

Within three years after sale the pawner may inspect the account of the sale
 in the pawnbrokers' books on payment of ... , and receive any
 surplus produced by the sale. But deficit on sale of one pledge may be set off
 by the pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire the pawnbroker will be bound
 to pay the value of the pledge, after deducting the amount of the loan and
 profit, such value to be the amount of the loan and profit and twenty-five per
 cent. on the amount of the loan, unless otherwise agreed upon by the pawner
 and pawnbroker.

If this ticket is lost or mislaid the pawner should at once apply to the
 pawnbroker for a form of declaration to be made before a justice of the peace,
 or the pawnbroker will be bound to deliver the pledge to any person who
 produces this ticket to him and claims to redeem the same.

(Signed) [*John Smith,*] pawnbroker.

(Signed) [*Henry Williams,*] pawner.

THE SECOND SCHEDULE.

Second Schedule

Profits and Charges allowed to Pawnbrokers.

PART I.—PROFIT ON LOAN.

A. On a loan of forty shillings or under—

For any time during which the pledge remain in pawn not
 exceeding one month, for every two shillings or fraction
 of two shillings lent One penny.

For every month after the first, including the current month
 in which the pledge is redeemed, although that month is
 not expired, for every two shillings or fraction of two
 shillings lent One penny.

Provisions.

1. If the pledge is redeemed before the end of the first fourteen days after
 the expiration of any month, the pawnbroker shall, in respect of those fourteen
 days, be entitled to take half of the amount which he would be entitled to take
 for the whole month.

No. 36--1889.

B. On a loan of above forty shillings—
 For every month or part of a month for every sum of two shillings and sixpence or fraction of a sum of two shillings and sixpence One penny.

PART II.—CHARGE ON PAWN-TICKET.

Where the loan is ten shillings or under One penny.
 Where the loan is above ten shillings... .. Two pence.

PART III.—CHARGE ON INSPECTION OF SALE BOOK.

For the inspection of the entry of a sale One penny.

PART IV.—CHARGE ON FORM OF DECLARATION.

Where the loan is five shillings or under
 Where the loan is above five shillings One penny.

Rule.

This sum is to be paid by the applicant at the time of application.

Third Schedule.

THE THIRD SCHEDULE.

Regulations as to Auctions of Pledges above Ten Shillings.

1. The auctioneer shall cause all pledges to be exposed to public view.
2. He shall publish catalogues of the pledges stating—
 - (1) The pawnbroker's name and place of business.
 - (2) The month in which each pledge was pawned ;
 - (3) The number of each pledge as entered at the time of pawning in the pledge book.
3. The pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker.
4. The auctioneer shall insert in some public newspaper circulating at the place where the pawnbroker carries on business an advertisement giving notice of the sale, and stating—
 - (1) The pawnbroker's name and place of business ;
 - (2) The months in which the pledges were pawned.
5. The advertisement shall be inserted on two several days in the same newspaper, and the second advertisement shall be inserted at least three clear days before the first day of sale.
6. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, sold by auction, shall be sold by themselves, and without any other goods being sold at the same sale, four times only in every year (that is to say), on the first Monday in the months of January, April, July, and October, and on the following day or days, if the sale exceeds one day, and at no other time.
7. Where a pawnbroker bids at a sale the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale ; and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.
8. The auctioneer shall, within fourteen days after the sale, deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledges of that pawnbroker, filled up with the amounts for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.
9. The pawnbroker shall preserve every such catalogue for three years at least after the auction.

THE FOURTH SCHEDULE.

No. 37—1889.

Fourth Schedule.

Forms of Certificates of Magistrates.

I, [here insert description of the Magistrate] do hereby certify that I do authorise the grant to A.B., of _____ in the division of _____ of a licence to carry on the business of a pawnbroker at _____ day of _____ 18 _____ Witness my hand this _____ E.F., Resident Magistrate for _____

No. 37—1889.]

[August 13, 1889.

ACT

To provide certain Relief for Lessess of Crown Lands under the Act No. 19 of 1864, and to extend in certain cases Relief granted under "The Quitrents Relief Act, 1887."

BEIT 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. Notwithstanding anything to the contrary contained in the eighteenth section of the Act No. 15 of 1887, commonly called the "Crown Lands Disposal Act, 1887," it shall be lawful for the Commissioner of Crown Lands and Public Works, upon any application made hereafter and on or before the first day of May, 1890, for relief under this section by any holder on lease of Crown Lands under the Act No. 19 of 1864, to entertain such application, and if after due inquiry and consultation he shall be satisfied that the application is deserving of consideration, it shall be lawful for the Commissioner to fix a price less than a sum, which reckoned as a principal sum would after the rate of six pounds sterling per hundred pounds, produce an amount of interest equal to the rent reserved on such lease, and such lesser price, when approved of by resolutions of the Legislative Council and House of Assembly, but not before, shall be deemed for all legal purposes to be the price fixed under the said eighteenth section of the said Act.

Commissioner, with approval of Parliament, may fix price lower than is provided by section 18 of Act No. 15 of 1887, in case of purchase by lessee under Act No. 19 of 1864, before 1st May, 1890.

2. In case any land board appointed under the fourth section of the Act No. 27 of 1887, commonly called "The Quitrents Relief Act, 1887," shall on inquiry and investigation into the circumstances of any case of application for relief under the said Act, have found that any part of the original quitrent has been previously to such application redeemed, and if such board has heretofore made a valuation of the true annual value of the quitrent upon the understanding that the redemption of part of the original quitrent should have been considered in favour of the quitrent holder, it shall be lawful for the Governor to substitute for the quitrent originally set forth in the title, the quitrent

Previous redemption of part of original quitrent when considered by land board under section 4 of Act No. 27 of 1887, may be taken into account in favour of applicant for redemption under that Act.

No. 39—1889.

determined upon such valuation, in place and stead of the quitrent determined upon any valuation made of the part not redeemed, without reference to the previous redemption of a part of the original quitrent.

Short title.

3. This Act may be cited as the "Crown Lands and Quitrent Relief Act, 1889."

No. 38—1889.]

[August 13, 1889.

ACT

To provide for the Salary of Her Majesty's High Commissioner for South Africa.

[Repealed by Act 2, 1902.]

No. 39—1889.]

[August 13, 1889.

ACT

To extend and Define the Jurisdiction, Power and Authority of the Table Bay Harbour Board with regard to Bye-laws framed under the Nineteenth Section of the "Explosives Act, 1887."

[Repealed by Act 36, 1896.]

No. 40—1889.] (1)

[August 16, 1889.

ACT

To Consolidate and Amend the Law with regard to the Constitution, Powers, and Functions of Divisional Councils.

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:—

DIVISION I.

PART I.

PRELIMINARY.

1. This Act may be cited for all purposes as “The Divisional Councils Act, 1899.”

Short title.

2. The laws set forth in the Schedule A to this Act, to the extent therein set forth, together with so much of any other law as may be repugnant to or inconsistent with any of the provisions of this Act, shall be and the same are hereby repealed.

Laws repealed set forth in Schedule A.

3. Notwithstanding the repeal of the said laws, they shall be deemed to continue in force in any division until the date of the first meeting of a council elected under the provisions of this Act for such division, and all rights or liabilities theretofore vested in or incurred by the council of such division shall be deemed and taken to pass by succession to, in favour of, or against the council elected under this Act in place and stead of such former council, and to be in all respects enforceable by and against such council elected under this Act as though such council were the former council.

Effect of repeal stayed pending election of new council, and new councils to succeed the old.

¹ Amended by Act 18, 1898 (p. 3904). See Act 27, 1892 (p. 3102), making provision for ballot at elections. See also Acts 11, 1893, Outspans (p. 3151); 30, 1899, § 17, Native Locations (p. 4146).

As to rating powers and grants in aid for Educational purposes see § 72, 73 and 76, Act 35, 1905 (p. 4940.)

As to rating powers under Public Health Act, see Act 23, 1897 (p. 3755).

See also the Special Indemnity Act 10, 1902 (p. 4371). This Act provides that the Divisional Councillors of the Cape, Port Elizabeth and East London, shall continue in office until 1st November, 1905, before which date a fresh election to be held and thereafter triennial elections. With respect to other Divisional Councils' Voters' rolls to be framed before 1st February, 1903, and thereafter every third year before 1st July. Elections to be held thereupon. Councillors so elected to vacate office on 1st November, 1905, and fresh elections to be held every third year thereafter.

No 40—1889.
 Interpretation of
 terms.

4. In this Act the following terms shall, unless another meaning appears clearly from the context to be intended, bear the following meanings:—

“Division” shall mean “fiscal division”;

“Council” shall mean the divisional council of any division heretofore or hereafter by law locally constituted and defined, including divisions of all provinces or territories annexed to and forming portion of this Colony.

“Councillor” shall mean divisional councillor or member of the council of a division;

“Voter” shall mean a person by law entitled to vote in the election of a councillor;

“Ratepayer” shall mean a person liable to the payment of rates in any division;

“Meeting” shall mean a meeting of the council of a division;

“Contractor” shall mean every person who directly or indirectly has a pecuniary or valuable interest in any money or other valuable consideration paid or given, or to be paid or given, by any council for services performed, for work or labour done, or for any goods or things of whatsoever nature or kind bought or hired by or supplied to such council;

“Field-cornet” shall mean, in connection with any election for councillors, such a person as is mentioned in the thirty-seventh section of this Act, as well as a field-cornet, and shall include the Resident Magistrate, and the Civil Commissioner or other person in the cases provided for by the thirty-sixth and thirty-eighth sections;

“Polling Officer” shall mean any person duly authorised to take the poll at any election under this Act;

“Divisional Road” shall include proclaimed branch roads.

“Construction” shall in the case of main roads, save when the context indicates the contrary, mean the first making of a main road over ground where there was no main road before, and shall include all work necessary to be done for completing such road down to the opening thereof for traffic; and the terms “maintenance,” “preservation,” and “keeping in repair” shall, in the case of all roads, include all work necessary to be done to any road already opened for traffic, and in order to put, keep, and have it in good and substantial repair and in condition fit for use and traffic.

DIVISION II.

PART I.

CONSTITUTION OF COUNCILS AND NUMBER OF COUNCILLORS.

5. Every division of this Colony, except the division of the Cape, shall, for the purpose of this Act, be divided into six subdivisions, to be called districts.

Six districts in all
 divisions except
 the Cape division.

6. It shall be lawful for the Governor, by proclamation in the *Gazette*, to fix and prescribe and to alter when necessary the limits of each of the six districts of every division, in such manner as shall, after investigation, be found most convenient and advantageous, subject to the following conditions:---

- (a) Every such district shall (except as hereinafter excepted) be formed of one field-cornetcy or of more than one, and no field-cornetcy shall be divided for the purpose of forming any such district.
- (b) The districts of every division (except the division of the Cape) shall be distinguished by numbering the same respectively, beginning at number one and proceeding to number 6.
- (c) As often as any division shall contain fewer field-cornetcies than six, then it shall be lawful for the Governor to divide such last-mentioned division into six districts, in whatever way shall appear to be most convenient; and every such district shall be as legally constituted as if it consisted of an undivided field-cornetcy.

7. Every council (except the council of the Cape division) shall be composed of members, to be styled divisional councillors, who shall be elected as follows:---

Each of the five districts, other than the district in which the office of the Civil Commissioner for the division shall be situated, shall elect one councillor, and the district in which the said office shall be situate shall elect:

- (a) One councillor, if the value of the rateable property for the purposes of this Act within the said district, according to the valuation roll for the time being of the division, shall be less than double the value of the rateable property as aforesaid within the other five districts divided by five;
- (b) Two councillors, if the first-mentioned value shall be double but less than treble the said value of the other five districts divided as aforesaid.
- (c) Three councillors, if the first-mentioned value shall be treble or more than treble the said value of the other five districts divided as aforesaid.

8. For the purpose of this Act, the division of the Cape shall include the municipalities of Cape Town and of Green Point and Sea Point, according to their respective limits for the time being.

9. The division of the Cape shall, for the purpose of this Act, be sub-divided into nine districts, instead of six, and the council of the said division shall consist of fourteen members to be styled "divisional councillors," instead of eight.

10. The division of the Cape, exclusive of the municipalities of Cape Town and Green Point, shall be divided into eight districts, numbered from one to eight, and the said municipalities conjointly shall form the ninth district of the said division, and shall be styled "The Cape Town and Green Point District."

No. 40-1889.

Limits of districts to be fixed or altered by proclamation.

Each district to comprise one or more field-cornetcies and to be distinguished by a number. If not sufficient field-cornetcies in division, districts to be formed as convenient.

Number of councillors to be elected for each council.

Cape division includes Cape Town and Green Point and Sea Point Municipalities.

Nine districts in Cape division, and fourteen councillors of its council.

Cape Town and Green Point and Sea Point Municipalities to form the ninth district of the Cape division.

No. 40-1889.

The Cape Town and Green Point district to elect six councillors.

11. Of the fourteen councillors constituting the council of the Cape division, six shall be elected by the Cape Town and Green Point district, and one by each of the eight other districts contained in the said division.

PART II.

ALTERATION AND BETTER DEFINITION OF BOUNDARIES OF ADJOINING DIVISIONS.

Governor may, on representation by and after agreement between councils of adjoining divisions, declare new boundaries between such divisions.

12. Whenever any two or more councils shall represent to the Governor that the boundaries of their respective divisions, where the same adjoin each other, are inconvenient or are not sufficiently defined, and require to be altered and duly defined, and shall agree upon and properly describe the proposed new boundaries, the Governor may, if he see fit, declare such new boundaries, to be the future boundaries of the said divisions; and thenceforth such boundaries shall be the boundaries of such divisions for all purposes.

In cases of disputes as to boundaries commissioners may be appointed to decide between councils of adjoining divisions.

13. Whenever any dispute or difference shall arise or exist between any two councils of adjoining divisions as to the actual position of the boundary or any portion of the boundary between the said divisions, or in any case where the boundaries between adjoining divisions are inconvenient, and one of the councils of such divisions shall claim that such boundaries shall be altered, such dispute or difference or claim as the case may be, shall if either council so desire, be submitted for decision to a commissioner or commissioners who shall be appointed for that purpose, and who shall make such survey, search, or inquiry as shall be proper and necessary to enable him or them to decide such dispute, difference or claim.

Act No. 6 of 1882 to apply to proceedings of commissioners as though they were arbitrators.

14. Whenever possible, the provisions of "The Lands and Arbitration Clauses Act, 1882," and especially of the second and third sections of the said Act, shall apply to proceedings instituted and carried on under the provisions of the last section in same manner as if the commissioners were arbitrators, save and except that when two commissioners are appointed by the respective councils, a third shall be appointed by the Commissioner of Crown Lands and Public Works.

Commissioners to report their decision to the Governor, who may declare boundaries accordingly.

15. The commissioner or commissioners appointed under the provisions of this Act shall determine in detail the definition of the boundary or portion of boundary with regard to which the dispute or difference has arisen or exists, or a claim has been made as aforesaid, and shall draw up a report embodying the decision arrived at, defining or altering such boundary or portion of boundary, and thereupon the Governor, upon consideration of such report, may, if he see fit, declare such boundary or portion of boundary in accordance with such decision; and thenceforth the boundary or portion of boundary so declared shall for all purposes be deemed and taken to form the boundary between the said divisions.

16. When any portion of a division shall, under the operation of this Act, be separated from that division and added to any other division, the following provisions shall apply:—

- (1) In case any rates lawfully levied by the council of the division to which the separated portion belonged shall be due or unpaid at the date of such separation, such rates shall be recoverable by the council of the division to which such portion has been added, as if the same had been assessed by such lastmentioned council; and a certificate of the chairman of such firstmentioned council shall be *primâ facie* evidence of the amount of rate due and of the assessment thereof in any action for the recovery of any such rate.
- (2) In case the council of the division to which the separated portion belonged shall, before the day of separation, have lawfully raised any sum of money on loan upon the credit of any rates assessed or to be assessed by such council, or shall have incurred any lawful debt upon the faith of such rates, then the council of the division to which such portion has been added shall be liable to pay to the council of the other division an equitable portion of such loan or debt to be agreed upon between the respective councils, or, failing agreement, to be determined by arbitration.
- (3) The Civil Commissioner of the division to which the separated portion belonged shall make out and transmit to the Civil Commissioner of the division to which such portion has been added a list of any voters for the purposes of this Act resident in such portion, and the list so transmitted shall be added to the list of voters for the purposes of this Act for any field-cornetcy in which such separated portion shall be incorporated, or shall be added to the list of such voters of that field-cornetcy if the separated portion shall be constituted a separate field-cornetcy; and the lists of voters for such firstmentioned division as reduced, and of such lastmentioned division as increased, shall respectively form the lists of voters for the purposes of this Act for such divisions.

No. 40—1889.
Provisions as to rates, loans, debts, and voters' lists, in cases where a portion of one division is separated from it and added to another.

PART III.

QUALIFICATION, &c., OF ELECTORS; MAKING OF (1) VOTERS' ROLL, &c.

17. The following persons shall be entitled to have their names placed on the voters' roll of any division for the purposes of this Act, and all persons whose names appear on such voters' roll and no other persons shall be entitled to vote at any election of councillors for such division:

Qualification of voters in the election of councillors.

¹ See § 6, Act 10, 1902 (p. 4368), fixing 1st February, 1903, as date for framing voters' roll in consequence of war and rebellion and thereafter every third year on or before the 1st July (Divisions of Cape, Port Elizabeth and East London excepted).

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- (1) Male persons of full age liable for the payment of Divisional Council rates as owners or lessees under this Act of immovable property within such division which is not in occupation of any occupier entitled to vote under this Act;
- (2) Male persons of full age who shall be occupiers, and shall have been in occupation for not less than twelve months previous to the date of the farming of the voters' roll, of any immovable property situated within the division and valued according to the assessment roll in force in the division at not less than seventy-five pounds:

Provided that

- (a) In respect of any unoccupied property at the time of the making of the voters' roll in any division, liable to the payment of Divisional Council rates, the owner thereof being a male of full age, shall be entitled to be registered as a voter on the said roll and to vote in place and stead of any occupier so long as the said roll shall be in force.
- (b) In case two or more persons of full age shall be and have been for not less than twelve months as aforesaid in joint occupation of any immovable property in any division, then and in that case if the value of the said property according to such assessment roll as aforesaid when divided by the number of such joint occupiers, shall be equal to not less than seventy-five pounds for each person, each of such joint occupiers who may be male persons shall be entitled to be registered as a voter and to vote, but if such value so divided shall be less than seventy-five pounds for each person, then and in that case such property shall for the purposes of this section be deemed unoccupied property.
- (c) Every person entitled to vote in any district which is by this Act empowered to elect more than one councillor, shall be entitled to give one vote and no more for each of any number of candidates at such election not exceeding the number to be elected for such district.

18. The following persons shall not be entitled to vote at any election of divisional councillors:—

- (a) All persons who have not paid all sums due from them in respect of any Divisional Council rates made payable three months before the day of voting.
- (b) 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.
- (c) Persons whose names do not appear upon the voters' roll for the time being.

19. The secretary of every council shall, on or before a day to be fixed by the Governor before the taking effect of this Act by notice in the *Gazette*, and thereafter before the first day of July

Special disqualifications of electors.

Triennial list of voters to be framed by the secretary of council.

in every (1) third 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 (2) list shall show—

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- (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, lessee or occupier.

20. The secretary 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 council 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 such office, and at each appointed place as aforesaid, during office hours, for a period of fourteen 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.

Completion of list to be notified by advertisement, list to lie open for inspection, and day to be notified for hearing claims and objections.

21. The 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.

Chairman and two councillors to hold court on day notified, with power to adjourn.

22. The said 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

Instructions to chairman and councillors holding court.

- (1) Insert the name of every person who shall prove to their satisfaction that he is entitled to be inserted in the voters' roll, 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, 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.
- (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.

¹ In Divisions where, in consequence of war and rebellion, no roll made, such roll to be made on or before 1st February, 1903, and thereafter before 1st July in every third year. See Act 10, 1902 (p. 4368).

² But see § 15 of the Liquor Licensing Act 25, 1891 (p. 2899). Voters within Municipal or Village Area to be grouped together.

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Revised roll to be certified by chairman and to continue in force till new roll made and revised.

Certified copy of roll to be *prima facie* evidence.

Omission of formalities prescribed by sec. 20 not to invalidate proceedings or roll.

Governor may if prescribed time has elapsed appoint a day for holding court of revision.

Omission or non-completion of preparation or revision of roll rectified by direction of Governor at request of council.

Qualification of councillors.

Lessees under Act No. 19 of 1864 deemed to be owners.

23. The revised roll, certified by the chairman of the council, shall be the voters' roll for the division, and shall continue in force, and shall not be added to or otherwise altered until a new roll has been made for the division and revised under the provisions of this Act, whether the same be duly made at the time appointed or afterwards.

24. Any printed or written copy, purporting to be a copy of the voters' roll of any division or field-cornetcy, signed by the chairman of the council, shall be *prima facie* evidence of such roll and of the contents thereof.

25. 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.

26. 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.

27. 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 division, 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 *Gazette*, such omission or non-completion shall be rectified, and such list validated in accordance with the terms of such order.

-PART IV.

QUALIFICATION, &c., OF COUNCILLORS.

28. Every male person whose name shall appear upon the voters' roll of any division for the purposes of this Act, and who shall be registered in the land registers of this Colony as the owner of immovable property situated in such division, which shall at the time of any election under this Act be valued for assessment for rating purposes at an amount not less than £500 sterling, shall (except as is hereinafter excepted) be eligible to be elected by any district into which such division shall be sub-divided as aforesaid, to be a councillor for such district of the council of such division: Provided

- (a) That all lessees of Crown land under the Act No. 19 of 1864 shall, for the purposes of this section only, be deemed to be registered owners of land valued in the proportion of £100 sterling for every amount of £6 sterling annually payable by way of rent in respect of the land leased under the said Act, and

(b) That as often as any such immovable property or land so valued as aforesaid shall be jointly owned or leased by more persons than one, every joint owner or lessee shall be eligible to be elected as aforesaid in case the value of such property, when divided by the number of the joint owners or lessees thereof, shall yield the sum of £500 sterling; but that in case such joint owners or lessees shall, by the land registers aforesaid or by the lease, appear to be entitled in unequal shares, no such joint owner or lessee shall be eligible, in respect of such share only to be elected unless his share shall, regard being had to the total value of the property, yield a sum not less than £500 sterling.

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29. No person whose estate shall be under liquidation, under assignment, or under inspection on behalf of his creditors, no insolvent who shall not have obtained his rehabilitation, no alien who has not been naturalised, 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.

Disqualification of certain persons for election or continuing as councillors.

30. No person holding any office or place of profit under Government, or under or in the gift of the council of any division, or concerned in or participating in the profit of any contract with any council, 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 that council; 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 council of which he is a member shall offer to sell by public competition.

Further disqualifications.

PART V. (1)

MODE OF ELECTION OF COUNCILLORS.—CORRUPT PRACTICES AT ELECTIONS, &c.

31. On a day (1) to be appointed by the Governor by notice in the *Gazette* after the taking effect of this Act, and thereafter on or before a day to be fixed by the Civil Commissioner of every division, such Civil Commissioner shall, by a notice in the *Gazette*, in the English and Dutch languages, call upon the voters in the respective districts composing such division, to nominate a cau-

Notice in *Gazette* calling for nomination of councillors.

¹ See Act 27, 1892 (p. 3103), and Act 10, 1902 (p. 4369), making provision in consequence of war and rebellion for a new election. Such Councillors to go out of office on 1st November, 1905, a fresh election to be held and triennial elections thereafter (Divisions of Cape, Port Elizabeth and East London excepted).

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didate or candidates for every such district respectively, and such notice shall be in substance as follows:—

Divisional Council for the Division of _____

Form of Notice.

The voters in several districts of the division of _____ are hereby invited to nominate, in writing, candidates for the representation of such districts respectively in the divisional council at the ensuing election. Every candidate must be nominated by not fewer than five persons entitled to vote for the district, or otherwise his nomination will be null and void, in district No.* _____ (which is entitled to return _____ members) each candidate must be nominated separately, by not fewer than five voters. No voter can sign more nominations than one, on pain of having his name erased from all the nominations in which it appears, and considered as if never placed there. All nominations must be received by the undersigned not later than the _____ day of _____, 18—, and any nomination received later than that day will be null and void. Every voter signing any such nomination must state his place and residence.

Dated this _____ day of _____, 18—.

(Signed) A. B., Civil Commissioner
for the Division of _____

Nominations received up to day to be named in notice, not less than 30 days after date of notice.

Publication of notice in newspaper and in other ways.

32. The day to be inserted in any such notice as aforesaid as that on or before which all nominations must be received, shall be a day not less than thirty days after the date of such notice.

33. Besides publishing such notice as aforesaid in the *Gazette*, the Civil Commissioner shall publish the same in some newspaper, if any, published in his division; or should there be no such newspaper, then in any newspaper circulating in such division and shall post a copy of such notice inside and outside of every court of Resident Magistrate in such division; and shall, by such other means as the then existing council shall determine, make known such notice or the substance thereof: provided that no failure to comply with the provisions of this section or any of them shall vitiate or in any way affect any election or other proceeding under the provisions of this Act.

Form of nomination in either English or Dutch.

34. The nomination of a candidate for any district may be written in English or Dutch, and shall be in substance as follows:

We, the undersigned, voters for district No. _____ do hereby nominate A. B., of _____, in this division, to become a councillor of the divisional council of this division for the said district No. —. Dated this _____ day of _____, 18—.

(Signed) C. D. _____ (name place of residence).
E. F. _____
G. H. _____
I. J. _____
K. L. _____

&c., &c., &c.

*In the notice to be given by the Civil Commissioner of the Cape, instead of "in district No. _____," say "in the Cape Town, and Green Point district."

Provided

- (a) That as often as any person signing any such nomination shall be a registered voter residing in the district to which such nomination relates, his omission to state his place of residence shall not vitiate or affect the validity of his signature.
- (b) That although the Civil Commissioner may deem a candidate to be ineligible he shall nevertheless receive the said nomination and make a record in writing of such special reception and his reasons for deeming the candidate to be ineligible.
- (c) That no informality in any such nomination shall vitiate the same so long as the requisite number of competent voters shall have signed the same, and so long as the names of the candidate or candidates, and the district for which they are nominated, shall be discoverable from the terms of the nomination.

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Lack of certain formalities not to vitiate nomination. Nomination of ineligible candidate to be received, and disqualification recorded by Civil Commissioner.

35. No person not nominated as aforesaid by five voters or upwards shall be eligible to be a candidate or to be elected as a councillor for any district of any division, and no person duly nominated with his consent shall have any power to withdraw his name: Provided that if the same person shall be nominated for more districts than one, he shall be deemed to be a candidate for each district for which he shall have been so nominated.

Nomination by not less than five voters: name of person nominated with his consent not to be withdrawn: candidate may be nominated for more than one district.

36. The poll for each district in any division (except the Cape Town and Green Point district in the division of the Cape) shall (except as hereinafter in this and in the next succeeding section is excepted) be taken by the field-cornet (who shall be the polling officer) at his residence, in case such district shall be constituted by a single field-cornetcy; and as often as any district shall comprise more field-cornetcies than one, the poll shall be taken by the respective field-cornets of such field-cornetcies, each at his own residence in his own ward: Provided that the poll for every field-cornetcy in which there shall be a court of Resident Magistrate shall be taken by the Resident Magistrate at his court-room: And provided

Provision for the taking of polls in different districts: field-cornets and in certain cases Resident Magistrates to be polling officers.

- (a) That as often as any Resident Magistrate shall not be himself the Civil Commissioner of the division in which such court-room shall be situated, the Civil Commissioner shall proceed, in regard to such Resident Magistrate and the poll to be taken by him, precisely as if such Resident Magistrate had been a field-cornet whose duty it was to take such poll.
- (b) That as often as the Civil Commissioner shall be himself the Resident Magistrate to take the poll in any field-cornetcy, he shall give the notice in the third sub-division of the fortieth section of this Act described, and conform (as shall also such Resident Magistrates as are not

Special provisions, as to the duties of different polling officers; as to the appointment of polling places additional to or in lieu of the field-cornet's residence; as to the place where voters must vote.

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Civil Commissioners) to the provisions of the Act regulating the taking of the poll by field-cornets.

- (e) That it shall be lawful for the Governor to appoint one or more additional polling places in any field-cornetcy, and for the Civil Commissioner to appoint such polling officers as may be required to take the polls thereat.
- (d) That as often as the residence of the field-cornet of any ward shall be so situated as to be remote from, or difficult of access by, the greater number of the voters in such ward, the Civil Commissioner may appoint some more convenient place for the taking of the poll in such ward.
- (e) That no voter shall vote except in the field-cornetcy in which such voter stands registered.

Appointment of polling officer in place of field-cornet in certain cases.

37. The Civil Commissioner of each division shall, previous to any election of members of any council, appoint, in writing, some fit and proper person in each ward who shall be the polling officer to act in place and stead of such field-cornet in case, by reason of illness, absence, or other sufficient cause, such field-cornet should not in person be able to take the poll for a member or members in such ward; and the poll taken by any such person shall be as legal, valid, and effectual as if the same had been taken by such field-cornet.

Polling place and polling officer in the Cape Town and Green Point district of the Cape division.

38. The poll for the Cape Town and Green Point district in the Cape division shall be taken at the Town-house, in Cape Town, or at some other convenient place or places to be fixed by the Governor by notice in the *Gazette*, by the Civil Commissioner of the Cape division, or by such other person or persons as the Governor shall by such notice nominate and appoint.

Notice in *Gazette* of names of candidates duly nominated, notice of poll in case of poll required.

39. As soon as may be after the day fixed by the notice in the thirty-first section of this Act mentioned as the latest day upon which nominations can be received, the Civil Commissioner shall, by notice in the *Gazette*, give notice of the names of the candidates nominated for each district respectively, and the place, day, and hour at or upon which the poll is to take place: Provided

- (a) That if in any case no greater number of candidates shall have been nominated for any district than the number to be then elected, no poll in or for such district shall take place, and the candidate or candidates so nominated shall be deemed to be duly elected.
- (b) That the notice in this section mentioned shall name the districts, if any, for which no poll is to be taken, and the candidate or candidates elected for the same.
- (c) That besides publishing such notice in the *Gazette*, the Civil Commissioner shall make it known by such other means as are in the thirty-third section of this Act set forth, which section shall apply to the notice in this section mentioned as fully as if the same were herein again repeated.

40. The Civil Commissioner shall, not less than seven days before the day named by him in the notice in the last preceding section mentioned for the taking of the poll in any particular field-cornetcy, deliver or cause to be delivered to the polling officer the documents or papers following, that is to say:

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Documents and papers to be delivered to polling officers for the purpose of taking polls.

- (1) A paper writing containing the names of the candidates nominated in manner aforesaid for the district in regard to which the poll is to be taken.
- (2) A list, written or printed, of the voters in such field-cornetcy whose names are on the voters' roll for the purposes of this Act,—the said list to be certified under the hand of the Civil Commissioner to be correct.
- (3) A notice, legibly written, ready to be signed by the field-cornet, and which he is required to post at his residence or office, which notice shall be, in substance, as follows:—

Division of ———, *District No.* ———.

Notice is hereby given that a poll for the (member or members, as the case may be) of the divisional council for the above district will be held at this place (or at ———) on the ——— day of ——— next, opening at eight o'clock in the morning and closing at five o'clock in the afternoon. The candidates nominated for the district are the following:

A. B.
C. D.
E. F.
&c., &c.

All votes given for any person except one of the above named persons, will be thrown away.

Dated this ——— day of ———, 18—.

- (4) A number of pages of ruled paper calculated to be sufficient to contain the names of the voters signing one after another on each successive line. Each page to have at the top, legibly written, name of one candidate, and but one, and every candidate to have a number of pages reckoned to prove sufficient for the names of those who will vote for him.
- (5) A printed paper containing the several sections of this Act, from the twenty-eighth to the forty-ninth, both inclusive, in the English and Dutch languages.
- (6) A printed paper containing the form of solemn declaration to be made by the field-cornet, as such form is hereinafter in the fifty-second section set forth.

41. The field-cornet shall, forthwith upon the receipt of the documents or papers in the last preceding section mentioned, fill in at the foot of the notice in the third sub-division of the said section set forth, the date when he received the same, and then sign such notice, and post the same for general information at

Notice of poll to be posted by polling officer, but omission not to void poll.

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some conspicuous place at or near his residence or office: Provided that no neglect or failure to comply with any of the provisions of this section shall render void the poll to which such notice relates.

Polling hours 8
a.m. to 5 p.m.

42. The poll at every polling place in any district shall open at eight o'clock a.m. and close at five p.m., before or after which hours respectively no votes shall be received.

Candidates may
be represented at
polling place by
one agent, who
must deliver au-
thority in writing
to polling officer.

43. Any candidate may be present or may appoint in writing one agent to represent him at any polling place for the purpose of seeing that the votes are fairly taken and recorded. In case an agent be appointed, the polling officer shall require such agent to deliver to him for record his authority in writing to act, and if such agent shall neglect or refuse so to do, the said polling officer shall not be at liberty to recognise his agency.

Manner of voting ·
voter to sign his
name or make his
mark, on the paper
headed by the
name, of the candi-
date for whom he
desires to vote.

44. The manner of voting shall in substance be this: The polling officer shall ascertain that the person coming to vote is a registered voter entered upon the list of voters, and having ascertained that such person is so entered, the polling officer shall ask for whom he votes. When the voter has named the candidate for whom he intends to vote, the polling officer shall lay before the voter one of the ruled pages received by him, having at the top the name of that candidate, and the voter shall, if able and willing to do so, write, in the presence of the polling officer, his name upon the utmost vacant line. Should the voter be unable or unwilling to write his name, he may, in the presence of the field-cornet, make his mark, in which case the field-cornet, or some other person in the polling officer's presence, shall write the christian name and surname of the voter, and the voter shall touch the top of the pen whilst the person who writes his name makes a cross (x) between the christian name and the surname. The words "his mark," above, below, or in connection with this cross shall not be necessary, nor the signature of any person as a witness to the making of such mark.

Manner of voting
where more than
one candidate to be
elected.

45. As often as the district for which any poll is taken under this Act shall be entitled to elect more than one member the manner of voting shall be the same as that in the last preceding section described, except that there shall be laid before the voter for his signature ruled papers, as aforesaid, bearing the names of such candidates not exceeding the number of members to be then elected, as the voter shall have named as the candidates for whom he votes.

Provision for cor-
rection of mistake
in voting on the
wrong paper. In
the absence of such
mistake vote can-
not after signature
be withdrawn.

46. If the field-cornet shall by mistake lay before any voter a paper headed by another name than the name of the candidate named by such voter, and such voter's name shall be affixed to such paper before the mistake shall have been discovered, then the name of such voter, in case before leaving the polling-room he shall so desire, shall be struck out of that paper, and he shall be at liberty to sign another paper headed by the name of the

candidate originally named by such voter; but no voter who shall have once affixed his name to a paper headed by the name of the candidate originally named by him shall be competent afterwards, upon an allegation of a mistake or for any other reason, to withdraw his vote: Provided, however, that a voter may, after naming a candidate as the candidate for whom he votes but before he has finished signing his name or making his mark to a paper headed by the name of that candidate, correct his error, or change his purpose, and vote, as aforesaid, for another candidate.

47. When any person comes to vote, the polling officer shall as aforesaid see that such person is a voter named upon the list of voters received from the Civil Commissioner, and unless his name shall be found upon such list, shall refuse to receive his vote: Provided that when and as often as the identity of any voter shall be established, and it shall be made to appear to the field-cornet that he is really and truly the person meant by the name upon the said list, no omission in the name upon the list of one or more of the christian names of such voter, and no error in the spelling of any christian name or surname of such voter, whether the error be in the spelling of the name upon the list, or in the spelling of the name by the voter, shall destroy or affect the validity of any vote, so long as the surname as written by or for the voter, shall be of the same sound with the surname upon the list, or so long as the surname as written by or for the voter, although not of the same sound with the surname upon the list, shall be a known corruption of that surname, or the name upon the list shall be a known corruption of the surname as written by or for the voter.

48. At any election the polling officer shall if he sees fit or if required to do so by any candidate or his duly authorised agent put to the person tendering his vote any of the questions following:—

- (1) Are you the person whose name appears upon the list of voters received from the Civil Commissioner of this division for the purposes of this election?
- (2) Have you already voted at this election for this district?
- (3) Have all sums due and payable by you in respect of Divisional Council rates made payable 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 entitled or permitted to vote.

Every person who shall wilfully make a false answer to any of the questions aforesaid, or who shall poll or attempt to poll 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.

No vote to be received unless voter's name found on list, but certain errors in spelling, &c., in the list not to debar voter from voting if identity established.

Questions which may be put by polling officer to person tendering vote, and which must be duly answered when put.

Penalty for wilful false answer, or for voting more often than permitted by law.

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No voter required to answer other questions, and if prescribed questions answered satisfactorily voter to be entitled to vote.

49. 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 said list, 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.

Adjournment of poll in case of interruption or obstruction at any polling place.

50. 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.

Duties of polling officer at close of poll.

51. As soon as may be after the close of the poll at any polling place, the polling officer shall sign his name at the foot or on some other part of every separate leaf or sheet containing the names of voters who have voted, and shall cast up the number of votes given for each candidate for whom votes shall have been given, and shall put down in writing, one after another, upon a separate paper, the names of the candidates, and opposite to each name the number of votes given for that candidate, and should any candidate have received no vote, shall write opposite his name the word "none": and the paper containing the statement of such numbers, signed in attestation of its correctness by the polling officer and by one other person, being an owner of fixed property in the division, who shall also cast up the votes, shall be carefully preserved by such polling officer until he shall know that the parcel mentioned in section fifty-three has been received by the Civil Commissioner.

Solemn declaration to be taken by polling officers.

52. The polling officer shall at the same time in the presence of the person who shall have signed the paper in the last preceding section mentioned, sign a solemn declaration, under the Ordinance No. 6, ⁽¹⁾ 1845, being the solemn declaration mentioned in the sixth sub-division of the fortieth section, and which solemn declaration shall be in substance as follows:

Solemn Declaration.

I, A.B., do solemnly and sincerely declare that I have taken the poll referred to in the accompanying polling papers, to the best of my ability, fairly and impartially, and without favour or prejudice in regard to any candidate, and that the accompanying polling papers contain a true statement, to the best of my knowledge, of the votes

¹ Repealed by Act 18, 1891 (see § 9).

given at the said poll. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits."

No. 40 1889.

Declared this _____ day of _____ 18__

A.B.

Witness: C.D.

Provided that every solemn declaration, when so signed and witnessed as aforesaid, shall be of the same force and effect as if it had been declared before a Resident Magistrate or Justice of the Peace.

53. As soon as the solemn declaration aforesaid shall have been signed and witnessed, the polling officer shall carefully and securely make up into a parcel all the polling papers relating to the poll just taken, together with the said solemn declaration, and shall address the said parcel to the Civil Commissioner of the division, and shall safely deliver or cause to be delivered the said parcel to such Civil Commissioner; but the polling officer shall not enclose in the said parcel the paper in the fifty-first section mentioned, but shall himself keep that paper, as in the said section is enjoined.

Polling papers, with declaration to be delivered by polling officer to Civil Commissioner in secure parcel.

54. The Civil Commissioner receiving any such parcel as aforesaid shall forthwith examine the papers therein contained, and in case he shall find that any separate leaf or sheet containing the names of voters who had voted has been omitted to be signed by the polling officer, or find that the solemn declaration aforesaid has been omitted to be enclosed, or, being enclosed, has been enclosed unsigned or unwitnessed, or find any other irregularity of a like nature, then such Civil Commissioner shall, without delay, inform the polling officer of the irregularity committed, and it shall be competent for the said polling officer to correct the same, and upon his correcting the same, the several papers relating to the said poll shall be in the same plight and condition as if no such irregularity had been committed: Provided that the polling officer by whom such irregularity was committed shall be liable for the expenses, if any, attendant upon the correction of the same.

Duties of Civil Commissioner on receipt of parcel: proceedings in case of irregularity.

55. It shall be competent for any voter registered or alleging himself to be registered as such in any district, who shall complain that his vote, duly tendered at the poll taken in such district was rejected by the polling officer, or shall complain that at such poll a person not registered as a voter in such district was admitted to vote, or who shall complain of any other irregularity fallen into at any such poll, to lodge with the Civil Commissioner his complaint, in writing, stating the name of the person so rejected, or admitted, or the particulars of any other alleged irregularity, and requesting that the grounds of such complaint may be investigated:

Complaints with regard to proceedings at polls may be lodged with Civil Commissioner within seven days after closing of poll.

No. 40—1880.

Provided that if such complaint shall not be lodged within seven days after the day of the closing of the poll, it shall be of no effect, and the poll as taken shall not be capable of being afterwards impeached by such complainant in any action or proceeding at law.

Duties of Civil Commissioner in investigating complaints, and powers of amending polling papers if complaint well founded

56. As often as the Civil Commissioner shall receive any such complaint as aforesaid he shall, in the most speedy and inexpensive manner practicable, cause the polling officer and the party complaining, and the party, if any, whose vote is questioned, or the persons concerned in any other alleged irregularity, to attend before him, and shall, in their presence, inquire into the grounds of such complaint, and if he shall find that the vote of any person so complaining was improperly rejected, shall enter such vote for the candidate for whom it was tendered; and if he shall find that any person not entitled to vote was admitted to vote, shall strike out such vote from the polling paper or polling papers in which it appears; and if he shall find that any other irregularity was fallen into, shall correct such irregularity: Provided

Procedure for the investigation of complaints.

- (a) That every person complaining and every person complained against shall be entitled to be assisted by an agent:
- (b) That the Civil Commissioner may, should the circumstances of the case require it, take evidence on oath, and may summon witnesses to appear before him to give evidence, and the form of summoning witnesses, and the consequences of attendance or non-attendance shall, *mutatis mutandis*, be in substance the same as are set forth in the sixteenth, seventeenth, and eighteenth of the rules, orders, and regulations of the Courts of Resident Magistrates contained in the schedule marked B to the Act No. 20 of 1856:
- (c) That the Civil Commissioner may if he shall so think fit award his reasonable costs to any person concerned in such investigation, to be paid by any other person concerned therein, and shall tax and ascertain such costs, and shall certify in writing to the Clerk of the Court of Resident Magistrate for the district in which the person liable to pay such costs shall reside, the amount of such costs, and the process of such court may issue for the levy of such costs, precisely as if such costs had been costs recovered in a civil suit by the person to whom they shall have been awarded by the Civil Commissioner.

Resort to a judge in chambers if Civil Commissioner be uncertain as to proper decision upon any complaint.

57. If the nature of any such case as aforesaid shall be such that the Civil Commissioner shall be uncertain regarding the decision proper to be given upon it, it shall be competent for him to draw up a statement of the facts, and such statement shall be signed by such Civil Commissioner, in attestation of its correctness, and such Civil Commissioner shall transmit the same to the

Registrar of the Supreme Court, to be by him submitted to a Judge in Chambers for his consideration and determination: Provided that every Civil Commissioner within the divisions wherein the Court of the Eastern Districts or the High Court of Griqualand shall have concurrent jurisdiction with the Supreme Court, shall transmit all such cases as aforesaid to the Registrar of the Court of the Eastern Districts, or of the High Court of Griqualand as the case may be, for the consideration and determination of a Judge of such court.

No. 40—1889.

58. The Judge before whom any such statement as aforesaid shall be laid may, should the same appear to him to be defective, call for further information from the Civil Commissioner who transmitted it, and shall give such a decision as shall appear to him to be right and proper, and such decision shall, for the purpose of the poll to which it relates, be final and conclusive.

Judge may call for further information, and his decision shall be final.

59. Nothing in this Act contained shall prevent any person who had within the seven days aforesaid complained that his vote was, at any such poll as aforesaid, improperly rejected, and whose complaint the Civil Commissioner shall have decided not to be well founded, or any person whose vote given at any such poll shall by the Civil Commissioner, have been struck off upon some other person's complaint, or any person whomsoever having an interest in the subject-matter of any such decision by the Civil Commissioner, from seeking redress in any competent court: Provided

Remedy for person aggrieved by the decision of Civil Commissioner upon any complaint, if proceedings taken within forty-two days. Civil Commissioner protected in discharge of his duty, unless decision wilfully wrong.

- (a) That no such person shall commence any suit or proceeding in any such court, for the purpose of obtaining such redress, later than forty-two days next after the pronouncing by the Civil Commissioner of the decision complained of:
- (b) That no Civil Commissioner shall be made a party to such a proceeding unless it be alleged that his decision was wilfully wrong: And if the court before which any such suit or proceeding shall be instituted shall find that the decision complained of was not wilfully wrong, it shall award the Civil Commissioner his reasonable costs against the party by whom the same shall have been alleged should it be consonant with justice so to do: and should it not be so consonant such costs shall be paid from and out of any moneys at the disposal or under the administration of the divisional council.

60. If the Civil Commissioner shall find, upon examining the papers received from each polling place in any district, that the same are regular and formal, he shall cast up the votes given for the respective candidates for such district, and shall ascertain for whom the greatest number of votes in such district shall have been given and such candidate shall be the councillor for such district: Provided

When polling papers are in order candidate or candidates with largest number of votes elected.

No. 40 -1889.

Civil Commissioner not to strike out vote unless complaint lodged.

During seven days for lodging complaints candidates may inspect polling papers.

If parcel of polling papers lost by accident, polling officer's written statement of results to be acted upon.

Penalty for wilfully causing loss or destruction of parcel of polling papers.

Civil Commissioner, except in Cape division, to publish after seven days in Gazette the names of elected councillors for the several districts.

In case of equality of votes election determined by lot.

Provisions as to Cape division.

- (a) That, in regard to any district entitled to elect more members than one, the Civil Commissioner shall ascertain what candidates, equal in number to the number of members to be then elected, shall have received more votes than any other candidate, and such candidates shall be the members for such district:
- (b) That the Civil Commissioner shall not of his own motion and without a complaint lodged, strike out any vote upon the polling paper upon the ground that, in his opinion, the voter's name was not a name upon the list sent to the polling officer:
- (c) That during the seven days aforesaid any candidate or person appointed in writing by any candidate shall be at liberty to inspect the several polling papers, and to compare them with the lists of voters with which such polling papers ought to correspond.

61. If the parcel in the fifty-third section mentioned containing the polling papers of any polling place should be lost or destroyed before it shall have been received by the Civil Commissioner, then the paper writing by the fifty-first section directed to be made and signed shall be received and acted upon by the Civil Commissioner, in place and stead of the polling papers so lost or destroyed.

62. If any person shall wilfully occasion the loss or destruction of any such parcel as in the fifty-third section mentioned, or of any of the contents of any such parcel, such person shall, upon conviction, be liable to a fine not exceeding forty pounds, and in default of payment thereof to imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

63. When the Civil Commissioner of any division, except the division of the Cape, shall have ascertained, in manner aforesaid, the names of the councillors who shall have been elected by the districts respectively composing his division, the said Civil Commissioner shall forthwith cause to be published in the *Gazette* the names of such councillors, placing opposite to or in connection with every such name the number of the district by which such councillor was elected: Provided

- (a) That if, in any district, two or more persons who have received the greatest number of votes, and who cannot be both or all elected, shall each have received the same number of votes, then the question between such persons shall be determined by lot, to be drawn in presence of the Civil Commissioner and not fewer than seven witnesses:
- (b) That the name of no member for any district in which a poll was taken shall be published until the expiration of seven days from the day on which such poll was taken:
- (c) That the provisions of this section shall apply to the Cape division, and to the Civil Commissioner of such division

save only that such Civil Commissioner shall publish the names of fourteen members instead of eight, and shall describe the several districts of the said division in the manner in which such districts are in the tenth section of this Act mentioned and described.

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64. The Civil Commissioner shall, after publishing such notice in the *Gazette* as is provided for in the last preceding section, enclose in one packet all the polling papers aforesaid, and shall seal up such packet and endorse thereon a description of the contents thereof, and sign such endorsement with his name. The said sealed packet shall be delivered to the secretary to the council, who shall safely keep such sealed packet for six months after the receipt thereof, and after the expiration of six months such papers may be destroyed in the presence of two councillors, unless the council shall otherwise direct.

Civil Commissioner after publishing names of Councillors, to enclose polling papers in packet, and deliver to secretary of council; packet to be kept for six months and may then be destroyed unless council objects.

65. No such sealed packet of polling 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 thereof, wilfully break the seal of or open any such packet, he shall, upon conviction be liable to a penalty not exceeding twenty pounds.

During six months packet only to be opened by order and in presence of council, or by order of competent court. Penalty for unlawfully opening packet.

66. 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 election 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.

Election not to be set aside for defect of title in officer by or before whom election held or poll taken.

67. The Civil Commissioner shall, in the same *Gazette* in which he shall cause to be published the names of the councillors elected to form the council, apprise such members, by public notice, of the day, the hour, and the place at which the first meeting of the council will be held: Provided

Notice of elected members to embody notice of first meeting not sooner than twenty-one days after notice.

(a) That such first meeting shall not take place sooner than twenty-one days from the day of the publication of such notice:

Personal notice to elected councillors.

(b) That the Civil Commissioner shall, over and above such notice, inform each of the said councillors respectively, in writing delivered or transmitted through the post or otherwise to the usual place of business, if any, or to the place of abode of such councillor within reasonable time of the day, hour, and place appointed for such first meeting.

68. The lodging of any complaint such as is in the fifty-fifth section described shall not prevent or delay the publication of the names of any candidate who would, even if every complaint so lodged were adjudged to be legal or well-founded, still be councillor for the district to which such complaint relates. But if the decision upon such complaint or complaints might alter or affect the result of the poll, then no candidate for such district whose

Complaints which cannot affect result of poll not to delay publication of names of elected councillors: otherwise publication delayed pending decision of complaints.

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Publication of name of duly elected councillors for one district not to be delayed by reason that publication in another district cannot yet be made.

Definition and punishment of "corrupt practices."

All complaints as to ineligibility of candidate, or as to corrupt practices to be dealt with like other complaints under sec. 55

Council in existence to remain in office pending publication of the names of a quorum of newly elected councillors.

election might be so affected shall be published as the member for, or as a member for, such district, until such complaint shall have been investigated and decided.

69. The non-attendance of all the voters of any district for the purpose of electing a councillor or the existence in regard to any district of any complaint or complaints of such a nature as to stay the publication of the name of any candidate as the councillor for any district shall not prevent or delay the publication, as aforesaid, of the names of the members for the other districts of the division to which such district belongs.

70. All the acts enumerated as (1) "corrupt practices" in any Act for the time being in force regulating or in respect of elections of members of Parliament, shall, *mutatis mutandis*, be deemed to be "corrupt practices" 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.

71. If any person ineligible under this Act to be elected a member of the council shall, nevertheless, have been nominated, and shall have been elected, or if any other candidate or any voter for the district should complain that any candidate has by himself or his agents been guilty in connection with the election of any corrupt practice as now by law defined, it shall be competent for such candidate or voter to lodge within seven days next after the day on which the poll in and for such district was taken, but not later, with the Civil Commissioner, a complaint stating the ground of such ineligibility or illegality, and thereupon the like proceedings, *mutatis mutandis*, as are in the fifty-fifth, fifty-sixth, fifty-seventh and fifty-eighth sections mentioned, shall apply to such complaint and the decision thereupon: Provided that, in regard to any complaint grounded upon the alleged ineligibility of any candidate, the attendance of the polling officer who took the poll shall not be necessary.

72. If, by reason of the failure in one or more districts to nominate or to elect candidates, or of the existence of irregularities or of errors in the taking of any polls, not yet corrected, or of complaints not yet decided, it shall so happen that there shall not be published in manner aforesaid, in any division, the names of councillors of the new council sufficient to form a quorum, the council then in existence shall remain in office until a number of councillors of the new council sufficient to form a quorum shall have been published: Provided that, as soon as a number of councillors of the new council sufficient to form a quorum shall have been published, then such councillors shall, for the time being, form such council, and such council shall be, to all intents

¹ See Act 21, 1859 (p. 755), and notes thereto.

and purposes, competent to perform all functions and duties belonging to it, in case such functions or duties shall not, by some particular act or acts, require the presence of a greater number of councillors than the number so published.

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73. For the purpose of the election of councillors of the council of the Cape by the Cape Town and Green Point district of the said division, the provisions of the several sections of this Act from the thirty-ninth to the seventy-second, both inclusive, shall, *mutatis mutandis*, apply to such election, precisely as if the said Cape Town and Green Point district were a field-cornetcy, and as if the Civil Commissioner or other person nominated as aforesaid to take a poll for such district, were a field-cornet and polling officer.

Election in Cape Town and Green Point district of Cape Division to proceed *mutatis mutandis* in accordance with provisions of preceding sections.

74. If it shall happen that, by reason of any accident or other cause, the Civil Commissioner of any division shall not, in regard to the election of a council for such division under the provisions of this Act, give on the proper date the notice in the thirty-first section mentioned, or shall not give any other notice, or do any other act, by any previous section of this Act required, whereby it shall happen that the names of at least a quorum of candidates to be councillors of any new council cannot be published before the latest day on which a poll for the election of councillors could be held, it shall be lawful for the Governor to authorise such Civil Commissioner to publish, or cause to be published, such a notice as aforesaid, fixing such day or days for the receiving of nominations for candidates for the representation of the several districts of such division, and such day or days for publishing any other notice or doing any other act, as may be most convenient, and the councillors of the old divisional council shall remain in office until the first meeting of the council elected under the provisions of this Act.

Governor in a y by notice in the *Gazette* extend time for nomination of candidates and for doing other acts not done in accordance with provisions of this Act.

75. If any district of any division shall, from accident or other cause, not being the neglect of the voters to attend, as hereinafter mentioned, fail, at any poll appointed for such district, to elect a councillor for such district, it shall be lawful for the Governor to authorise the taking, in such district, upon such day as may seem convenient, of another poll, and such other poll shall be deemed to be as legal, valid, and effectual as if it were the poll first appointed for such district: Provided

If a councillor not elected on polling day through accident or other cause than neglect of voters another polling day may be appointed by the Governor.

- (a) That as often as it shall be certified to the Governor by the Civil Commissioner of any division, that at the poll duly appointed for any district, no member of the council was elected, by reason that no voter for such district attended to give his vote, then the Governor shall direct the Civil Commissioner to call by a notice in the form in the next succeeding section set forth, to be published in manner and form and for the same time as the notice in the thirty-first section of this Act mentioned,

If failure to elect any councillor in any district be due to neglect of voters to attend at the poll, new notice to be published for nomination of candidates, by any voters in the division, and poll to be taken for district of all voters in the division. Future district elections to

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proceed in ordinary
course by poll of
voters in that dis-
trict only.

for a new nomination of candidates to fill the seat or seats in the council remaining vacant by reason that the district aforesaid so failed to elect; and shall, as soon as may be after the day fixed by such notice as the latest day for receiving such nominations, by another notice, published in manner and form as the notice in the thirtieth section of this Act mentioned, announce the names of the candidates nominated, and the day on which and the place at which a poll will be taken for the councillor or councillors whom the district which so failed to elect was entitled to elect, and such poll shall be taken by the Civil Commissioner in the court-room of the Resident Magistrate nearest to his office, and shall be kept open during the hours in the forty-second section specified; and at such poll every voter entitled to vote in any district of the division for councillors of that division shall be entitled to vote for the councillor or councillors to be then elected, and the person or persons elected at such poll shall be deemed to be the councillor or the councillors (as the case may be) for the district which shall have so, as aforesaid, failed to elect:

- (b) That when the councillor or councillors so elected as aforesaid shall vacate office, the district for which he or they sat shall be again entitled to elect its councillor or councillors (as the case may be) precisely as if this section had never been passed:
- (c) That as often as the district which so failed to elect shall be a district entitled to have elected more councillors than one, then each voter at the said poll shall be entitled to give one vote, and no more, for each of any number of candidates, not exceeding the number of councillors to be then elected:
- (d) That if any district entitled to have elected more councillors than one shall have elected one or more, but not all of the councillors who should have been elected at such poll, then the provisions of this section regarding an election by the whole of the voters in the division shall apply to the election of the councillor or councillors who shall not have been elected at such poll, in like manner as if no councillor had been elected at such poll; and the notice in the next preceding section mentioned shall be modified accordingly.

76. The notice in the last preceding section mentioned, calling for the nomination of candidates, shall be in substance as follows:—

Divisional Council for the Division of————.

Whereas the District No. — failed to elect a councillor (or councillors as the case may be) at the last election, by

Form of notice to
voters in the division
to nominate candi-

reason that no voter of such district attended at the poll to give his vote, I hereby invite the voters entitled to vote for councillors in the several districts of this division to nominate, in writing, candidates for the representation of the said District No. —. Every candidate must be nominated by not fewer than five voters, or otherwise his nomination will be null and void. No voter can sign more nominations than one, on pain of having his name struck out of all the nominations in which it appears, and considered as if never placed there. All nominations must be received by the undersigned not later than the ——— day of ———, 18—, and any nomination received later than that day will be null and void. Every voter signing any such nomination must state his place of residence.

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 ———
 dates for district
 which has failed to
 elect.

Dated this ——— day of ———, 18—.

(Signed) A.B., Civil Commissioner for the Division
 of ———.

77. The form for nominating candidates in reference to the notice in the last preceding section mentioned shall, in substance, be the form in the thirty-fourth section of this Act set forth, except that the word "said" in the said form shall be struck out: Provided that the provisions of the thirty-fifth section of this Act, except the last proviso thereof, shall apply to all nominations made under this section.

Form of nomination
 by voters of
 division for district
 councillor.

78. If the voters of any district shall, without some reasonable and sufficient cause, to be judged of by the Governor, fail to nominate any candidate for such district, in case such district shall be entitled to elect one councillor, or the necessary number of candidates, in case such district shall be entitled to elect more councillors than one, then the right to nominate and elect the councillor or councillors for such district for whom no nomination shall have been received shall devolve upon the voters throughout the several districts of the division, and thereupon the provisions of the seventy-fifth, seventy-sixth, and seventy-seventh sections of this Act shall, *mutatis mutandis*, apply to the election of such councillor or councillors: Provided that as often as the Governor shall be of opinion that a reasonable and sufficient cause existed for the failure to nominate as aforesaid, then the Governor may authorise the Civil Commissioner to issue a fresh notice, such as is in the thirty-first section of this Act mentioned, calling for nominations of candidates, in like manner as if the seat or seats for the district in question had become casually vacant.

On failure by
 district voters to
 nominate without
 reasonable and
 sufficient cause,
 right of nomination
 and election passes
 to voters in the
 entire division,
 and new notice
 calling for
 nominations must
 issue.

79. The councillors throughout the Colony who shall be elected in manner aforesaid shall come into office on the date of the first meeting of the Council to which they are elected, and shall go out of office on the 1st day of November, 1892, and a fresh election shall be held before the said day in the said last-

Triennial tenure
 of office by elected
 councillors, but
 councillor may be
 re-elected.

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mentioned year, and so on with ⁽¹⁾ triennial vacancies and triennial elections for ever; and all and singular the several provisions of this Act regulating the first election, after this Act shall take effect, shall, *mutatis mutandis*, extend and apply to all successive elections: Provided that nothing in this section contained shall prevent a councillor going out of office from being re-elected.

PART VI.

EXPENDITURE UPON ELECTIONS.

Notices in *Gazette* relating to election and required by this Act to be inserted free of charge by Government, but all other expenses connected with election to be defrayed out of moneys at the disposal of Council.

80. The expenses arising out of the election of councils,—that is to say, the cost of publishing notices under this Act in any newspaper other than the *Gazette*, the cost of all printed papers hereinbefore directed to be provided in regard to the taking of any poll and the cost of remunerating field-cornets or others for their services in and about any election or the taking of any poll,—shall, except as next hereinafter is excepted, be defrayed from and out of moneys at the disposal or under the administration of the council: Provided that all notices relating to such election, required by this Act to be inserted in the *Gazette*, shall be so inserted through the Colonial Government, free of charge to the council.

Remuneration of field-cornets and others rendering services at elections to be according to a tariff established by the Governor.

81. The remuneration to field-cornets or others in the last section referred to shall be according to a tariff to be fixed, and altered and amended from time to time, by the Governor, provided that the Governor shall have the power, if he deems fit, to increase such tariff remuneration in any special case at the request of the council.

PART VII.

RETIREMENT AND VACANCIES IN COUNCILS.

Resignation of councillor's office, and causes of vacation of office.

82. Any person elected to be a councillor or appointed to fill any other office under this Act shall be at liberty to resign such office by writing addressed to the chairman or secretary of the council, and such resignation shall be complete from the date of its receipt by the said chairman or secretary.

The office of any councillor shall become vacant in case such councillor shall

- | | |
|---|---|
| (a) Death. | (a) Die. |
| (b) Resignation. | (b) Resign his office. |
| (c) Incapacitated by judgment of competent court. | (c) Be declared incapacitated from holding office by any competent court. |
| (d) Loss of qualification. | (d) During the time for which he is elected cease to be qualified. |

¹ But see Act 10, 1902 (p. 4370). The Divisional Councils of Cape Town, Port Elizabeth and East London to continue in office until 1st November, 1905, and thereafter triennial elections. In Divisions where, in consequence of war and rebellion, no elections held, fresh election to be held before the 1st November, 1905, and triennial elections thereafter.

- (e) Absent himself from the meetings of the council for three months from the time of his last attendance, without leave of the council first had and obtained, from any meeting, whether ordinary or special, which may have been held within that period, unless he shall have been prevented by sickness or some other lawful and sufficient cause, to be judged of by the council: Provided that every member prevented from attending at such meetings as aforesaid by sickness or other cause, shall be bound to report, or cause to be reported, to such council, not later than twenty-eight days next after the day on which the last of the said meetings shall have been held, the cause of his non-attendance; and if no such report shall have been received, or, being received, shall be resolved by the council not to be lawful and sufficient then the seat of such member shall, as aforesaid, become vacant: And provided that, in regard to special meetings of the council, absence from the same shall not be reckoned or regarded for the purposes of this section unless notice of the same shall have been given to the member who shall have absented himself, in reasonable and customary time.
- (f) Be convicted and sentenced to imprisonment without the option of a fine for any offence.
- (g) Become the holder of any office of profit under the Crown, or become insolvent, or assign his estate for the benefit of his creditors, or become a contractor under any contract with the council of which he is a councillor, or be interested in any such contract directly or indirectly, or become surety for any contractor under such contract.

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(e) Absence for three months from meetings.

(f) Conviction and sentence without option of fine.

(g) Holding Crown office of profit, insolvency, assignment of estate, contracting with council, becoming surety for contractor.

83. As often as any person shall have been elected as a councillor by more districts than one, he shall be bound to declare to the Civil Commissioner of the division, within fourteen days next after the publication of his name as councillor for such districts respectively for which of the said districts he elects to sit as councillor, and upon such election by him the seat or seats of such person for the other district or districts by which he was elected shall become vacant: Provided that in case such person shall not within the fourteen days aforesaid, make his election as aforesaid then all the seats in the council for which seats such person was elected shall become vacant.

Councillor elected by more than one district must, under penalty of void election, within fourteen days, declare for which district he elects to sit.

84. As often as any casual vacancy shall occur in any council, upon any of the grounds in the last preceding section mentioned, or upon any other ground mentioned in this Act, then all and singular the provisions of this Act in regard to elections shall, *mutatis mutandis*, apply to the election of a member to supply such vacancy: Provided that the dates to be fixed for receiving the nomination of candidates and for the taking of the poll (if any) shall be, as regards the filling up of casual vacancies, in the discretion of the Civil Commissioner.

Provision for election to fill casual vacancies in councils.

PART IX.

POSITION OF CIVIL COMMISSIONER AND PROCEDURE AT MEETINGS OF COUNCIL.

Civil Commissioner *ex-officio* a councillor, and Chairman when present at meetings of council; but if acting Civil Commissioner be also Secretary of Council, he shall not be a councillor or preside.

Quorum at meetings of council.

Election of chairman when Civil Commissioner absent from meeting.

No casting vote for the chairman.

Meetings open to the public, vote of majority to decide.

Councillor peculiarly interested in matter under discussion not to vote, under penalty of £50 sterling.

Adjournment of meetings whether quorum present or not.

Notice required before resolution of council can be reconsidered for revocation or alteration; and revocation or alteration requires majority of two-thirds of councillors present if number present not greater than number present at former meeting.

85. The Civil Commissioner of the district shall *ex officio* be a councillor of his division, and shall, when present, preside as chairman at all the meetings thereof: Provided that if, in any case, the person acting as Civil Commissioner shall be the secretary of the council, then such person shall not be a councillor, or preside as chairman at any of its meetings.

86. At every meeting of any council which shall consist of less than seven councillors, three councillors with or without the Civil Commissioner shall form a quorum; and at every meeting of any council which shall consist of seven or more than seven councillors, four councillors, with or without the Civil Commissioner, shall form a quorum.

87. Every meeting of any council at which the Civil Commissioner shall not be present shall, before proceeding to business, elect some councillor present to be the chairman of such meeting.

88. The Civil Commissioner or other councillor presiding at any meeting shall in regard to all questions that may come before such meeting have his original or deliberative vote, but not a casting vote.

89. All meetings of the council shall be open to the public, and all questions shall be decided by a majority of the councillors present.

90. 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 may be prosecuted on sworn information by any person, and shall, for every offence, be liable to a penalty not exceeding fifty pounds.

91. 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.

92. 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 fourteen 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.

93. All notices of any special 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) or to the place of abode of each of the councillors at such time, previous to such meeting, as the council may by its bye-laws provide, 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.

94. 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 or single councillor any inquiry or power to do any act which they may think fit, and in case of a committee may fix the quorum of every such committee, and every such committee may from time to time appoint one of its 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.

95. 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.

96. 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, provided that a quorum of such council or committee be present.

97. The council shall by way of minutes 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 secretary 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. 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 signatures of the chairman and secretary, 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

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Notice of meetings to be given to each councillor, with notice of object of any special meeting which shall not transact any but business set forth in such notice.

Occasional or standing committees; delegation of powers; quorum of committees fixed by council.

Procedure of committees of council; if quorum not fixed two councillors must be present.

Vacancy in council or committee not to invalidate proceedings of quorum.

Minutes of meetings of council or committee to be duly kept by secretary, and signed by chairman at next meeting; and when attested by signature of chairman and secretary a copy or extract from such minutes to be received as *prima facie* evidence in all courts.

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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.

Minute books to be open to inspection by councillors, ratepayers and creditors of the council, and copies or extracts may be taken without fee.

Proceedings of council or committee not invalidated by reason of defect in election or appointment or of disqualification of chairman, councillor or officer.

Appointment by council or Governor in case no chairman or secretary, or none who will or can act.

98. Such books shall at all reasonable times be open to the inspection of any of the councillors and of any ratepayer or creditor of the council, any of whom may at all reasonable times, without fee, make and copy of or take any extract therefrom.

99. All proceedings of the council, or of any committee, or of any person acting as chairman, councillor, or officer of the council as the case may be, shall, notwithstanding that it be afterwards discovered that there was some defect in the election or appointment of any such chairman, councillor, or officer, or any disqualification, be as valid and effectual as if every such chairman, councillor, or officer, has been duly elected and qualified.

100. If at any time there shall be no chairman or secretary, or any chairman or secretary 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 chairman or secretary, as the case may be, may lawfully be done and performed by such one of the councillors as the council may appoint for that purpose, and failing such appointment by the council, by such person as the Governor may appoint.

PART X.

OFFICERS OF COUNCIL.

101. Every council shall have a secretary, and such other officers (if any) as shall be deemed necessary by such council, and such officers shall be appointed by such council, and shall hold office during the pleasure of the council: Provided

(a) That the secretary and other officers appointed by any council shall remain in office, notwithstanding the occurrence of any number of general elections of members of such council, unless removed by such council.

(b) That every council shall take from every officer employed by it, who shall be charged with the receipt or disbursement of any of the funds of such council, sufficient security for the due performance of his duty.

102. Nothing in this Act contained shall prevent any council from appointing, with the consent of the Governor, any Civil Commissioner's clerk to be secretary to such council.

103. It shall be lawful for every council to assign to its secretary and other officers such salary as it shall deem adequate and proper, to be paid out of any rates or other funds at the disposal of such council.

104. Unless it shall be otherwise stipulated in the contract with, or appointment of, any such secretary or other officer, the employment of any such secretary or officer shall terminate upon a notice upon either side of not less than three months, or in case of misconduct without notice.

Secretary and other officers of council, appointed and removed by council.

Security to be given by officers dealing with funds.

Civil Commissioner's clerk may be secretary of council.

Salaries to officers.

Termination of employment of officers by three months' notice, in the absence of stipulation or of misconduct of officer.

105. The chairman may at any time suspend from office or service any officer or servant of the council who may in his opinion be guilty of misconduct or neglect, and if necessary temporarily appoint another 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 or servant 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 person 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 until a successor be appointed in his stead.

106. 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 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 contract made by the council, shall be dismissed as for misconduct and incapable of being afterwards employed by the council in any official capacity.

PART XI.

(1) AUDITORS; ACCOUNTS; BORROWING POWERS, &c.

107. Two auditors of the accounts of every council, who shall be deemed to be officers of the council, and amenable to regulations under the Audit Act of 1875, shall be elected by the persons entitled to vote for councillors at a public meeting of such persons, to be convened by the Civil Commissioner of the division, and to be held, except in regard to the Cape division, in the court-room of the district of which such Civil Commissioner is the Resident Magistrate, on the second Wednesday of the month of January succeeding every general election of councillors: Provided

- (a) That the Civil Commissioner shall convene such meeting by a notice posted for not less than fourteen days next before the day of meeting at or near his public office and published in any newspaper issued in the town or village in which such meeting is to be held, or, if there be no such newspaper, then in some newspaper circulating in the division:
- (b) That if such Civil Commissioner shall fail or neglect to post or publish such notice, the said meeting shall, nevertheless, be held at ten o'clock a.m. on the day and at the place aforesaid:

¹ See § 9, Act 10, 1902 (p. 4369), legalising appointment by Government of auditors in consequence of war and rebellion. Auditors so appointed to continue in office till second Wednesday of January, 1904, and thereafter to be elected as herein provided, but for divisions of the Cape. East London and Port Elizabeth auditors duly elected to continue in office till 1st November, 1905, and triennial elections thereafter.

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Suspension by chairman of any officer for misconduct to be reported to next meeting of council: Temporary successor may be appointed by chairman, but council appoints permanent successor.

Officers not to receive other remuneration for official duty than appointed salary or allowance, nor to be interested in any contract; penalty, dismissal and incapacity for future office.

Annual election of auditors by voters in the division at meeting of which due notice shall be given.

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- (c) That such meeting may be adjourned till a future day should the persons present thereat and entitled to vote so determine:
- (d) That the public meeting for the division of the Cape shall be held on the day aforesaid, in the Town House, Cape Town.

Disqualifications for the office of auditor.

108. It shall not be competent to elect as an auditor any councillor or officer of the council of which the accounts are to be audited by such auditor, nor any person related to any councillor or officer of such council in or within the third degree of consanguinity or affinity: Provided

- (a) That no auditor who was at the time of his election duly qualified to be elected shall cease to hold such office by reason that some person related to him in or within such third degree shall, after the election of such auditor, become a councillor of the council to supply some casual vacancy, or by reason that such auditor and some person who was, when such auditor was elected, already a member of the council, shall after such election become related to each other in or within the third degree of affinity:
- (b) If any auditor shall after his appointment as such be elected a councillor of the council, his office of auditor shall, *ipso facto*, become vacant.

Nomination of auditors at meeting: appointment must be accepted at the meeting.

109. At every meeting held for the election of auditors every person proposed to be elected an auditor shall be nominated by one person entitled to vote, and such nomination shall be seconded by some other such person: Provided that no person shall be elected an auditor unless, being personally present, he shall accept the office, or some one of the electors present shall produce his acceptance of the office by a writing under his hand: and, failing such acceptance, verbal or written, then an election of a person instead of the person in respect of whom such acceptance shall not be given shall at such meeting take place, until some two persons shall be chosen who shall, at such meeting, agree to act.

Vacation of the office of auditor, remaining auditor to act till vacancy filled.

110. Should any auditor die or resign, or refuse to act, or become incapable of acting from mental or bodily disease, or cease to reside in the division for which he was elected, or become insolvent, or assign his estate for the benefit of his creditors, or become a contractor, or be directly or indirectly interested in any contract, or be or become surety for any contractor with the council of which he is to audit the accounts, or be elected a councillor of such council, his office shall become vacant, and the remaining auditor shall act alone until the next election of auditors, or of one auditor, as the case may be, as hereinafter provided.

Proceedings for filling vacancy in the office of auditor.

111. If the election of auditors should fail to take place, or should become void for any reason, or if such election having taken place, both or either of the auditors shall, upon any of the grounds in the immediately preceding section mentioned, vacate office, then

the Civil Commissioner shall, upon such notice as is in the one hundred and seventh section mentioned, convene a public meeting for some convenient day, not being less than fourteen days after the day on which such notice shall be posted, as in the said section mentioned, and such meeting shall proceed to elect two auditors or one auditor, as the case may be, in manner and form provided by the said section.

112. The council shall cause books to be provided and true and regular accounts to be kept therein of all sums of money received and paid on account of and for the council, and of the several purposes for which such sums of money have been received and paid, which books together with all valuation rolls and rating lists shall at all reasonable times on every Wednesday be open at the office of the council to the inspection of any councillor, ratepayer, or creditor of the council as well as by the auditors under this Act. Any such person may without fee take copies of or extracts from the said books.

Books to be kept by the council; inspection and right to take copies of books, valuation rolls, and rating lists.

113. It shall be the duty of the auditors to examine, half-yearly, the accounts of receipts and payments of the council, to ascertain that they are supported by proper vouchers, that the expenditure is in accordance with votes, or resolutions, or contracts of the council, and that such votes, and resolutions, and contracts are authorised by law; and also to ascertain and certify the amount of the cash balance in the hands of the council or of its treasurer, and where such cash is deposited; to publish for and on behalf of the council in the English and Dutch languages in some newspaper published in the division, or if there be none, some newspaper circulating therein, an abstract of the accounts, with a certificate of the auditors as to their correctness or otherwise, which certificate shall be in the form prescribed by regulations under the Audit Act of 1875; and if any such auditor shall wilfully certify any such account knowing the certificate or the account verified by it to be untrue in any material particular, he shall be deemed to be guilty of contravening this section of this Act, and shall upon conviction be liable to punishment by fine not exceeding twenty pounds, or in default of payment of the fine, by imprisonment with or without hard labour for any period not exceeding one month.

Duties of auditors: publication of abstract of accounts; certificate and declaration by auditors; penalty for wilfully untrue certificate.

114. For the purpose of the examination by the auditors in the one hundred and thirteenth section provided, 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 council to be balanced to the thirty-first day of December and the thirtieth day of June immediately preceding such firstmentioned 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 secretary, 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

Accounts to be balanced within one month after 30th June and 31st December in each year for purposes of audit and all vouchers, books, &c., to be produced to auditors, who may either sign accounts as correct, or disallow improper items.

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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 item of the said accounts they may disallow the same, stating in a report to the council their reasons for disapproval.

Persons who may be present at audit and submit objections in writing to any part of the accounts.

115. Any person interested in the said accounts, either as a creditor of the council, 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.

Audited statements to be laid half-yearly before council in February and August, shewing assets and liabilities, half-yearly receipts and payments and rates made and contracts entered into.

116. Half-yearly statements showing the financial position of the council 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 received or 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 council.

Inspection of audited statement.

117. The council shall cause every such audited statement to remain for inspection at the office of the council, and every creditor or ratepayer of the council, or any person acting on his behalf, may at all reasonable times, on every Wednesday at such office, inspect such statement and compare the same with the books and documents relating thereto in the possession of the council.

Audited accounts, when produced at open meeting in February or August, or at adjournment thereof, shall be examined, settled, and if approved, certified by chairman.

118. 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 lastmentioned 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 the abstract published under the one hundred and thirteenth section of this Act shall be kept by the secretary at the office of the council.

Copy of auditors' abstract to be kept by secretary.

Governor may appoint examiner of council's accounts.

119. The Governor may from time to time appoint some person to examine the accounts of any council. And such council shall by the secretary produce and lay before the person so appointed all books and accounts of the council with all vouchers in support of the same, and all books, papers, and writings in their power relating thereto.

Powers of examiner appointed by Governor.

120. For the purpose of every examination under the provisions of the last preceding section it shall be lawful for the person appointed 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, neglect or 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; and provided further that any such person who shall make any wilfully false statement upon oath shall be deemed to be guilty of the crime of perjury.

121. The remuneration to be paid to auditors elected under this Act shall be such amount as shall have been previously fixed by the council, and such remuneration, together with the cost of publishing every notice of meeting and abstract of accounts, shall be paid from and out of the funds of the council.

122. Every council shall cause an exact and particular account to be kept, and to be made up and balanced at the end of each half year, in manner and form prescribed from time to time by regulations framed under the Audit Act, 1875, of all moneys raised or collected or otherwise received by such council or by any person on its behalf, under the provision or for the purposes of this Act, and of all rates assessed under this Act due and in arrear, and of all disbursements made and expenses incurred by the said council for the said purposes, distinguishing the amount derived from each source of receipt, and shall forward such account, rendered and audited, by the aforesaid auditors in conformity with the aforesaid regulations, and accompanied by their certificate of its accuracy and correctness, and by all necessary vouchers, to the Controller and Auditor-General of the Colony, by whom it shall be audited, and an abstract of all such accounts so audited shall be laid before both Houses of Parliament. If any person who may be surcharged by the Controller and Auditor-General as having made or authorised or as being otherwise answerable for any illegal payment appearing in the accounts of any divisional council, shall fail to adjust or recover such surcharge within such time as may be allowed for its recovery in regulations framed under the provisions of the sixth section of the "Audit Act, 1875," the Controller and Auditor-General shall report such surcharge and all necessary particulars to the Attorney-General, who shall sue the person

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Penalty on person neglecting or refusing to comply with duties under this section: False oath equivalent to perjury.

Remuneration of auditors out of funds of council.

Final audit by Controller and Auditor-General of accounts of councils, which must then be laid before Parliament.

Power of Attorney-General to recover amount properly surcharged.

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or persons in default, in any court of competent jurisdiction, for the recovery of any amount which, in the opinion of such Attorney-General, has been properly surcharged, and any costs adjudged to be payable by the defendant in any such suit, shall be payable by such defendant personally or out of the funds of the divisional council concerned, as such court may direct.

Accounts of council to show separately expenditure on objects for which contributions are received.

123. Every council which shall receive or be entitled to any contribution from any other council or from Government, or any person or public body, shall keep its accounts in such manner as to show separately and correctly the expenditure really and *bonâ fide* made by such council upon the object or for the purpose for which such contribution is received or claimable, and shall half-yearly forward a detailed account of such expenditure to the Government or contributory.

Surplus funds may be deposited in banks.

124. Whenever the funds at the disposal of any council may exceed the amount immediately required for carrying into effect the objects of this Act, every such council may deposit the surplus in any joint-stock bank or Savings Bank in the Colony.

Public funds granted in aid of specific work to be applied to purpose specified, and accounts to show application.

125. Whenever any sum of money may be granted from the public treasury to any council, in aid of any specific work within such division, such money shall be applied to the special purpose stated in such grant, and to none other; and the accounts of the council shall be so framed and kept as to show such application.

Overdraft by Council for Temporary accommodations not to exceed prior year's income.

126. For the temporary accommodation of councils, it shall be lawful for such councillors with the consent of the Governor to obtain advances from banks, by overdraft of the current account upon the credit of the council. But no such overdraft or accommodation shall at any time under any circumstances exceed the prior year's income.

Councillors personally liable for sums unlawfully borrowed with their consent on account of the council.

127. If after the commencement of this Act, any council borrow any money, as on the credit of the council but to the payment of which divisional council funds are not legally applicable, 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 or out of divisional council funds.

PART XII.

REMUNERATION TO COUNCILLORS.

Remuneration of councillors for attending meetings.

128. It shall be lawful for each council, out of any funds at its disposal or under its administration, to pay to each councillor attending any meeting of such council, travelling expenses at a rate, in regard to each member, to be fixed by such council, not exceeding in the whole ten shillings per day for every day necessary for jour-

neying to, remaining at, and returning from place of meeting:— Provided that no councillor whose ordinary place of residence shall not be distant more than five miles from the place in which any meeting of such council shall be held shall be entitled to receive any payment for or in regard to his attendance at such meeting either by way of travelling expenses or otherwise.

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129. No councillor shall have or receive any salary or allowance or exact, accept or receive any fee or reward whatsoever, not granted or allowed by this or some other Act, for, on account, or by reason of his office as such councillor; nor shall any member become a contractor with the council of which he shall be a member. Any person contravening this section of this Act may be prosecuted upon sworn information by any person, and shall incur and be liable to a penalty not exceeding one hundred pounds: Provided that nothing in this section contained shall prevent any councillor from receiving any fee or allowance which the Governor shall authorise for or on account of any service performed by such councillor under and in pursuance of any Act of Parliament, or any fee or allowance specially granted to him by the council for inspection of roads or works under the control of the council, according to a tariff to be approved of by the Governor.

No other remuneration to be received by councillor in respect of his office; penalty for contravention.

But special fees and allowances for special services may be taken when authorised by Governor according to tariff by him approved.

130. No payment under the two last preceding sections shall be made out of the funds at the disposal of the council save upon the certificate of the secretary which, with the receipt of the councillor, shall be preserved as the proper vouchers for such payments, and if the secretary shall grant any such certificate which to his knowledge shall be false in any material particular, he shall be liable for each offence 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.

Secretary to certify payments to councillors; penalty for wilful false certificate.

PART XIII.

SUITS AND PROCEEDINGS BY AND AGAINST COUNCILS.

131. The council of any division may sue or be sued by the name or style of "The Divisional Council of——," and may in all legal proceedings be referred to by that name or style.

Legal name of council.

132. 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.

Invalidity of election of council not to affect legal proceedings.

133. In all suits and proceedings in any court of Resident Magistrate by or against any council, it shall be lawful for the secretary of such council to appear as the agent of such council, without producing his authority to sue and to defend: Provided that nothing herein contained shall be construed so as to prevent any council from appearing in any such court by an agent other than the secretary of such council; and the power to sue or

Secretary may appear in court for council without producing authority; but other agent if appearing must produce authority signed in specified form.

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Power to sue or defend in other courts, how to be signed.

Signature of Civil Commissioner *prima facie* evidence of authority of council to sue or defend.

Service how effected.

Jurisdiction of the Resident Magistrate in all cases for recovery of rates.

defend, to be produced by such agent, and filed with the clerk of the court, shall be signed by the secretary thus: "By order of the Divisional Council, A. B., Secretary of such Council."

134. In all suits and proceedings in any court other than the Court of the Resident Magistrate, the warrant to sue or defend shall be signed by the Civil Commissioner thus: "By order of the Divisional Council, C.D., Civil Commissioner."

135. No proof need be given in any court that the Civil Commissioner or the secretary of the council (as the case may be), in signing any such warrant or power as aforesaid, acted under the authority of the council, but evidence shall be admissible to prove the contrary.

136. Any summons or notice, or any writ or other proceeding at law requiring to be served upon any council may be served by being given personally to the chairman or secretary, or left at the council office.

137. The Resident Magistrate of any district shall have jurisdiction in all cases of suits for the recovery of divisional council rates without reference to the amount thereof, and he is hereby empowered to adjudicate upon all such cases notwithstanding that he shall be chairman of the council.

PART XIV.

LAPSING OF ANY COUNCIL FOR A DIVISION.

On lapse of three months of council for any division Governor may annex such division to adjoining division for the purposes of this Act only, but books and accounts must be kept separately.

138. In case there should not be at any time in any division, for the space of three months, any council, then it shall be lawful for the Governor, by proclamation, to annex such division to any adjoining division in and for which division a council shall exist, and thereupon the council of such lastmentioned division shall become the council of the other division so annexed, and shall be competent to exercise, and is hereby required to exercise, all and singular the provisions and authorities which might under this Act have been exercised by the council of the division so annexed, did such a council exist: Provided

- (a) That such annexation shall take place only for the purposes of this Act, and not for any other purpose;
- (b) That notwithstanding any such annexation, the council of the division to which any other division shall have been annexed shall keep books and frame the accounts required by this Act in such a way as to keep the receipts and expenditure of the division which shall have been so annexed as aforesaid distinct and separate from the receipts and expenditure of the division to which such division shall have been annexed;
- (c) That the secretary and auditors of the council of the division to which any other division is so annexed shall perform their respective duties for and on behalf of both

divisions, but shall receive out of the funds of the annexed division such separate remuneration for the addition to their duties caused by the annexation as the said council shall determine.

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139. Notwithstanding anything in the preceding section mentioned it shall be lawful for the Governor, under the circumstances therein set forth, instead of annexing the division in and for which no council shall exist to another division, to nominate and appoint, by proclamation, such number of fit and proper persons as he shall select, being not less than five nor more than seven, to be the council of such division, for the purposes of this Act; and every such nominated council shall be competent to exercise, and is hereby required to exercise, all and singular the powers and authorities which might under this Act have been exercised by a council duly elected, did such a council exist: Provided

Governor may appoint by proclamation councillors to form a council for a division whose elected council has lapsed. Such appointed council shall hold office for three years.

- (a) That the persons so nominated and appointed may or may not be persons resident within such division, as may be found convenient:
- (b) That every nominated council shall go out of office at the end of three years, reckoned from the day of the publication of the proclamation appointing such council, and be succeeded by another council to be appointed by proclamation as aforesaid and so on as long as no council shall be elected for that division.

140. Should any division which shall have been annexed as aforesaid to any other division, or for which a council shall have been appointed as aforesaid, at any time after such annexation or appointment, elect and have a council for such division, it shall be lawful for the Governor, by proclamation, to revoke and annul such annexation or appointment from and after such convenient day as the Governor shall fix and announce; and from and after such day, but not sooner, the council so elected shall be deemed and taken to be in office, and shall take over from the council previously in office all moneys, contracts, officers, matters, and things belonging to the administration of such council in regard to such division, in the plight and condition in which they shall then be, precisely as if the period of office of such previous council had terminated by effluxion of time.

Division whose council has lapsed may at any time elect a council under this Act, and annexation or appointment may then be annulled by proclamation.

DIVISION III.

POWERS, DUTIES, AND FUNCTIONS, &c., OF COUNCILS.

SUB-DIVISION I.

PART I.

ROADS, &c.

141. Every council shall, with the funds at its disposal for such purposes, be invested with the power and charged with the duty of making all divisional roads, and of superintending, main-

Powers and duties of council with regard to divisional and main roads respectively.

No. 40—1889.

Clause vesting property in the council, and conferring power of administration in accordance with this Act.

Powers of council as to entry and inspection.

taining, keeping in repair, preserving, and improving all main and divisional roads, within the division represented by such council.

142. The right to and property in all and singular the roads under the superintendence, control and management of the council of any division, and to and in all gates, bars, sheds, houses, buildings, toll-houses, public dams, upon or belonging to any such public road, and to and in all materials for road-making, plant, cattle, implements, utensils, and things whatsoever, which may be provided by such council, and used for the purposes of this Act, and all property, movable and immovable, duly acquired by such council for the purposes of this Act shall vest in such council, and such council shall be authorised and entitled to administer and dispose of any of the said matters and things for the purposes of this Act and in accordance with the provisions thereof as to such council may seem expedient.

143. Every 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 division 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.

PART II.

POWERS TO TAKE LANDS AND MATERIALS, AND PROCEEDINGS IN CONNECTION THEREWITH.

Power to enter on and take possession of land for road purposes and purposes incidental to the making of roads; power to take materials.

144. Every council may enter upon and take possession of so much of any land belonging to the Crown as may be required for the purposes set forth in the one hundred and forty-first section, and for any other purpose subsidiary to the proper exercise and discharge of the power and duty by that section conferred and imposed, including the erection of toll-houses, toll-bars, and residences for workmen or other persons employed by such council in connection with such exercise and discharge, and every council may enter upon all such land lying convenient to any main or divisional road, and there may dig, get, and carry away any stone, clay, or other materials which may be required or serviceable for the purposes of this Act.

Similar power where one council is charged with the duty of maintaining main road lying in another division, and corresponding duties also to be discharged by such council.

145. As often as any council is or shall be, by any law, charged with the duty of maintaining and keeping in repair any line or main road lying in any other division than that to which such council belongs, the council so charged shall be and it is hereby invested with all and singular the same powers and authorities in regard to the taking of lands and materials, whether of the Crown or of private persons, the erection of toll-houses and toll-bars, and residences for workmen and other persons employed by such council as in the last section mentioned, the taking of tolls, the renting of farming of tolls, and the protection of tolls by

penalties, which would have been possessed by the council of the division in which such line of road shall lie, in case such council had been charged with maintaining such line and keeping it in repair; and the council first aforesaid shall be charged with the performance of every duty in regard to such line which the council of the division in which it lies would have been charged with in case such lastmentioned council had been charged with such maintenance and repair.

146. For the purposes aforesaid every council and every person duly authorised by such council is hereby invested with all and singular the legal rights, if any, belonging to the Government of this Colony, in respect to the taking of any land, and the raising and carrying away materials for making and repairing public roads, whether such rights have been preserved to the said Government by the proclamation of His Excellency Sir John Francis Cradock, bearing date the 6th day of August, 1813, permitting the conversion of lands on loan into places on perpetual quitrent, or have been created by express stipulation or condition in any grant of freehold property, or exist in any other way or manner whatsoever: Provided

- (a) That no land be taken, or materials be raised or carried away as aforesaid, without previous notice to the proprietor thereof.
- (b) That where fences exist and the council is desirous to obtain an entrance through such fences, such council shall have the power to make such entrance, but the council shall be bound to erect gates with locks and with keys, to be kept by the owner or occupier of the land, and by any person authorised by the council, and such gates shall be kept locked when not required to be opened for use.

147. If any council should, for the purposes aforesaid, require to take or use any land, or to dig, get, or carry away any materials situated as aforesaid, belonging to any person who may not be bound by law to allow such council so to do without requiring any recompense or payment, and who may think proper to require compensation from such council, it shall be lawful for such council to agree with such person as to the amount of such compensation, and in the absence of agreement the amount of such compensation shall be determined by arbitration in manner provided by "The Lands and Arbitrations Clauses Act, 1882."

148. The Governor shall have in respect of the construction of main roads all powers, and be subject to all duties, conferred or imposed upon any council under the one hundred and forty-fourth and one hundred and forty-seventh sections of this Act.

No. 40 -1880.

Council invested with the rights of Government under Cradock's proclamation, by express stipulation or otherwise, with regard to the taking of land and the raising and carrying away of materials, but notice must be given to the proprietor. Gates with lock and key to be provided where entrance made through fences.

Compensation to be determined by agreement or arbitration under Act No. 6 of 1882.

Governor to have powers conferred by sections 144 and 147.

No. 40--1 89.

PART III.

PROCLAMATION AND TAKING OVER OF ROADS.

Proclamation of main or divisional road by Governor at request of council, which proclamation may be revoked or altered at like request.

149. The Governor may, at the request of the council of any division, by proclamation, declare any road or portion of a road situate in such division to be a main or divisional road; and such road shall thereupon be deemed for all purposes to be a main or divisional road, as the case may be; and any such proclamation may, at such request, be from time to time altered or revoked as may be thought expedient; provided that by no such proclamation without consent of Parliament shall Government be deemed to be authorised to incur the cost of constructing any new main road or portion thereof.

Construction of main road to be completed before road handed over to council: disputes to be decided by arbitration under Act No. 6 of 1882.

150. No main road or portion of a main road now in course of construction, or which may hereafter be constructed, shall be placed in the hands of any council before such construction shall have been completed, and as often as any council shall be required to take over any main road as having been constructed, it shall be lawful for such council, in case it shall not consider that such road is yet constructed, according to the true intent and meaning of this Act, to require that the question in dispute shall be decided by arbitration in manner provided by "The Lands and Arbitrations Clauses Act, 1882."

Duty of Government as to retaining walls of mountain passes.

151. It shall be the duty of the Colonial Government, from and out of the public revenue, to keep in usual and customary repair the retaining walls of every mountain pass in this Colony for the space of twelve months next after the day upon which any such pass shall hereafter be taken over by any council.

PART IV.

CLOSING OR DIVERTING OF AND ERECTION OF GATES ACROSS ROADS.

Governor, at request of council may proclaim that road in division shall cease to be a main or divisional road, or that any such road or any public road, path, or tract in the division shall be closed or diverted.

152. It shall be lawful for the Governor, at the request of the council of any division as aforesaid, and by proclamation as aforesaid, from time to time to declare that any main or divisional road or part of any main or divisional road in the division now in existence, or which may hereafter be in existence, shall cease to be a main or divisional road, as the case may be, and such road, or part of a road, as the case may be, shall thereupon cease to be such road accordingly; or to declare that any main, divisional, or other public road, path, or track in such division shall be diverted or closed at such time as shall be specified in that behalf in any such proclamation; and such road, path, or track shall thereupon be so diverted or closed as the case may be accordingly: Provided

Notice required before proclamation by Governor, to afford opportunity for objections.

- (a) That no such request as aforesaid shall be entertained by the Governor unless and until a notice in writing of the intention to make the same shall have been posted for general information at some conspicuous place outside of the

building wherein the office of such council is situated, and at the residence of each field-cornet of the division, and until notice of such intention shall have been published in the *Gazette* once in each month for a period of three months, and once a week during six weeks in some newspaper published within the division, or if none such, in some newspaper circulating within the division, which notice shall in some part thereof clearly describe the road, path, or track sought to be affected and the situation thereof, and shall require any person objecting to lodge with the said council, within three months after the date of the posting or first publication of such notice, his objections thereto in writing; and any objections which may be so lodged shall be transmitted to the Governor, together with any such request as aforesaid:

- (b) That the words path or track shall not be taken to mean trekpaths lawfully used in certain districts of the Colony:
- (c) That at the request of the council of any division the Governor may proclaim as a divisional road any main road or portion of a main road which has ceased under this section to be a main road:
- (d) That the right of the public to travel along any main or divisional road, or part thereof, which has ceased to be such road shall continue unless and until such road or part thereof shall have been diverted or closed.

Trekpaths not included in path or track.

Road which has ceased to be a main may be proclaimed a divisional road.

Public right retained to travel along road until closed or diverted

153. (1) Whenever the owner or occupier of any land over which a public road, path, or track, shall pass shall be desirous of fencing such land, he shall be at liberty to do so if he provides a swing-gate in such fencing so as to allow persons entitled to use such road, path or track, free passage; and such gate shall at all times be kept in proper repair to the satisfaction of the Divisional Council by the owner or occupier of such land: Provided that any gate placed across any public road, path, or track, which is not a swing gate, substantially constructed and properly hung, shall be deemed to be unlawfully so placed, and the owner or occupier of the property whereon such gate is placed shall in every such case be liable to all such penalties and obligations as would be incurred by any person wilfully obstructing such public road path or track.

Lands over which public road runs may be fenced, if free passage be secured by swing gate kept in proper repair, substantially constructed and properly hung

154. (1) Any person, not being such owner or occupier, or not being thereto duly authorised by such owner or occupier, who shall open or unfasten any gate erected or provided in pursuance of the provisions of the last section, except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, or who shall pass through any such gate and shall fail

Penalty for opening, and for leaving open any swing gate except for purpose of lawful passage.

¹ The provisions of these Sections apply to gates erected across trek-paths. See Act 37, 1896 (p. 3684). See also Act 15, 1897 (Oudtshoorn swing gates) (p. 3733).

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Penalty for damaging, &c., any such gate.

or neglect, forthwith after so passing through the same, to close and fasten such gate or cause it to be closed and fastened, shall, upon conviction before any Resident Magistrate or Special Justice of the Peace, be liable to a penalty of not exceeding five pounds, or in default of payment thereof, to imprisonment with or without hard labour for any term not exceeding thirty days, unless such fine be sooner paid. And any person who shall damage or destroy such gate whether in passing through or otherwise, shall forthwith make the same good, and in case of failure or neglect shall upon conviction before any Resident Magistrate or Special Justice of the Peace be liable to a penalty of not exceeding ten pounds, or in default of payment thereof to imprisonment, with or without hard labour, for any term not exceeding two months, unless such fine be sooner paid.

PART V.

DEFINITION OF WIDTH OF ROADS.

Application of section 155 to 161 when specially proclaimed for any division.

155. The provisions of this part of this Act shall—that is to say the provisions of sections one hundred and fifty-five to one hundred and sixty-one inclusive—apply to such divisions of the Colony as shall be proclaimed in manner hereinafter mentioned, and no other.

Council may determine width of public roads, which here includes every road over which a right of way exists; but no alteration of width of road passing between houses or improved lands.

156. It shall be the duty of every council to fix and determine what shall be the width of every public road within their jurisdiction to be constructed for the use of wheeled vehicles, and also the width to be allowed on each side of such roads for the purpose of removing stock in cases where such roads are not enclosed; and for the purposes of this section every road over which a right of way shall exist in favour of some person or persons other than the owner or occupier of the land on which such road is situate, shall be taken to be a public road: Provided that no alteration shall be made in the width of any road passing through or between any garden, cultivated lands, orchards, vineyards, or between buildings or homesteads.

Circumstances to be considered by council in determining the width of public roads.

157. In determining the width of the several roads the council shall take into consideration the circumstances of any such road being

- (1) A main road,
- (2) A divisional road,
- (3) A road with the right of way mentioned in the one hundred and fifty-sixth section of this Act,
- (4) A mountain pass, or
- (5) An approach to a drift;

and also the nature of the soil over which such road passes, and whether the same is used for pastoral or agricultural purposes: Provided that it shall be lawful for every council to select and appoint upon enclosed public roads resting places (each of which shall not exceed half an acre in extent or be distant less than

Resting places for cattle, subject to compensation determined by agreement or by arbitration under Act No. 6 of 1882.

two miles from each other), for cattle passing along such roads, and such resting places shall be selected and agreed upon by the council, and the owner of the land upon which the same are to be reserved; and in case of disagreement the selection of such resting places, and the amount of compensation (if any) to be paid out of the funds of the council for injury to property or other loss, shall be settled or determined by arbitration, in manner provided by "The Lands and Arbitration Clauses Act, 1882."

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158. Having defined the width of the several roads within its division, the council shall give notice of the same to the several field-cornets of the division: and shall also publish such notice in the *Gazette* and in some one or more newspapers, if any, published or circulating in such division.

Council to notify definition of width of roads to field-cornets, and in *Gazette* and public newspapers.

159. Within a reasonable time after such notice has been given the council shall, if necessary, remove all fences or obstructions which shall in any way encroach upon the roads of which the width has been defined as hereinbefore provided for; but the owners of the fences so removed shall be entitled to receive compensation for such removal, the amount thereof to be agreed upon between such owners and the said council, and in case of any dispute as to such amount, the question shall be referred to arbitration in manner as provided by "The Lands and Arbitration Clauses Act, 1882."

Removal of existing obstructions by council, subject to compensation in case of fences determined by agreement or arbitration under Act No. 6 of 1882.

160. Any person who shall, after such notice has been given defining the width of public roads in any division, erect any fence or raise any obstruction which shall encroach upon the width of any road as defined under the provisions of this Act, shall be called upon immediately to remove the same, and in case of his neglect to do so, such fence or other obstruction shall be removed by the council at the expense of such person, which shall be recoverable at the suit of the council in the Court of the Resident Magistrate of the district in which such fence or other obstruction shall be situate.

Removal of obstructions, made after notice, by council at expense of person raising obstruction.

161. It shall be lawful for the Governor, at the request of the council of any division, from time to time, to put this part of this Act in force in such division, by proclamation published in the *Gazette*, and upon the like request and in like manner to suspend the operation of those sections for such time as the Governor may deem necessary.

Proclamation of sections 155 to 161 in any division at request of council; and proclamation of suspension of operation of those sections.

PART VI.

TOLLS AND TOLL-BARS.

162. All toll-bars lawfully established at the time of the passing of this Act shall continue to be so established; and all tolls leviable thereat shall continue to be leviable and receivable by the council of the division, as if the same had been established under this Act; and every council may, from time to time, with the sanction of the Governor and by proclamation in the *Gazette*

Established toll-bars and tolls to continue; but council may, with Governor's sanction by proclamation, abolish or remove any toll-bar, or abolish any rates of toll or alter them

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to rates not more than thrice the amount of existing rates, without prejudice to the rights of any renter or farmer of tolls in the division.

to be by him issued in that behalf, abolish or remove any such toll-bar, or notwithstanding anything to the contrary contained in any law, abolish or alter any of the rates of toll now or hereafter existing within its division: Provided

- (a) That it shall not be competent for any council to increase any toll existing at the time of the taking effect of this Act to rates or amounts exceeding treble the rates or amounts of the tolls payable at the time of the taking effect of this Act:
- (b) That it shall be lawful for any council, from time to time, with such sanction as aforesaid, at its discretion, to alter particular items in any tariff of tolls, by increasing or diminishing the same, without altering the other items of such tariff, as also to add new items or omit old items:
- (c) That no such proclamation shall be issued unless the Governor shall be satisfied that the person, if any, entitled under the one hundred and sixty-fourth section, to rent or farm the tolls at any toll-bar in the division, the tolls whereof would be affected by such proclamation, has had notice of the proposed abolition or alteration, and has either consented or has no reasonable grounds for objection.

How toll-bars may be established by proclamation after notice in the *Gazette*, but not in any municipality or corporate town without consent of the council or corporate body.

163. Every council may, after having given six weeks' previous notice in the *Gazette* of their intention so to do, erect and establish at such places as it may deem fit upon any roads under its charge, as many toll-bars as it may deem requisite, and may demand and receive thereat such reasonable tolls as it may deem proper, to be appropriated to the maintenance and improvement of any such roads: Provided, always, that no toll-bar shall be erected or established, and no toll shall be demanded or received, without the previous sanction of the Governor, to be published in a proclamation in the *Gazette* to be by him issued in that behalf, and provided that no toll-bar shall be erected or established within the limits of any municipality or corporate town save with the consent of the municipal council or corporate body, and subject to such terms and conditions as may be mutually arranged.

164. Every council may, from time to time, if it shall deem fit, let or farm the tolls to be payable at any toll-bar on any road in the division, by tender or by public auction, to the highest and best bidder, for any term not exceeding one year in any case: Provided

- (a) That previously to every letting of such tolls the council shall give, by notice, to be posted at the office of the council, and published in some newspapers published in the division, or, if none, in some newspaper circulating therein, or otherwise in some convenient manner, a public notice of the time and place at which tenders will be received, or any such auction as aforesaid will take place:

Power of council to let or farm for one year the tolls at any toll-bar either by tender or to the highest and best bidder at public auction, notice calling for tenders or of the sale being given, and a bond with sureties being entered into for the payment of the stipulated hire.

- (b) That in every letting of such tolls, whether by tender or by auction, the council shall require the farmer or renter thereof to enter into a bond, with not less than two sufficient sureties, to the satisfaction of the council, each binding himself as principal debtor for the payment of the whole rent or hire of the said tolls, at the time and in the manner in that behalf to be in the said bond specified; and if any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same may have become due, the council may, by any person duly authorised in that behalf, enter upon and take possession of the said tolls, and of all toll-houses, or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and may re-let the said tolls, or otherwise may place a collector or collectors in receipt thereof, and in possession of the said houses and buildings, as to such council may seem fit; and the sum for which the said renter or farmer may have been in default, together with all further instalments or payments stipulated to be made by the said farmer or renter, shall be due and demandable from him, in like manner and form as if he still remained in receipt of the said tolls, credit being given to him for whatever sums may be received on account of the said tolls less the expense of collecting, in respect of the term for which the said tolls were let to the renter or farmer making default:

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Provisions for recovery of unpaid hire.

- (c) That unless the highest bidder shall forthwith on the day of sale produce two such sufficient sureties as aforesaid, who shall forthwith sign bond or an undertaking to execute the same, the right to rent or farm the tolls shall not be knocked down to the said highest bidder, but shall forthwith be again put up for disposal by public auction, and the difference between the highest bid then obtained and any greater sum which may have been bid by the said highest bidder shall be a debt due by him to the council, to be recovered in any competent court.

Highest bidder at auction to produce sureties forthwith, or right put up again for disposal at his risk if lower price obtained.

165. Every council, or, in case of any letting to hire, every renter or farmer of any tolls, shall affix, or cause to be affixed, in a conspicuous place, at each toll-bar whereat any toll is payable, a table of the tolls to be taken thereat, plainly and legibly painted or printed in the English and Dutch languages, under a penalty not exceeding five pounds, to be sued for by any person in any competent court, for his own use.

Table of tolls to be conspicuously shown at every toll-bar.

166. The person entitled to demand and receive the toll payable at any toll-bar or toll-gate, may prevent the passing through such toll-bar or toll-gate, of any vehicle or animal on which any toll shall be payable, until such toll be paid; and if any person

Toll-keeper may prevent passage unless tolls paid; and penalty for evading payment of lawful tolls.

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liable to any toll from whom it has been duly demanded, or who, by any act of his own, intended to prevent a due demand from being made, may have succeeded in preventing such due demand from being made, and may, without paying the said toll, and without the consent of the person entitled to demand the same, or without some other lawful authority, have proceeded through or beyond the place where the same is of right demandable, such person shall upon conviction in any competent court be liable to a fine of not less than twenty shillings, and not more than ten pounds, and in default of payment thereof, shall be liable to be imprisoned and kept at hard labour for any period not exceeding one month, unless such fine be sooner paid.

Exemptions from the payment of tolls.

167. No toll shall be demanded at any bar on account of the use of any road by any vehicle or animal employed in conveying, or in returning from conveying, any gravel, stone, or other material for making or repairing the roads, under the control of the council of the division, or any buildings, matters, or things belonging thereto, or for any vehicle or animal used by any officer engaged on council duty, or used by any officer or soldier being in proper staff or regimental or military uniform, dress or undress, and on duty, or for any vehicle conveying Imperial Stores, and provided with a pass signed by the proper Imperial authorities, or for any vehicle or animal used by any officer or member of any volunteer corps, or of the Cape Mounted Rifles, in uniform and on duty, or of any police force on duty; and further, no more than one full toll in any one day, to be computed from twelve of the clock at night to twelve of the clock of the next succeeding night, shall be demanded in respect of the same vehicle or animal for passing and re-passing through the same toll-bar.

"Toll-bar" shall include "ferry." Provisions for collection or farming, and for division of revenue from tolls, at any ferry situated partly in one and partly in another division.

168. All and singular the provisions of this Act with regard to toll-bars and tolls shall be read as though the word "toll-bar" included "ferry": Provided

- (a) That if, in any case, it shall so happen that any ferry at which there is a toll shall ply within two divisions, and not be wholly in either of them, then the tolls taken at such ferry shall be divided between the councils of both divisions, share and share alike:
- (b) That in regard to any such ferry, such councils shall, by mutual agreement, arrange between them which council shall have the letting or farming of the toll at such ferry, and that, failing, such agreement, the Governor shall decide.

Equitable division of income from tolls, in certain cases, to be settled by arbitration.

169. If there shall now or hereafter at any time be any toll-bar lawfully established on any main road at or near the boundary between two divisions, it shall be lawful for the Governor at the request of the council of either of the said divisions, in case the councils of the said divisions cannot mutually agree to an equitable division of the income derived by the one of them from the

establishment of such toll-bars, to direct that arbitrators, to be appointed in accordance with the provisions of the fourteenth section of this Act, shall inquire into and determine what share, if any, of such income it is in their opinion fair and reasonable that the council of the division in which such toll-bar is situated should pay to the council of the adjoining division, and after receiving the award of the arbitrators aforesaid, or the majority of them, the Governor shall cause the same to be proclaimed in the *Gazette*, and from and after the date of any agreement arrived at between the said councils as aforesaid, or of such proclamation, as the case may be, the council wherein the said toll-bar shall be situated shall be bound and obliged to conform to, abide by, and obey the terms of such agreement or award, as the case may be.

PART VII.

CONSTRUCTION OF BRIDGES.

170. It shall be lawful for the Governor, from time to time, by notice in the *Gazette*, to call for tenders from any joint-stock company, or other co-partnership, or private person who may be prepared to enter into a contract for the construction of one or more bridges over rivers which are crossed by any line of main road in this Colony.

Governor may call for tenders for the construction of bridges on the line of main roads.

171. Every such tender shall specify the river or rivers over which the party tendering proposes to construct a bridge or bridges, and shall state the spot or site or spots or sites where it is proposed to construct the same, and shall describe in detail the nature or character of the bridge or bridges proposed to be constructed, and the materials of which the same shall be made, and shall contain or annex a tariff showing the maximum or highest rate of all tolls proposed to be levied at every such bridge, and shall set forth the number of years, reckoned from the day of the execution of the contract or the building of any such bridge, during which term tolls not exceeding the rates specified in such tariff, shall be payable to the party tendering, and shall also contain all such other information as the said notice calling for tenders shall describe or require.

Details required to be contained in tenders to be sent in, as to construction, site, etc., of bridge, and tolls to be paid.

172. Should it appear to the Governor that any tender sent in, in pursuance of any such notice, is of such a nature as to give promise that a contract may be founded upon it, which it would be for the public interest to enter into, then the Governor shall, if necessary, cause the party tendering to be communicated with, for the purpose of coming to a clear and full understanding upon all points necessary to be understood before concluding such contract, and of agreeing upon any modifications which may appear desirable.

Governor may treat with parties tendering.

173. As soon as a clear and full understanding shall have been come to between the Government and the party tendering, the Governor shall cause the proposals of the party tendering to be transmitted or communicated to the council of the division in

Proposals when clearly understood to be communicated to the council of

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any division in which the whole or part of the proposed bridge would be situate.

Council to advise the Governor, within what distance from the bridge no other toll-bar should be established.

When Governor may enter into contract.

Contract to specify time within which bridge shall be completed and contain agreement to keep it in repair under penalty for breach.

Governor may remit penalty.

Contracting party to deliver over bridge in good repair on expiration of period.

which any such bridge is proposed to be constructed, to the end that such council may advise the Governor whether, in the opinion of such council, it will be expedient to conclude a contract upon the terms proposed, and, if not, what modification of any of those terms the said council would suggest: Provided that if in any case any such bridge should be a bridge connecting two divisions, and not entirely in either of them, then the full particulars aforesaid shall be transmitted to the councils of both divisions.

174. Every council to which any such proposals as aforesaid shall have been transmitted or communicated shall, when advising the Governor upon the subject thereof, inform him respecting the distance from either end of the proposed bridge within which distance it should not be competent during the term for which the party tendering is to be entitled to the tolls taken at such bridge, to put up or have any other toll-bar or toll-gate upon the road passing over such bridge, to the end that such restriction as to distance may be embodied in the contract, should a contract be made.

175. In case the party tendering shall agree with the council or councils as to the distance from the proposed bridge within which no toll shall be established, other than the toll at such bridge, or shall agree to any modification of such distance which any such council shall consent to make, and in case the Governor, after receiving and considering the advice of the council or councils upon the subject of such proposals, shall decide that it will be for the public interest to enter into a contract with the party tendering, it shall be lawful for the Governor, and he is hereby authorised to enter into such contract, and such contract shall be of the same force and effect as if embodied in this Act.

176. Every such contract shall (amongst other things) specify a time within which the bridge or bridges, the subject matter of such contract shall be completed and opened for traffic, and shall contain a covenant by the party contracting, that such party shall keep and have the said bridge or bridges in reasonably good repair and condition during and throughout the term of years for which such party is to be entitled to receive tolls at the rates agreed upon, and shall specify some sum of money to be paid to the Government by the party contracting, for and on account of any breach of any such engagement or covenant, by way of ascertained and liquidated damages for such breach: Provided that the Governor, if satisfied that any such breach arose from causes over which the parties contracting had no control, may remit the payment of such damages.

177. Every party contracting for and constructing any such bridge shall be, and such party is hereby declared to be, bound and obliged, at the expiration of the term of years during which such party is to be entitled to receive the tolls aforesaid, to deliver over the said bridge to the Colonial Government in reasonably good repair and condition, and such bridge shall from and after such delivery, become and be public property, precisely as if it had

been originally constructed by the said Government: Provided that, if any dispute or controversy shall arise or exist regarding the state and condition of the said bridge at the time of such delivery or proposed delivery, such controversy or dispute shall be settled by arbitration under the "Lands and Arbitrations Clauses Act, 1882."

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Arbitration in case of dispute.

178. Every such bridge when delivered to the Colonial Government shall forthwith for all the purposes of this Act be deemed to become and be a portion of the road on the line of which such bridge is situate, and to become and be in the charge and custody of the council of the division in which such bridge is situate. Every such bridge shall at all times 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 any such contract as aforesaid to be taken at any such bridge shall during the continuance of such contract be, and the same is hereby declared to be, as legal, valid, and effectual as if the same had been established by this Act, and as though the person entitled under such contract were a lessee of a toll-bar on a main road.

Bridge when delivered to be deemed part of main road, and at all times protected by law as regards protection of main road, and the levying of tolls,

179. Every party contracting for the construction of any such bridge under this Act shall give security to the satisfaction of the Governor for the due fulfilment by him of all the covenants, undertakings, and obligations by him to be fulfilled and kept under the contract and under this Act.

Security for proper execution of contract to be given.

180. It shall be lawful for any council to enter into a contract with any joint-stock company, or other co-partnership or private individual, for the construction of any bridge over any river crossing any line of divisional road in the division which such council represents, in like manner as by this Act provided in regard to bridges over rivers crossing lines of main road: Provided that no such contract shall be concluded by any council without the previous sanction of the Governor.

Councils empowered to contract for bridging rivers on divisional roads, but Governor's sanction required.

181. Every application to the Governor by any council requesting such sanction as aforesaid shall contain or be accompanied by the several particulars hereinbefore by the one hundred and seventy-first section of this Act required in regard to all tenders in the said section mentioned.

Application for sanction to be accompanied by full particulars.

182. The Governor, upon receiving any such application and particulars shall, by notice in the *Gazette*, publish the said applications and particulars, or an abstract of them, for general information, and shall in such notice, state that any parties objecting to the construction of the bridge or bridges mentioned in such application, upon the proposed terms, may send to the Colonial Secretary, on or before some day to be fixed in such notice, not being earlier than thirty-one days from the date of the first publication of such notice, their objection to such construction.

Application to be published in *Gazette*, and time fixed for sending in objections.

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Governor, after hearing and deciding all objections, may sanction a contract as proposed or with modifications.

183. In case the Governor, after considering any such application as aforesaid, and all objections, if any, urged against it, shall decide that it will be for the public interest that the council shall be authorised to conclude the contract mentioned in such application, or any modification of the contract which the Governor shall suggest, and the council and the party proposing to contract with them shall agree to, the Governor shall, through the Colonial Secretary, give his sanction to the council to enter into such contract, and any contract so sanctioned shall be of the same force and effect as if embodied in this Act.

Sections 176, 177, and 178 to apply *mutatis mutandis* to contract, to make bridge in the line of divisional road.

184. The provisions of the one hundred and seventy-sixth, one hundred and seventy-seventh, and one hundred and seventy-eighth sections of this Act shall extend and apply *mutatis mutandis* to every such contract as is in the last preceding section mentioned, and precisely as if wherever the terms "Colonial Government," "Government," and "Governor" are used in any of the said sections, the term "council" had been used in their place and stead.

Where proposed bridge is within municipal limits, the municipal council to have the powers conferred on divisional councils.

185. Every municipal council of any municipality shall, in regard to any bridge to be constructed within the limits of such municipality, be invested with all and singular the powers and duties hereinbefore conferred and imposed upon divisional councils in regard to the construction of bridges over rivers crossing divisional roads, and all and singular the provisions of sections one hundred and eighty to one hundred and eighty-four inclusive, shall, *mutatis mutandis*, apply to all contracts for the construction of bridges proposed to be entered into by any municipal council: provided that in the interpretation of this Act the term "municipal council" shall mean any board of commissioners, municipal, or town, or borough council elected by any municipality, town, or borough established under any law.

Where proposed bridge on main road shall connect municipal with other land, municipal council to be consulted on proposal.

186. As often as any bridge proposed to be constructed under this Act, upon any line of main road, shall be a bridge connecting any municipality with any extra-municipal ground, then the Governor shall, besides transmitting the proposal in the one hundred and seventy-third section mentioned to the divisional councils concerned, transmit the same to the municipal council of such municipality to the end that such board may advise the Governor in like manner as is hereinbefore provided with respect to divisional councils.

Where proposed bridge on divisional road shall connect municipal with other land, municipal council and divisional council may join in application to Governor.

187. As often as any bridge proposed to be constructed under this Act, upon any line of divisional road, shall be a bridge connecting any municipality with any extra-municipal ground, then it shall be lawful for the municipal council of such municipality, and the divisional council concerned, to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract.

188. All tolls which may be taken at any such bridge connecting any municipality with extra-municipal ground at any time after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, shall belong to the divisional council or the municipal council, or be divided between them in some certain proportion as the said councils shall determine by mutual agreement: Provided

- (a) That the cost of keeping such bridge in repair after it shall have become public property shall be borne by that one of the two bodies which shall be in receipt of the said tolls; or should such tolls be divided between the two bodies in a certain proportion, then the said cost shall be borne by such bodies in the same proportion.
- (b) That the Governor shall not give his sanction to any contract for the construction of any such bridge until the divisional council and the municipal council concerned have agreed together regarding the division or other appropriation of the tolls, if any, to be taken at such bridge, after the expiration of the term during which the tolls are to be taken by the party who constructed such bridge.

189. In regard to any bridge which shall be constructed under this Act entirely within the limits of any municipality, it shall be lawful for the municipal council of such municipality upon and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, to exercise all the powers by this Act conferred upon divisional councils with regard to the establishment of a toll-bar and the levying of tolls thereat in connection with such bridge, and the income received under this section shall be for the use and benefit of the funds of such municipality.

190. Every such bridge as is in the one hundred and eighty-sixth section of this Act mentioned shall, at all times from and after the construction thereof, be deemed to be a portion of the main road leading over it to or through the municipality, and every such bridge as in the one hundred and eighty-seventh section mentioned shall be deemed to be a portion of the divisional road leading over it to or through the municipality, and every such bridge as is in the one hundred and eighty-fifth section mentioned shall be deemed to be a portion of the municipal road or street along which it is constructed: Provided that nothing herein contained shall extend to, or alter, or affect any of the provisions of the one hundred and eighty-eighth section of this Act regarding the appropriation of tolls or the duty of making repairs

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Revenue from toll to whom payable after termination of right of party constructing bridge described in two foregoing sections.

Bridge to be maintained by body receiving revenue from tolls

Governor's sanction to be withheld until divisional council and municipal council have agreed as to appropriation of tolls after termination of right of party constructing bridge.

Municipal council to levy tolls, where bridge is within municipality, after right of contracting party shall have ceased.

Bridges mentioned in secs. 185, 186, 187, shall be deemed portion of municipal, main, or divisional road as the case may be; but sec. 188 not affected.

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Councils of two divisions may join in application for Governor's sanction for the construction of bridge.

191. As often as any bridge proposed to be constructed under this Act, upon any line of divisional road, shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the councils of both the divisions concerned to agree together in regard to the terms and conditions of the contract to be entered into for the construction of such bridge, and to join together in the application to the Governor for his sanction to such contract, and the provisions of the one hundred and seventy-sixth, one hundred and seventy-seventh, and one hundred and seventy-eighth sections of this Act shall extend and apply to every such contract as is in this section mentioned, as well as to every contract mentioned in the one hundred and eighty-fifth and one hundred and eighty-seventh sections of this Act.

Tolls to be levied on bridge connecting two divisions, after right of party constructing it shall have ceased, shall be equally divided between the two, unless by the Governor otherwise determined.

192. If any bridge constructed under this Act (being a bridge over which a line of main road or a line of divisional road passes) shall be a bridge connecting two divisions, and not entirely in either of them, then it shall be lawful for the Governor, upon and from and after the expiration of the term of years during which the tolls payable at such bridge shall be taken by the party who constructed such bridge, and with the advice of the councils of both such divisions to establish, by proclamation, tolls to be payable at such bridge, and the tolls levied at such bridge shall be divided between the said two divisions in equal shares and proportions, unless the Governor shall otherwise determine: Provided

- (a) That the Governor shall, and may, in equally dividing or otherwise appropriating the said tolls, by proclamation, make due provision, as circumstances shall demand and convenience dictate, for the superintendence, maintenance, preservation and keeping in repair of the said bridge by one or both of the councils of such divisions.
- (b) That the provisions of this Act shall be deemed to extend to all toll-bars and tolls established under this section.

PART VIII.

GOVERNMENT INSPECTION OF MAIN ROADS AND BRIDGES, PROCEEDINGS BY RATEPAYERS TO ENFORCE PROPER MAKING AND MAINTENANCE OF ROADS BY COUNCILS, &c.

Governor may direct periodical inspections and reports of main roads, &c., if roads, &c., not properly maintained, may direct repairs to be effected by council, and if road, &c., be not repaired in time prescribed as reasonably necessary, not being less than three months, Governor may temporarily re-

193. It shall be lawful for the Governor to direct periodical inspections and reports to be made of the condition and requirements of all main roads and bridges, or pontoons on the line of any main road, and should the report of the inspecting officer be of such a nature as to show that any section of main road or any such bridge or pontoon is not properly maintained, it shall be lawful for the Governor to direct that a full report of the nature of the repairs required be sent to the secretary of the council of the division in which the road, bridge or pontoon is situated, and to direct that such road, bridge or pontoon shall be placed in

proper repair, and should the council, so addressed through their secretary, fail to place such road, bridge or pontoon in proper repair, to the satisfaction of such inspecting officer as the Governor may appoint, within such reasonable time as the inspecting officer may report to be necessary for that purpose, being not less than three months, it shall be lawful for the Governor to direct that such road, bridge or pontoon shall temporarily be removed from the charge of the council of the division in which either may be situate, and the Governor may cause such road, bridge or pontoon to be put into proper repair, and the sums expended in placing the road, bridge or pontoon in proper repair, together with all reasonable expenses of the person or persons employed in the inspection aforesaid, shall be a debt due by the said council to the Treasurer of this Colony: Provided that a certificate from the Chief Inspector of Public Works, countersigned by the Controller and Auditor-General of Public Accounts, shall be transmitted to the secretary of the council, setting forth the particulars of such debt, and such certificate shall in all courts and places be conclusive evidence of the amount of such debt.

194. If on the report of such inspecting officer as aforesaid, it shall appear that any main road, bridge or pontoon situate in any division is not in a proper state of repair, and that such main road, bridge or pontoon cannot be placed in a proper state of repair without such an expenditure as would necessitate a rate exceeding one penny in the pound for main road purposes in such division, then in case the council of such division shall impose a rate of not less than one penny in the pound for main road purposes, and shall prove to the satisfaction of the Governor that such rate has been duly assessed, and that an amount equal to the total amount of such rate will be applied to the repair of the main roads, bridges and pontoons within such division, it shall be lawful for the Governor to supplement the funds of such council available for main road purposes by a grant in aid out of the public revenue, not exceeding in any case the amount to be realised by such rate as aforesaid, and to be expended upon the main roads, bridges and pontoons aforesaid, in case such grant shall be required for putting, or towards putting, the said main roads, bridges and pontoons in a proper state of repair: Provided

- (a) That no second or further grant in aid shall be made within twelve months next after the making of the first or any succeeding grant.
- (b) That unless an amount equal to the amount contributed from the public revenue in any year shall be expended by the council upon the main roads, bridges and pontoons of its division within twelve months next after the taking of its contribution, then the deficiency shall be recoverable from such council under the "Public Bodies Debts Act, 1867."

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move road, &c., from charge of council and cause repairs to be effected at expense of council, which shall receive certified particulars of debt so due.

Certificate conclusive evidence of amount of debt.

If rate of one penny in the pound is reported insufficient for proper repair of main roads, bridges or pontoons, in any division, Governor may supplement funds of council available for main road purposes.

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- Reconstruction or extraordinary repair of bridge or pontoon on line of main road, requiring extraordinary expenditure, shall, if council has satisfactorily performed its duties, be regarded as coming under the head of construction.

Where question arises as to any work as properly under construction or under maintenance the Governor shall decide, subject to decision, if any, of Parliament.

Ratepayers, representing at least three-fourths in value of rated property in any field-cornetcy, may insist on repair of any neglected road in division, and unless council can prove that on roads in such field-cornetcy it has during preceding three years expended the sums received from road rates therein levied, the road rates levied therein after such demand shall in the first place be devoted to repair of the neglected road.

Majority of ratepayers, being a majority of three-fourths in value, in one or more field-cornetcies, may request the levy of a special additional rate by the council for the making, &c., of a road other than a main or divisional road, and the

195. If by reason of floods or other casualty, any bridge or pontoon on the line of any main road shall be carried away, or shall sustain damage entailing an extraordinary expenditure for repairs of more than one hundred pounds sterling, or if from natural decay any bridge or pontoon shall require to be reconstructed or to be repaired at an expenditure exceeding two hundred and fifty pounds sterling, and if in either case it shall have been proved to the satisfaction of the Governor, that notwithstanding the due exercise of reasonable foresight on the part of the council to which the maintenance of such bridge or pontoon belongs, such casualty by floods or otherwise could not have been prevented, and further that the council responsible has in all respects satisfactorily performed its duties of maintenance, preservation and keeping in repair in respect of such bridge or pontoon, then the reconstruction or such extraordinary repairs of such bridge or pontoon, the case may be, shall be regarded as coming under the head of construction: Provided that if at any time any doubt or question should arise whether any particular work necessary to be done on or about any main road should be regarded as coming under the head of construction or the head of maintenance, such doubt or question shall be decided by the Governor, whose decision shall be final, unless Parliament shall otherwise decide.

196. Whenever any council shall refuse or neglect to maintain in proper repair any main or divisional road within the division, any number of persons liable to be assessed to road rates in any field-cornetcy, or in any two or more field-cornetcies, through which such road may pass, being not less than three-fourths in value of the persons so liable within the said field-cornetcy or field-cornetcies, may apply in writing to the said council, and demand that such road may be put in proper repair; upon the receipt of which demand the said council shall be bound, within a reasonable time, to put such road into proper repair; and no fresh road rates levied after the receipt of such demand within said field-cornetcy or field-cornetcies shall be appropriated to any other purpose than the repair of such road, until the repair thereof be completed: Provided, always, that the foregoing provision shall not apply in any case in which any council may prove that it has expended in the repair of other roads in the said field-cornetcy or field-cornetcies, within the preceding three years, the sums which it has received as road rates leviable therein during that period.

197. Whenever the majority of any persons liable to be assessed to road rates in any field-cornetcy, or in any two or more field-cornetcies in a division, being not less than three-fourths in value of persons so liable within such field-cornetcy or field-cornetcies, should desire to have a road situate therein, which is not a main or divisional road, made, improved, or repaired, they may apply to the council in writing, setting forth their wishes, and request that a special additional rate, not exceeding in any one year the amount

of one penny in the pound upon the value of the immovable property within such field-cornetcy or field-cornetcies liable to be rated, may be levied upon such property, for the purpose of being appropriated by the council, or by a committee of the inhabitants of such field-cornetcy or field-cornetcies, to be approved by the council to the purpose aforesaid; and every such council shall be bound to comply with such application within three months after it has received an application for its imposition.

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council shall comply with such request and apply the rate accordingly.

PART IX.

CONTRIBUTIONS TO OTHER FUNDS IN REGARD TO ROADS AND BRIDGES.

198. (1) Before any council may contribute to the making or improving of any road, bridge or pontoon in any other division, otherwise than according to the provisions of the one hundred and ninety-ninth section of this Act or of any law, it shall, by a notice to be published in the English and Dutch languages, in the *Gazette*, and in some newspaper published in the division, or, if none be there published, then in some newspaper there circulating, call a meeting of the owners of immovable property liable to be assessed under this Act, to be held at some convenient place and time, to be named in such notice, such time to be at least thirty days after the issue of such notice, for the purpose of deciding whether any, and if so what, sum shall be contributed by such council to such road, bridge or pontoon, and upon what terms and conditions; and if, at such meeting, the majority in value of rateable property resolve that the council be authorised to contribute a certain sum, then such council may pay over to the council of the division in which such road, bridge or pontoon may be, any sum not exceeding the sum named in such resolution, upon the terms and conditions approved at such meeting: Provided, however, that any council may call such meetings as aforesaid, from time to time, for the purpose of increasing the amount of the contribution to any such road, bridge or pontoon, or of varying the terms or conditions of such contribution; and that, if any such meeting as aforesaid should reject the proposal to contribute to or add to any previous contribution, no similar meeting shall be again called to consider the same proposal, until the expiration of six calendar months from the day on which such previous meeting was held.

Contribution to making or improving road or bridge in other division only lawful if resolved on by meeting of ratepayers convened after thirty days' notice, except contributions arranged under sec. 199 or prescribed by law.

No second meeting within six months from previous meeting.

199. (1) Whenever any council may decide upon making or improving, in its division, any line of road which leads to or through any other division, the said council shall communicate to the council of the other division the course of the proposed line, and the public purposes which the proposed work is meant to

Provisions for joint action and contribution by councils of adjoining divisions in making or improving roads connecting the divisions:

¹ See § 53, sub § (9), and § 55, Act 25, 1894.

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if councils cannot agree matter may be left to arbitration of Assistant Commissioner of Crown Lands.

serve, and shall desire the concurrence of the last mentioned council in the making or improving of such road; and any two or more councils agreeing upon the making or improvement of a road which passes through any part of their several divisions, may arrange together as to the execution of the work on such road, and as to the contribution from one to the other of funds in aid of the execution of such work; and if any such councils cannot agree as to the making, or improvement, or maintenance of a road in which they are jointly interested, or in which one of the divisions is interested, and the other divisions do not consider themselves to be interested, and if the councils of the divisions concerned are willing to submit to arbitration of the Assistant Commissioner of Crown Lands and Public Works, the said Assistant Commissioner shall consider and arbitrate in such matter, and his arbitration, confirmed by the Governor, shall be binding upon the parties, and final.

Times for payment of contribution by one council to another, and for recovery of unpaid contributions.

200. Every payment or contribution to be made by any one council to any other council shall, unless other provision is specially made by law or mutual consent of the said councils, become due and payable on the first day of June in each year, and in case it shall not be made within one month after the said date, the same may be sued for in any competent court by the council entitled to receive the same: Provided that as often as any different time or times shall be fixed for the payment of any such contribution, by law or mutual consent as aforesaid, the same shall be payable and recoverable at and after the time or times so fixed.

Rates may be assessed by council to meet contributions due from it or expenses of carrying out duty of maintaining and repairing road in any other division.

201. It shall be lawful for every council which is or shall be required to pay or contribute any sum of money to any other council, under any law, to assess rates upon the immovable property of the contributing division for the purpose of such contribution, precisely as if such money were required for the maintenance and keeping in repair of a main road lying within such last mentioned division; and in like manner every council which is, or shall be, by any law charged with the duty of maintaining and keeping in repair any part of any line of main road lying in any other division than that which such council represents, may assess rates upon the immovable property of the division to which such council belongs, for the purpose of such maintenance and repair as though such part of such line of main road lay in the last-mentioned division.

Municipal councils to contribute to maintenance and repair of main road running through municipality: work may be done according to mutual agreement between divisional and municipal councils, and in case of dispute,

202. As often as any line of main road within any division shall pass through any municipality or corporate town, the divisional council and the commissioners or municipal, town, or borough council of such municipality or corporate town (as the case may be) shall contribute, share and share alike, to the cost of maintaining and keeping in repair that piece or portion of such main road lying within the limits of such municipality or corporate town, and the divisional council and the said commissioners or municipal, town,

or borough council shall, by mutual agreement, settle between them by whom, or in what manner, the work of maintaining and keeping in repair such piece or portion of road shall be performed: Provided that should they be unable to agree in regard to any matter or question relating to their respective rights and duties under this section, the matter or question in controversy may by either party be submitted to the Governor, whose decision shall be final; and provided further that nothing in this section contained shall apply to any municipality or corporate town within the Cape division; and that the cost of maintaining and keeping in repair the main roads within the limits of municipalities or corporate towns within the said division shall be borne by the divisional council of the said division.

203. The following shall be included among the divisional roads of the Cape division, for the purposes of this Act, viz.: Sir Lowry-street, from the Toll; through the Imhoff, Strand-street, down Bree-street, to the North Wharf; from the Lower Toll to the Town Market. And in consideration of the Town Council of Cape Town keeping in repair these thoroughfares, the council of the Cape division shall pay to the Town Council, out of every levy to be made under this Act, one-half of the amount raised from the property within the municipality of Cape Town.

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according to decision of Governor; special exception of municipalities in Cape Division.

Certain divisional roads in Cape division to be maintained by Town Council of Cape Town, and council of Cape division to pay to Town Council half of rates on property in Cape Town.

PART X.

OFFENCES IN REGARD TO ROADS, &c.

204. The provisions of the third, fourth, and fifth sections of the Ordinance No. 9 of 1846, intituled "Ordinance for the better preservation of the public roads and the prevention of accidents and injuries thereon," shall apply to all public roads; provided that the provisions as to negligent, careless, or furious driving shall not apply to any public road in any town or village for which municipal regulations for the prevention of negligent, careless, or furious driving shall be provided.

Sections 3, 4 and 5 of Ordinance No. 9 of 1846 shall apply to all public roads.

205. If any person maliciously destroy, injure, or in any way do damage to any public road, whether main road or divisional road, or any toll-bar or toll-house, building, or work of any kind whatever, erected or made under the authority of this Act, or being upon or belonging to any public road within the Colony, it shall be lawful for any person who may see the offence committed to apprehend, and also for any other person to assist in apprehending, the offender, and by the authority of this Act, and without any warrant, to deliver him to any field-cornet, constable, or peace officer, who is to keep him in safe custody, and with all reasonable despatch to convey him before the Resident Magistrate within whose district the offence has been committed; and if the person or persons accused be convicted of any such offence by any such Resident Magistrate, he or they shall forfeit, severally and respectively, any sum not exceeding three pounds for every such offence,

Penalty for malicious destruction, injury or damage done to any public road, toll-bar, toll-house, etc.

Arrest without warrant.

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Payment to informer of half of sum forfeited by offender, other half to council.

and shall also make full satisfaction for the damage which may have been done thereby: and one moiety of any sum so forfeited shall be paid to the person or persons upon whose information such offender or offenders have been apprehended or brought to trial, and the other moiety shall be paid to the council of the division in which such offence was committed, to be applied by it for the purposes of this Act; and if any such offender do not, upon such conviction, pay the said forfeiture and satisfaction, such Magistrate shall commit him to prison, there to be kept to hard labour, if such Magistrate so order, for any time not exceeding three calendar months, unless the said forfeiture and satisfaction be sooner paid: Provided

- (a) That nothing herein contained shall prevent the said council from bringing any action for damages before any court having jurisdiction, should it consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.
- (b) That the secretary of the said council by authority of the said council shall be competent to prosecute in any case of damage or injury to any public road, without previously applying to the public prosecutor.
- (c) That any person who shall maliciously, and without reasonable and probable cause, apprehend any person, without warrant, for any alleged contravention of this section, shall, upon conviction, be liable to the same penalty as that by this section provided for the contravention thereof.

Council not debarred by this section from its action for damages.

Council may prosecute through secretary for damage to public, other than main road.

Penalty for malicious arrest under this section.

Jurisdiction of resident magistrates to award damages to council for injury done through carelessness, and to imprison for 14 days person neglecting to pay.

206. If any person should, through carelessness, do damage or injury to any of the matters or things in the last preceding section mentioned, any Resident Magistrate having jurisdiction shall, upon the application or complaint of the secretary of the council within whose division such damage or injury may have been done, duly authorised thereto by the said council, according as such damage shall have been done to a main road, or some road other than a main road, summon the party complained of, and upon hearing the parties on both sides, or on the non-appearance of the party complained of, examine the matter of complaint, and may award such sum of money, by way of satisfaction to the council as to such Resident Magistrate may appear reasonable; and in case of neglect or refusal forthwith to pay such money, together with all expenses attending the recovery thereof, such Resident Magistrate may sentence the party so neglecting or refusing, to any period of imprisonment with or without hard labour not exceeding fourteen days, unless such money be sooner paid: Provided, however, that nothing herein contained shall prevent any such council from bringing any civil action for damages against any person doing such damage or injury as aforesaid, before any court having jurisdiction, should he or they consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.

Council not debarred by this section from action in higher court for damages beyond resident magistrates' jurisdiction.

SUB-DIVISION II.

No. 40—1889.

PART I.

PUBLIC OUTSPANS.

207. All public outspans in any division shall be under the management and control of the divisional council of such division. A divisional council may, with the consent of the Governor, let a portion of any outspan ⁽¹⁾ over which it has control, not exceeding in extent one morgen, with a limited right of grazing over the remainder, subject to conditions for the erection of buildings for the accommodation of travellers, the making, or keeping in repair of dams, the eradication of burr-weed or noxious plants or otherwise, such as the Governor shall approve: Provided that before submitting any application and conditions for the Governor's approval, notice thereof shall be given in the newspapers in which the notices of such council are usually published, for one month, and if any objections be made such objections shall be forwarded to the Governor together with the council's remarks thereon. No such letting shall be for a period longer than seven years.

Control of public outspans.

SUB-DIVISION III.

PART I.

PUBLIC HEALTH.

208. [Repealed by Act 23, 1897.]

209. The council of every division is hereby empowered as occasion may require, to levy special rates upon all property situated within such division, exclusive of any municipality or community under the Villages Management Act, and liable to be rated by such council, for the purpose of defraying any expenses incurred or to be incurred under the provisions of the "Public Health Act, 1883,"

Special rates to be levied as occasion may require for health purposes.

¹ Cannot lease any portion of any private land which shall be subject to a registered servitude of outspan, § 3, Act 11, 1893 (p. 3151).

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Council may levy rate in aid of local authority in division which has no power to levy rates, and such rate shall be levied by council on written application by such local authority.

Special rate on each hut or dwelling on Crown land, to be collected in the same manner as a hut tax.

Act No. 10 of 1884 not affected.

Management and control of pounds vested in council.

Established pounds to continue till abolished.

Governor may, at request of council, proclaim or abolish pounds, without prejudice to legal remedies if poundmasters or other persons interested in abolished pound

and such special rate shall be levied and collected in the same manner as other rates provided for in this Act.

210. In case any expense shall be incurred in carrying out the provisions of the "Public Health Act, 1883," by any local authority not having by law the power to levy rates upon the landed property within the area over which such local authority shall exercise its powers, it shall be lawful for the council of the division in which such area is situated, and such council is hereby required upon the application, in writing, of such local authority stating the amount required to be raised for the purposes of this section to levy a special rate upon all the rateable property within such area, and such rate shall be levied and collected by the said council in all respects as if it were a rate lawfully levied by such council for its own purposes.

211. In addition to the rates provided for in the two last preceding sections, and as a portion of any such rate which may hereafter be levied, the council of any division may assess and levy upon all huts or dwellings erected within the division, or within such areas as are mentioned in the last preceding section, as the case may be, upon Crown land not liable to be rated, a rate in the proportion of one shilling for each hut or dwelling for every farthing in the pound levied upon the assessed owner of rateable property: Provided that such last-mentioned rate shall, in respect of any huts or dwellings liable therefor in any native location, be collected by the inspector of such location or by such other officer as the Governor may appoint, and shall be recovered as though such rate were hut tax payable in respect of such huts or dwellings.

212. Nothing in this Act contained shall be deemed to alter or affect the provisions of the "Public Health Extension Act, 1884."

SUB-DIVISION IV.

PART I.

POUNDS, POUND FEES, &c.

213. The general management and control of every pound other than pounds situated within any municipality or corporate town, is hereby vested in and conferred upon the council of the division in which such pound is situate, and every such pound, lawfully established at the date of the passing of this Act shall be deemed and continue to be a lawful pound within the meaning of this Act, unless or until such pound shall be abolished.

214. It shall be lawful for the Governor by proclamation in the *Gazette* at the request of the council of any division to declare and establish any pound at any spot or site named and desired by such council, and to declare the abolition of any existing pound; provided that nothing herein contained shall be so construed as in any way to prejudice or take away any legal rights vested in any poundmaster or other person lawfully interested in the continuance of any pound which may hereafter be abolished, or to deprive such

person of any legal remedy arising out of any contract with any such council.

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215. The council of every division may at its discretion appoint and dismiss any poundmaster of any pound in such division, subject to the terms of such contract as may be entered into between such council and such poundmaster.

Council may appoint and dismiss poundmaster subject to terms of contract.

216. Advertisements or notices of intended sales of impounded animals, commonly called pound notices, shall be published in manner and form as the council of each division shall, from time to time, approve of and direct; and the approval by the Governor aforesaid of any particular manner or form of publication shall cease to be necessary or required anything in the nineteenth section of the Ordinance No. 16, (1) 1847, to the contrary notwithstanding: Provided that the half-yearly notices of dates and places of holding pound sales in the twentieth section of the said Ordinance mentioned shall continue to be published by and at the expense of the council of each division.

Advertisements or notices of intended sales published at expense of and as approved by council.

217. All moneys which, under or by virtue of the twenty-third section of the Ordinance No. 16, (1) 1847, would become the property of Her Majesty the Queen, and be paid into the Colonial Treasury, shall henceforth be received by the council of the division, to be applied in defraying the cost of publishing the pound notices and other notices connected with pounds: Provided that an account shall be rendered and audited in accordance with this Act of all moneys so received, and that the surplus of such moneys if any, shall be applicable to the purposes set forth in the two hundred and seventy-eighth section of this Act.

Moneys going to Treasury under section 23 of Ordinance No. 16 of 1847 to go to council: account to be audited: and balance applied under section 278 of Act.

218. The powers vested in Civil Commissioners and Justices of the Peace under and by virtue of the thirty-seventh section of the Ordinance No. 16 (1) of 1847 shall be vested in and exercised by the council of each division in respect of all pounds, other than municipal pounds, situate in such division.

Powers of Civil Commissioners and Justices of the Peace under section 37 of Ordinance No. 16 of 1847 vested in council, except as to municipal pounds.

219. The rate of mileage, pound fees, fees for herding, grazing and feeding, and trespass money payable in respect of all domesticated ostriches impounded under the provisions of the Act No. 31 (1) of 1875, shall be such as the council of each division shall from time to time fix and determine.

Mileage rates, pound fees, &c., under Act No. 31 of 1875 to be fixed by council.

220. Immediately after the framing of such tariff of fees and charges by any council, the said council shall publish the same in the *Gazette* and in some newspaper circulating in the division, and shall furnish each poundmaster with a copy thereof, and the said tariff shall forthwith be of full force and effect in such division until altered or amended in like manner by such council: Provided that unless and until any council shall frame and promulgate such tariff of fees and charges, the provisions of the Act No. 31 of (1) 1875, and of the Schedule thereto, shall continue to be in force in said division.

Tariff of fees and charges to be published in *Gazette* and public newspaper: may be altered or amended by council: pending tariff provisions of Act No. 31 of 1875 and Schedule to continue in force.

¹ Repealed by Act 15, 1892 (p. 3006).

SUB-DIVISION V.

PART I.

ANIMALS, LICENCES TO KEEP DOGS, &c.

Tax on dogs may be imposed by council and collected by means of licences or otherwise.

Rules and regulations may be framed by council, subject to Governor's approval, and publication in the *Gazette*, and public newspapers.

Application of funds derived from tax on dogs.

Tax to be not greater than 5s. nor less than 2s. 6d.; no tax on dogs under three months of age.

Penalty for keeping dog in any division without paying tax imposed in such division.

Powers of justices of the peace, field-cornets, constables and officers of the peace, and of proprietors or occupiers of land, to call upon travellers with dogs to produce licence or proof of payment of tax under this part of this Act. Provision for report to council of division where person describes himself as residing.

221. Every council shall have the right to impose a duty or tax upon dogs within its division, which tax shall be collected by means of licences to be granted by such council, or in such other manner as such council shall determine, subject, however, to the provision in the next succeeding section contained.

222. The council shall have the power to frame rules and regulations in regard to the form of licences for keeping dogs, the manner of taking the same out, or in regard to any other mode of collecting the duty or tax hereby authorised to be imposed: Provided, however, that all such rules and regulations shall be subject to the approval of the Governor, and such rules and regulations, if so approved of, shall be published in the *Gazette*, and some one or more newspapers, if any, published or circulating within the division for which such rules and regulations are framed.

223. The funds collected by any council as the proceeds of the said duty or tax or of fines and penalties under the two hundred and thirty-second section of this Act shall be applied by such council for the destruction of wild carnivorous animals or for the purposes of the two hundred and seventy-eighth section of this Act.

224. The amount of the duty or tax authorised to be levied shall not be more than five shillings, nor less than two shillings and sixpence for each dog: Provided, always, that no duty shall be payable for or in respect of any dog under the age of three months or thereabouts.

225. Every person keeping a dog within any division, the council of which shall have imposed the duty or tax in this Act provided for, without having paid such duty, shall be subject, on conviction, to a fine not exceeding the sum of one pound sterling, or, in case of non-payment, to imprisonment with or without hard labour for any term not exceeding fourteen days, unless such fine be sooner paid.

226. If any justice of the peace, field-cornet, constable, or other officer of the peace, or any proprietor or occupier of land, shall request any person travelling with a dog in his custody, charge, or possession, to produce his licence for keeping such dog, or to afford other sufficient proof that he has paid a duty or tax for the same under the provisions of this Act, or has a licence to keep the same from some Municipality or Village Board of Management, and shall, after failure of such production, have no reason to believe that such person either has a fixed abode or is licensed to keep such dog, then and in such case it shall be the duty of such officer, proprietor, or occupier to demand from such person the particulars

of his name and abode, and the place whither he is travelling, and thereupon it shall be the duty of such officer, proprietor, or occupier, with all convenient speed, to send to the council of the division, a report stating such particulars as he shall have obtained, and describing the person in whose custody, charge, or possession, such dog shall have been found or seen; and upon receiving such report such council shall, if such person travelling as aforesaid shall have described himself as living in any other division, send such report to the council of such other division: Provided that if any person travelling as aforesaid, from whom such particulars as aforesaid shall have been demanded, shall refuse to give answers thereto, or shall wilfully give false answers thereto, he shall be deemed to be guilty of the offence of contravening this section of this Act, and shall, upon conviction, be liable to a fine not exceeding one pound, or in case of non-payment to imprisonment, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid; and provided that, subject to the provisions of the three next succeeding sections of this Act, it shall be lawful for any justice of the peace, field-cornet, constable, or other officer of the peace, or for any collector of the duty or tax on dogs lawfully appointed by any council for that purpose, to destroy any dog found by him at any place within the limits of the division or district within which such justice of the peace, field-cornet, constable, or other officer of the peace has authority, or such collector is appointed to collect the duty or tax on dogs, and it shall be lawful for any proprietor or occupier of land to destroy any dog found trespassing upon the land owned or occupied by such proprietor or occupier.

227. Nothing in the last preceding section contained shall render it lawful for any of the persons therein mentioned to destroy any dog at any time when such dog shall be in the custody, charge, or possession of some person if such person shall either

- (1) Upon request under the said section produce a licence to keep such dog, or
- (2) Satisfy any such justice of the peace, field-cornet, constable, or other officer of the peace, that the person in whose custody, charge, or possession such dog shall be found has a fixed abode, or that a duty or tax has been at that time duly paid in any division in respect of such dog.

228. Nothing in the two hundred and twenty-sixth section of this Act contained shall render it lawful for any collector of the duty or tax on dogs to destroy any dog found in the custody, charge or possession of any person unless such person shall after demand on failure to produce a licence for such dog have refused or neglected to pay the amount of the duty or tax on such dog levied in the division within which the said collector

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Penalty for refusing to answer, or for giving wilfully false answers.

Power of above mentioned persons to destroy dogs under certain circumstances.

Dog found in custody of any person not to be destroyed if licence produced by person or satisfies J.P., &c., that he has a fixed abode, or has paid tax in any division.

Nor if person in whose custody dog is found pays to collector the amount of the tax.

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Penalty for obstructing person exercising lawful powers under this part of this Act.

Licences are annual and expire on 31st December.

Tax on dogs not levied by divisional council within limits of municipality, &c., where municipal tax exists.

No municipal tax to be subsequently imposed if divisional council is first in imposing tax under this part of this Act.

Fines and penalties recovered, to be paid to the council.

is lawfully appointed as aforesaid, in accordance with rules and regulations framed in pursuance of the provisions of this Act.

229. Any person who shall in any way hinder, prevent, obstruct, or interfere with any person duly authorised to exercise and while lawfully exercising the powers conferred by the provisions of this Act in regard to dogs, shall upon conviction be liable to the penalties prescribed in the two hundred and twenty-sixth section of this Act.

230. Every duty or tax authorised by the aforesaid Act to be levied upon dogs shall be payable annually, and every licence to keep a dog shall expire upon the 31st day of the month of December next after the issue of such licence.

231. No duty or tax on dogs shall be imposed or levied under this Act by any council within any area which shall be within the jurisdiction of any Municipality or Village Board of Management which shall already have imposed a duty or tax upon dogs: Provided that in case any Municipality or Village Board of Management shall not have imposed a tax on dogs kept within the area under its jurisdiction it shall be lawful for the council of the division to impose and levy within such area the duty or tax authorised by this Act: and thereupon no such Municipality or Village Board of Management shall have the power to impose any such tax within the same area.

232. All fines and penalties imposed under the provisions of this part of this Act shall, when recovered, be paid over to the council; and all costs incurred in prosecuting offences under the said Acts shall be borne by the person convicted, and the court before which such person has been tried and convicted may make the payment of costs a part of the sentence against him: Provided that in case of failure to recover such costs or any part thereof from such person, the said costs or the part not so recovered as well as any costs incurred in relation to such recovery shall be borne by such council.

SUB-DIVISION VI.

PART I.

EXTIRPATION OF XANTHIUM SPINOSUM AND OTHER NOXIOUS WEEDS AND PLANTS.

233. [Repealed by Act 18, 1898, p. 3094.]

234. [Repealed by Act 18, 1898.]

235. The Commissioner of Crown Lands in respect of waste Crown lands, and the commissioners or council of any municipality in respect of municipal lands, and Boards of Village Management in respect of village lands, and the headmen of native (1) locations as representing the inhabitants thereof in respect of location lands, shall be charged with the duty of eradicating or destroying the said weed when found on such land, and shall obey the provisions of the two last preceding sections of this Act, and be deemed to own such waste Crown lands or municipal lands, or village, or location, as the case may be, and as owners to be amenable to the proceedings provided in the last preceding section of this Act.

236. Persons authorised, in writing, by councils to inspect lands for the purpose of this part of this Act shall be at liberty to enter upon and inspect land within the division, and anyone

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Duty of eradicating weed on waste Crown lands, municipal lands, village lands or native locations.

Council may appoint inspectors for the purposes of this part of this Act. Penalty for obstructing inspector.

¹ As to native locations see Act 22, 1905 (p. 4849).

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Contribution out of public revenue if annual expense in eradicating weed exceeds £100 in any division.

Other noxious weeds or plants may be proclaimed at the request of any council, and shall then come under this part of this Act.

Penalty for negligence on the part of council in eradicating or destroying noxious weeds or plants.

obstructing any person so authorised shall, upon conviction by the Resident Magistrate of the district, be liable to a fine not exceeding five pounds.

237. If in one year the costs and charges incurred in any division by the council thereof for the eradication and destruction of the said weed shall when properly audited under the provisions of this Act be found to exceed the sum of one hundred pounds sterling (£100), then one-half of the expense incurred over and above that sum shall be paid from and out of the public revenues of the Colony.

238. It shall and may be lawful for the Governor, at the request of any council, to declare by notice in the *Gazette* that any other noxious or destructive weed or plant shall be dealt with in manner similar to that provided by this Act in the case of the burr weed, called *Xanthium Spinosum*, and thereupon all the provisions of this part of this Act relating to the burr weed, called *Xanthium Spinosum*, shall apply in respect of such other noxious or destructive weed or plant.

239. Whenever it shall come to the knowledge of the Government that any weed or plant referred to in this part of this Act is growing in any division, and that the council of such division has not taken, or is not taking, all the necessary steps, and exercising all the powers and authorities conferred on it by this Act to eradicate or destroy the said weed or plant, it shall be lawful to summon such council, at the suit of such person as the Colonial Secretary shall appoint for that purpose, before any competent court, to answer for their neglect, and to show cause why an order should not be made to compel the said council to perform the duty imposed upon them by this part of this Act.

SUB-DIVISION VII.

PART I.

CONTRACTS.

Contracts of council to be in writing if price or sum paid exceeds £10.

Terms and conditions to be included in contracts.

Execution by two councillors.

240. Every council acting in pursuance of the provisions of this Act may, from time to time, enter into any contract with any person or company for any work to be done, or for any materials or things to be furnished for the purposes of this Act, and all contracts upon which the price or sum to be paid may exceed ten pounds sterling shall be in writing, and shall specify the work to be done, or the materials or things to be supplied, and the price or sum to be paid for the same respectively; and, in the case of work to be done, the time within which the same shall be completed; and shall provide some penalty to be suffered in case of non-performance of the contract, and shall be signed by not less than two councillors, and also by the person or persons contracting; which contract, or a copy thereof, shall be entered in a book to be kept for that purpose.

241. 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 division, 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.

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Except in cases of emergency public notice to be given of important intended contracts calling for proposals.

Best proposal to be accepted, if any, and security may be required.

242. All contracts entered into by any council for the doing of any work or the supplying of any materials, articles or things required by such council, shall be binding upon their successors in office: Provided that no such contract shall be made to endure for a longer period than three years from the day of its date.

Contracts binding on succeeding councils; but no contract to run for more than three years.

SUB-DIVISION VIII.

RATING POWERS; VALUATION AND ASSESSMENT FOR RATING PURPOSES; APPLICATION OF FUNDS; CONTRIBUTIONS.

PART I.

RATEABLE PROPERTY.

243. (1) All persons owning immovable property within any division, including any municipality within such division, shall be liable to be rated for the purposes of this Act, save as hereinafter excepted, that is to say:

Rateable property and exceptions

- (1) Immovable property belonging to the Crown whether vested in the Colonial Government or otherwise, except as in the next succeeding section set forth.
- (2) Immovable property vested in or belonging to any municipal board, or town council, except as in the next succeeding section set forth.
- (3) Buildings appropriated exclusively to the purposes of public worship or to public schools, libraries, or museums.
- (4) Burial grounds.
- (5) Land used exclusively for hospitals, lunatic asylums, benevolent asylums or orphanages.

244. (1) All Crown Lands leased under the provisions of Act No. 19 of 1864 or of any other Act in case such last mentioned letting shall be for a period not less than one year, and all municipal common lands leased under Act No. 45 of 1882 or any other Act for a period not less than one year, shall be liable so long as the same shall be under lease, to be rated for the purposes of this Act, and for the purpose of every assessment of such Crown

Leased. Crown or municipal lands—how and when rated and how assessed.

¹ This section applied to district of Glen Grey. See § 47, Act 25, 1894 (p. 3383).

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or municipal lands, the value of the lands comprised in any such lease shall be deemed to be sixteen times the amount of the annual rent payable by c^r under such lease: Provided that the Colonial Government and any municipality shall not be liable to pay any rates in respect of such lands.

PART II.

MODE OF MAKING VALUATION.

Periodical valuation for rating purposes by competent valuers.

245. The Council of every division shall from time to time, but not less than once in ⁽¹⁾ five years, cause to be made for such division a valuation of all rateable property within the division by a competent person or competent persons as valuers, not being councillors, and the rates made by the council for the purposes of this Act shall be made upon such valuation.

Form of declaration by valuer.

246. 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:—

“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 division of——, for the purpose of assessment. 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,——.”

Declaration of valuer to be lodged and preserved.

247. Every such declaration as aforesaid shall be lodged with and preserved by the council appointing such valuator.

Interim valuation of omitted, divided, improved, or deteriorated property.

248. It shall be lawful for the council at any time to direct that an interim valuation be made of any property discovered to have been omitted from the valuation roll, and of any property subdivided or permanently improved by the erection of buildings or otherwise, or of any property materially diminished in value by fire, flood, or similar cause between any two valuations, and to appoint a valuer or valuers for the purpose, and the valuation roll shall be amended in accordance with the results of such interim valuation, when any objections thereto have been finally decided in accordance with the provisions of this Act.

Valuer to have reasonable right of entry in day time.

249. 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 division

¹ See § 8, Act 10, 1902 (p. 4369) making provision for fresh valuation rolls in consequence of war and rebellion (Divisions of Cape, Port Elizabeth and East London excepted).

without being liable to any action or other proceeding on account thereof.

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250. 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 or lessee 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.

Owner or occupier, or person in charge, must answer valuer's questions.

Penalty for refusing to answer, or for false answer.

251. As soon as the valuation roll aforesaid shall have been completed in any division, it shall lie in the office of the divisional council, or such other place as the council may authorise, for the inspection of every owner, occupier or lessee of any property included therein, who may, upon all lawful days, and at reasonable hours, inspect the same and take extracts therefrom, and the council shall, after the valuation roll has been completed, by notice in the English and Dutch languages in the *Gazette*, announce, for general information, that the said council 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

Valuation roll when completed shall lie for inspection, and council to give thirty days notice of holding of court to hear objections.

- (a) That such notice shall be published in the *Gazette* for not less than thirty days before the day appointed therein for the holding of such court:
- (b) That the same or a similar notice shall be published in at least one newspaper which may be published, or which may circulate within such division, and shall be posted at or near the court-house of every Resident Magistrate's Court, whether stated or periodical, situated within such division, and at some conspicuous place at all public markets within such division; and that the council of such division shall adopt such other means of giving publicity to such notices as circumstances shall permit:
- (c) That it shall not be necessary, in any suit or proceeding for the recovery of any rate, to prove anything further, in the nature of due notice of any such valuation as aforesaid, than the publication of the notice aforesaid in the *Gazette*.

Provisions as to notice, and proof thereof in legal proceedings.

252. Upon the day and at the place 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 lessee as

Council to hear and decide on objections at court holden for the purpose.

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aforesaid, or other person on his behalf, nominated in writing, and shall inquire into the merits of such objections, and for that purpose may take the oath or affirmation of any person whom it shall see fit to examine (which oath or affirmation the chairman of such council is authorised to administer), and shall confirm or correct or alter any valuation objected to, as truth and justice shall require: Provided that the said court may, if necessary, be adjourned from time to time upon the application of any person objecting, who shall show reasonable grounds for not being ready with his proofs, or for the purpose of obtaining further evidence in regard to any case which shall have been partly heard.

Oath to be taken by chairman presiding over court and by other councillors.

253. The chairman presiding over any such court shall, before said court proceeds to hear objections to any valuation, take himself, in open court, the following oath:

I, A. B., do solemnly swear that I will, to the best of my skill and knowledge, and without fear, favour, or prejudice, truly and impartially adjudge upon all questions that may come before me as a member of this court. So help me God!

And he shall then administer the same oath to the other councillors forming the court.

Court may increase or diminish valuation.

254. It shall be competent for the said court, acting in manner and in form as by this Act directed, to increase or diminish the value put, in and by any valuation which shall be under the review of such court, upon any property.

Objection as to under valuation may be made by any ratepayers.

255. Any person liable to the payment of rates in respect of any property included in any valuation, who shall consider that any property included in such valuation is valued lower than it ought to be, may send in to the secretary of the council an objection in writing, setting forth the nature of such property and the value which the person objecting considers true and just: Provided that such objection shall be sent so as to be received by the said secretary not later than fourteen days before the day appointed for the holding of the said court.

Objection must be made fourteen days before court held.

Notice of objection to be given by secretary to owner, &c., of property affected by objection.

256. The secretary of any council receiving such objection, shall forthwith serve upon the owner, or occupier, or the lessee of the property of which the value is objected to, a notice in writing, setting forth the exact terms of the objection lodged, and intimating that such objection will come on for consideration at the court aforesaid.

Owner &c., may in writing, consent to objection, and property shall be raised in value accordingly.

257. Should the person receiving notice as aforesaid, that an objection has been lodged by the person named in such notice, against the value put upon the said property, consent that the valuation upon such property may be increased to the amount claimed in and by the objection, such person may in writing, inform the secretary aforesaid that he consents to such increase, and such secretary shall report such consent to the court aforesaid at its sitting, and thereupon the value of such property shall be increased accordingly.

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

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 Objector to receive notice of consent of owner, &c.

259. In case no such consent as aforesaid shall be given as aforesaid, then the person objecting and the person resisting the objection may, in person, or by any agent appointed in writing, appear before the court aforesaid, upon the day appointed for the sitting thereof, and such court shall proceed to determine upon such objection.

In absence of consent, objector and owner, &c., may appear before court personally or by an agent.

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

If objector does not appear, or objection fails, it shall be dismissed; and court may award costs against objector to owner, &c., appearing in person or by an agent.

261. If the person entitled as aforesaid to receive, and who shall have received, notice of an objection lodged to any valuation, shall fail to appear at the sitting of the court, or, appearing, shall fail to rebut the proof made that the valuation objected to was too low, so that the valuation objected to shall be increased, then the court may, should it think fit, give costs to the objecting party: Provided

Costs may be given against owner, &c., who has not consented, if valuation increased.

- (a) That no costs shall be given against any person who shall have received notice of objection, and who shall appear at the sitting of the court, and then and there declare his consent that the valuation objected to shall be increased to some amount less than the amount claimed in and by such objection, which shall be admitted by the objecting party, or found by the court to be the true and just value.
- (b) That even where such person appears to consent that the value objected to shall be increased to the full amount claimed in and by the objection, no costs shall be given against him, in case he shall prove to the satisfaction of the court that he received notice of such objection so short a time before the sitting of the court that he could not send in as aforesaid, to the secretary, before the sitting of the court, his consent to such increase in the valuation.
- (c) That no costs shall be given against any person who shall have received notice of objection as aforesaid, in case such person shall show that he made no application to the valuer to fix the amount of the valuation.
- (d) That in case of any increase of valuation caused by the act or omission of the valuer alone, the court shall con-

Provisions for guidance of court in awarding or refusing costs.

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Costs awarded recoverable by action in court of Resident Magistrate upon proof of order of court awarding costs.

Objections may be made at sitting in court, but hearing of objection may be adjourned.

Decision on merits of objection to be final.

Assessment of rates when valuation roll settled, after notice to councillors.

sider whether any reasonable costs of the objector should not be borne by the funds of the council.

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

263. Although no objection shall have been lodged in manner and form, and within the time of this Act mentioned, it shall be lawful for the court aforesaid, at the sitting thereof, should it so think fit, to allow any such person as might have lodged an objection under the two hundred and fifty-fifth section, to make such objection then and there, in writing, and thereupon, should the person entitled to receive notice of such objection be present, and consent, the said court may proceed summarily and at once to inquire into and decide upon such objection: provided that if such lastmentioned person be not present, or, being present, shall demand time to answer the objection, then the court shall adjourn till some future day to be then and there appointed for deciding upon such objection, at which day, or upon some other day to be fixed by a further adjournment, the said court shall decide finally upon such objection, and make such order as to costs as shall to justice appertain.

265. The decision of the said court upon any objection to any valuation shall, save as to the question of costs, be final and conclusive, and shall not be capable of being reviewed or reversed by any court or proceeding whatsoever.

PART III.

MAKING OF RATES.

265. As soon as the valuation roll of the whole of the rateable property in any division shall have been completed, and all objections thereto decided, the council may proceed to assess and impose upon all persons liable thereto, such a rate as it may deem necessary and expedient for the purposes of this Act on the value of the rateable property: Provided

- (a) That no such rate shall be assessed until after the expiration of thirty days from the issue by the secretary at the request of any two councillors of a notice to the several councillors, which shall express the intention to propose such assessment, and after the publication of such notice once for such period in the *Gazette*, and at least once in one of any newspapers that may be published or circulated in the division:

- (b) That no rate shall be imposed under this section more frequently than once in twelve months.

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Only one rate in twelve months.

PART IV.

RECOVERY OF RATES.

266. 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 of the amount of which rate the said council shall give in the English and Dutch languages at least thirty days previous notice in the *Gazette*: Provided

Rates when due; notice to be given.

- (a) That the same or a similar notice shall also be published and posted, in like manner as is hereinbefore directed in the last preceding section, in regard to the certain notice therein mentioned:
- (b) That it shall not be necessary, in any suit or proceeding for the recovery of any such rate, to prove anything further as to due notice thereof having been given than the publication of the announcement thereof in the *Gazette*.

267. (1) Whenever any council has announced in the *Gazette* as hereinbefore required, the day on which any rate, duly assessed under this Act, shall become due and payable, it shall be incumbent upon all persons liable to such rate to pay the amount thereof so due to the secretary, or 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 for the recovery of the amount.

Rates to be recoverable by legal proceedings if not paid on or before due date.

268. (1) 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, 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.

Evidence in proceedings to recover rates.

269. (1) Every council may, in suing for the recovery of rates, proceed against the owner or lessee, 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

Owner, or lessee, or occupier may be sued jointly or separately for rates due, but owner *prima facie* liable to occupier who pays rates.

- (a) That any occupier of property on which a rate has been assessed, who is not the owner thereof, and who has not entered into such occupation, in pursuance of any agree-

¹ Provisions of this section applied to Glen Grey under certain circumstances. See § 50, Act 25, 1894 (p. 3384).

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Occupier only liable for rates becoming due during his occupation.

Liability once accrued to continue though ownership or occupation ceases or lease determined.

Remedy by distress without action under warrant signed by chairman.

Recovery of rates by action in resident magistrate's court.

Alternative actions where person liable does not reside in district where rated property is situated.

ment for becoming the owner thereof, shall, in the absence of any agreement to the contrary, be enabled to retain or recover from such owner the amount of any rate which he may have so paid, but not any costs or expenses which he may have incurred, or been condemned to pay, in the course of any suit or action brought against him by the council for non-payment of any such rate:

- (b) That no occupier of any movable property shall be liable for any rate which had become due and payable thereon at any time before he entered upon the occupation thereof:
- (c) That any person who may have become liable for any rate as aforesaid, shall continue to be liable for such rate, although he may have ceased to own, to hold on lease, or to occupy the property in respect of which the rate had been imposed.

270. (1) 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, 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.

271. (1) 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 of the district wherein the rated property is situated, as hereinbefore by the one hundred and thirty-seventh section of this Act is provided, or in any other competent court.

272. (1) In case any person liable for any rate shall not reside within the district wherein the rated property is situated, action may be brought either in the Court of Resident Magistrate of such district, or in the Court of Resident Magistrate of the district

¹ Provisions of this section applied to Glen Grey under certain circumstances. See § 50, Act 25, 1894.

in which such person shall reside: Provided that as often as any such person not resident in the district in which the rated property 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 such property, or upon the persons summoned, by the messenger of the Court of the Resident Magistrate of any district in which such person shall be found.

No. 40-1880.

Service of process-

273. (1) 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 said date.

Interest on overdue rates.

274. (1) The fourth section of the Act No. 28 of 1881 shall, in respect of any rates due and payable to any council under this Act, be read as though the word "five" were therein inserted instead of the word "ten." (2)

Act No. 28 of 1881 to apply after five years' default in payment of rates on derelict land.

275. Before passing transfer of any immovable property within any division, every Registrar (3) of Deeds shall require the production of a receipt or other voucher showing that the rates last due to the council of such division upon such property have been paid.

Payment of last rate to be proved before registrar of deeds may pass transfer.

276. It shall be the duty of every secretary to a council, immediately after the making of rates by such council, to transmit to such Registrars of Deeds as the Council may think fit, a written notice showing the date upon which such rates become due. Until the receipt by any Registrar of Deeds of such notice, the rate, of which notice has last been given to him by the secretary, shall be taken to be the rate for the payment of which a receipt or other voucher is required to be produced under this Act.

Notice to registrars of deeds of rates made by council.

PART V.

APPORTIONMENT AND APPLICATION OF RATES.

277. At the time of assessing any general rate under this Act, every council shall apportion such rate into two parts, the first part for the maintenance, preservation, and repair of main roads in the division, and the public dams upon such roads, and the second part for the construction, maintenance, preservation, repair and improvement of divisional roads within the division and for other purposes (4) for which under this Act the funds at the disposal of the council may be applied: Provided that the following charges and expenses shall be borne proportionately by the two parts into which such general rate is divided, to wit:

General rate to be divided into two parts: certain charges and expenses to be borne proportionately by the two parts.

¹ The provisions of this section to apply to Glen Grey under certain circumstances. See § 50 Act, 25, 1894.

² Previously reduced to "five" by Act 24, 1887 (p. 2478).

³ See § 9, Act 5, 1884 (p. 2161).

⁴ As to rating powers for Educational purposes see Act 35, 1905 (p. 4040). As to grants in aid see § 76 of the same Act.

No. 40--1889.

- (1) The expenses of any election of a member or members of such council ;
- (2) The expenses of valuation of and assessment of property ;
- (3) The collection of road rates under this Act ;
- (4) The salary of the secretary, auditors, and other lawfully appointed officers of such council ;
- (5) The payments by law authorised to be made to members of such council ;
- (6) Any other charge or expense which such council may lawfully incur, and as to which the council may by resolution, approved of by the Governor, determine, that it shall be borne in such proportion as aforesaid.

Save as aforesaid, the part of every general rate which shall be apportioned for the maintenance, preservation, and repair of main roads shall be devoted to the purposes for which it is apportioned, and separate accounts shall be kept showing the receipts and expenditure for those purposes.

How second part of rate, and other moneys received by council from other sources to be appropriated.

278. All money raised or received by any council from the other part of the general rate in the last preceding section referred to, and all other moneys raised or received from any other source for the purpose of this Act, and not specially appropriated by law for purposes other than those in this section set forth, shall, subject to the last preceding section of this Act, be appropriated

- (1) To the construction, maintenance, preservation, repair, and improvement of the several divisional roads within its division, and the public dams upon such roads ;
- (2) To the making or improving of any public road within the division, not being a main or divisional road ;
- (3) To contributing towards the cost of making or improving of any road or bridge, proposed to be made or improved under the one hundred and ninety-eighth or one hundred and ninety-ninth sections of this Act in any adjoining division, which would be of so much benefit to the inhabitants of the division to which such council belongs, as to make it desirable that it should contribute to such work ;
- (4) To asserting by legal process the right of the public to any public road within the division, not being a main road, which the council shall ascertain to exist, and shall find to have been stopped up or otherwise obstructed by any person or persons whomsoever ;
- (5) To encourage the planting and cultivation of trees, in accordance with the Act No. 4 of 1876 ;
- (6) To defray expenses necessarily incurred in connection with the definition of width of roads ;
- (7) To defray expenditure in connection with the eradication or destruction of *Xanthium Spinosum* or any other noxious weed or plant as by this Act provided ;

- (8) To meet any expenditure not otherwise by law provided for, of which the Governor shall approve;
- (9) Generally for all purposes for which money may lawfully be expended by such council, and for which no sufficient special or other provision has been made by this or any other law: Provided that nothing in sub-section four of this section contained shall be construed so as to require such council to resort to legal process for the purpose therein mentioned, or to prevent any person from resorting to such process to which he would but for this section be entitled.

No. 40—1889.

SUB-DIVISION IX.

PART I.

BYE-LAWS OR REGULATIONS.

279. Every council may from time to time make, alter, and revoke bye-laws or regulations for all or any of the following purposes:—

General provision as to bye-laws or regulations.

- (1) Regulating the proceedings of the council and the duties of their officers and servants and preserving order at council meetings;
- (2) For preventing injury to any dams or the pollution of any water over which the council may have control;
- (3) For planting and preserving (1) trees and shrubs and preventing injury thereto;
- (4) For regulating the use of and generally controlling outspan (2) places;
- (5) For regulating traffic upon, over, or in, and preventing injury to roads, bridges, pontoons, ferry boats, or any other property, movable or immovable, vested in the council;
- (6) For the more effectual eradication or destruction or prevention of the spread from adjoining divisions of *Xanthium Spinosum* or any other noxious weed or plant;
- (7) Generally for the purposes of this Act.

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.

280. 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 by further and final resolution of the council, 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

Notice of and opportunity to inspect intended bye-law, &c.

¹ See also Act 4, 1876 (p. 1400).

² See Acts 11, 1893 (p. 3151), and 41, 1902 (p. 4518).

No. 40 -1889.

Bye-law, &c., approved and published by Governor to have force of law in division.

Power of repeal of bye-law vested in Governor.

Penalties for breach of bye-law, &c.

Gazette evidence of bye-law, &c.

Council in office when Act takes effect to continue till new council elected.

Council may appoint newspaper for publications, &c., under Act.

Signature of two councillors or secretary sufficient authentication.

Penalty for obstructing council, or persons employed by it, in discharge of powers or duties.

Council may proceed for penalties.

general purport of the proposed bye-law or regulation, and stating that a copy is open to inspection as aforesaid.

281. After any bye-law or regulation has been confirmed by the council it shall be submitted for the approval of the Governor, and if approved shall be published in the *Gazette* and thereupon such bye-law shall have the force of law in the division.

282. Every bye-law or regulation in force in any division hereafter constituted or brought under the operation of this Act may be repealed by the Governor.

283. 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.

284. A copy of the *Gazette* containing any bye-law or regulation shall be evidence of the due making and provisions thereof.

DIVISION IV.

PART I.

MISCELLANEOUS PROVISIONS.

285. Every council which shall be in office at the time of the taking effect of this Act shall continue in office until the date of the first meeting of a council elected under the provisions of this Act, and shall continue to perform its functions and duties, and exercise its rights and be subject to its liabilities just as if this Act had not passed.

286. In all cases in which any matter or thing is by this Act required to be published, advertised, or inserted in a newspaper generally circulated in the division, the said newspaper shall be such newspaper as the council shall for the time being appoint in that behalf.

287. Every order, notice, or other document requiring authentication by the council may be sufficiently authenticated if signed by two councillors or by the secretary.

288. 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, in the absence of any other penalty specially provided in any case, be liable to a penalty not exceeding five pounds.

289. 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-law made thereunder, and may order the expenses of such prosecution or other proceedings to be paid out of the funds at its disposal.

No. 40—1889.

290. Where any matter or thing is by this Act, or by any bye-law, regulation, order or notice made and published under the authority hereof, directed or forbidden to be done, or where any authority is given by this Act to any person to direct any matter or thing to be done, or to forbid any matter or thing to be done, and such act so directed to be done remains undone, or such act so forbidden to be done is done, in every such case every person offending against such direction or prohibition shall, in the absence of any other special provision of this or any other law in force in the division, be deemed guilty of an offence against this Act.

Offences against this Act, not otherwise defined.

291. Every person guilty of an offence against this Act shall for every such offence be liable to the penalty expressly imposed by this Act or by the bye-law or regulation contravened, and if no other penalty be imposed, to a penalty not exceeding ten pounds.

Penalty for offence against Act or bye-law, &c., in cases not otherwise provided for.

292. All penalties or other moneys payable in respect of any offence against this Act, or any bye-law made thereunder, may be recovered before the Court of the Resident Magistrate of the district.

Recovery of penalties.

293. In any prosecution for contravening the provisions of any bye-law or regulation it shall be sufficient to allege the act complained of and that the accused is guilty of contravening or offending against a bye-law or regulation in force in the division, without describing the bye-law or regulation by number or otherwise.

In proceeding for contravention of bye-law, &c., not necessary to set forth number, or describe bye-law.

294. Whenever any penalty shall have been imposed under the provisions of this Act or of any bye-law or regulation made thereunder, 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 such person shall be detained and kept to hard labour accordingly unless he shall sooner pay the penalty.

Imprisonment for default of payment of penalties.

295. All penalties recovered for offences against the bye-laws of any division or for offences against this Act committed in any division or in any way in respect of the division, shall be paid into the funds of the council of such division.

Council entitled to receive penalties recovered.

296. Nothing in this Act contained shall be deemed to alter in any way the powers, functions and duties conferred or imposed upon divisional councils by any of the following laws or by any other law not repealed by this Act, and the said powers, functions, and duties shall be deemed to be hereby conferred and imposed upon every council elected or appointed under this Act:

Powers, functions, and duties of councils under certain laws not affected by this Act.

No. 40—1889.

- The Act No. 24 of 1858, or any Act heretofore constituting any division in this Colony: Act No. 20 of 1861, Section 3, commonly called "The Electric Telegraph Act, 1861";
- The Acts No. 7 of 1865, No. 8 of 1866-1867, No. 15 of 1869, No. 9 of 1879, commonly known as the Land Beacons Acts;
- The Act No. 11 of 1867, commonly called "The Public Bodies Debts Act, 1867";
- The Act No. 14 of 1870, Section 14, commonly called "The Cattle Removal Act, 1870";
- The Act No. 6 of 1873, commonly called "The Locomotives Act, 1873."
- The Act No. 4 of 1876;
- The Act No. 29 of 1881, Section 16, commonly called the "Villages Management Act, 1881";
- The Act No. 11 of 1882, commonly called the "Local Works Loans Act, 1882";
- The Act No. 26 of 1882, Section 9, commonly called the "Right of Passage of Water Act, 1882";
- The Act No. 3 of 1883, Section 6, commonly called "The Cemeteries Act, 1883";
- The Act No. 28 of 1883, Sections 28, 30, and 32, commonly called the "Liquor Licensing Act, 1883";
- The Act No. 30 of 1883, Sections 5 and 25, commonly called "The Fencing Act, 1883";
- The Act No. 7 of 1884, Section 2, commonly called the "Villages Management Act Amendment Act, 1884";
- The Act No. 21 of 1884, Section 2, commonly called "The Dutch Language Judicial Use Act, 1884";
- The Act No. 37 of 1884, Section 3, commonly called the "Native Locations Act, 1884";
- The Act No. 13 of 1885, Section 4, commonly called the "Ostrich Feathers and Skins Theft Further Repression Act, 1885";
- The Act No. 28 of 1886, Section 3, commonly called "The Scab Act, 1886";
- The Act No. 36 of 1886, Section 12, commonly called the "Game Law Amendment Act, 1886";
- The Act No. 4 of 1887, commonly called the "Explosives Act, 1887";
- The Act No. 15 of 1887, Sections 2, 5, and 18, commonly called the "Crown Lands Disposal Act, 1887,"; Act No. 27 of 1887, Section 6, commonly called "The Quitrent Relief Act, 1887";
- The Act No. 23 of 1888, Section 52, commonly called the "Convict Stations and Prisons Management Act, 1888";
- The Act No. 28 of 1888, Section 13, commonly called the "Forest Act, 1888";

Provided, also, that wherever by any other law, any power, function or duty has been heretofore conferred or imposed upon every council, or upon any particular council, such power, function or duty shall be deemed, subject to the provisions of this Act, to be conferred or imposed upon all councils, or upon the particular, succeeding council, as the case may be, elected or appointed under the provisions of this Act.

No. 40-1889.

297. It shall be the duty of the secretary of the council of every division at any time, upon the request of any owner of any immovable property situated within such division, to furnish and supply to such owner a certificate under the hand of such secretary, setting forth such property as described in the valuation roll in force at such time, together with the value placed thereon in such roll.

Secretary of council to furnish certificate of property value.

298. This Act shall come into force on a day to be proclaimed by the Governor in the *Gazette*.

Date of taking effect of Act.

SCHEDULE A.

Schedule A.

REPEALED LAWS.

Laws.	Short Titles or Descriptions.	Extent of Repeal.
Act No. 1 of 1857.	For transferring from the Colonial Government to the Divisional Councils certain Powers and Functions relating to the Public Pounds of the Colony.	The whole.
Act No. 9 of 1858.	To provide for the management of the Public Roads of the Colony.	So much as has not heretofore been repealed.
Act No. 11 of 1859.	To amend the Act No. 9 of 1858.	Sections five, six and seven.
Act No. 5 of 1860.	"Road Act Amendment Act, 1860."	The whole.
Act No. 1 of 1863.	To provide for the Construction and Maintenance of the Public Roads of the Colony.	The whole.
Act No. 10 of 1864.	"The Road Act," 1864."	Sections one to twelve inclusive, fifteen to eighteen inclusive, thirty to thirty-two inclusive and thirty four to forty-one inclusive.
Act No. 25 of 1864.	"The Bridge Building Act, 1864."	The whole.
Act No. 27 of 1864.	For Promoting the Extirpation of the Burr Weed called <i>Xanthium Spinosum</i> .	The whole.
Act No. 4 of 1865.	"The Divisional Councils Act, 1865."	So much as has not heretofore been repealed.
Act No. 21 of 1867.	For conferring on Divisional Councils certain Powers relating to the Regulation and Management of Pounds in their Divisions.	The whole.

SCHEDULE A—*continued.*

Laws.	Short Titles or Descriptions.	Extent of Repeal.
Act No. 7 of 1869.	To regulate the Conditions upon which it shall be lawful for Divisional Councils to erect Toll-bars and levy Tolls within the Limits of Municipalities or other Corporated Towns.	The whole.
Act No. 15 of 1869.	"Divisional Councils Acts Amendment Act, 1869."	The whole.
Act No. 3 of 1870.	To render Lessees of Crown Lands under Act 19 of 1864, liable to the payment of Road Rates and qualified as Members of Divisional Councils.	The whole.
Act No. 22 of 1873.	"The Road Act, 1873."	The whole.
Act No. 11 of 1877.	"Roads Act, 1877."	The whole.
Act No. 37 of 1879.	"The Roads Act, 1877, Amendment Act, 1879."	The whole.
Act No. 4 of 1883.	"Public Health Act, 1883."	Section five.
Act No. 14 of 1884.	"Dog Tax Act, 1884."	The whole.
Act No. 27 of 1884.	"Public Roads Width Act, 1884."	The whole.
Act No. 15 of 1885.	"Dog Tax Act Amendment Act, 1885."	The whole.
Act No. 31 of 1885.	"Roads Act Amendment Act, 1885."	The whole.
Act No. 33 of 1885.	"Adjoining Divisions Boundaries Act, 1885."	The whole.
Act No. 41 of 1885.	To amend the "Public Health Act, 1883."	Section three.
Act No. 12 of 1887.	"Dog Tax Act Further Amendment Act, 1887."	The whole.
Act No. 32 of 1887.	To repeal a certain Section in the "Roads Act, 1877." and to substitute another in lieu of it.	The whole.
Act No. 40 of 1887.	"Public Health Act, 1887."	The whole.
Act No. 24 of 1888.	To amend the Act No. 31 of 1875, and the Act No. 1 of 1857.	The whole.

No. 41--1889.]

[August 13, 1889.

ACT (1)

To compensate the Owners of Stock destroyed or injured by trains on the Government Railways.

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:—

Colonial Government liable for stock destroyed or injured by daylight by train on unfenced line of Government railway.

1. The Colonial Government shall be and is hereby obliged to make compensation to and indemnify the owner of any stock destroyed or injured by any train running by daylight on any part now or hereafter included in the system of railways known as the Cape Government Railways, if the part of the line at which such destruction or injury takes place is unfenced at that

¹ Amended by Act 22, 1897 (p. 3740), which limits the amount of compensation, and Act 10, 1903 (p. 4591).

time, and if no compensation shall have at any time been paid to any person by the Colonial Government for or in respect of the right to construct such part of such line; provided that no person shall be entitled to recover any sum of money under this Act for the destruction or injury of any stock who shall fail within forty-eight hours after such stock shall have been destroyed or injured, to give notice to the nearest station-master of the destruction or injury thereof, and of the number and kind of stock so destroyed in respect of which compensation is claimed; and provided, also, that the carcases or remains of all destroyed stock, and all injured stock, in respect of which any claim is made under this Act for compensation or indemnification, shall be diligently and to the best of his ability, kept and preserved by the owner making such claim, for a period of not less than three full days from the time when such destruction or injury took place, and shall be shown to any person appointed for the purpose of ascertaining the value of the stock so destroyed or injured.

2. No person who shall fail diligently and to the best of his ability to keep and preserve such carcases or remains of destroyed stock, or such injured stock as aforesaid, or who shall make any claim for compensation or indemnification under this Act which any court of competent jurisdiction shall determine to be either fraudulent or grossly excessive, shall be entitled to any of the benefits of this Act; and any person who shall make any such claim with intent to defraud shall be liable on conviction to all the penalties of the crime of fraud.

3. "Stock" shall include horse, gelding, mare, colt, mule, ass, bull, ox, cow, calf, sheep, goat, and ostrich.

4. This Act may be cited as the "Railway Injuries Compensation Act, 1889,"

No. 41—1889.

Notice of claim to be given within 48 hours to Resident Magistrate.

Carcases and injured animals to be diligently preserved for 3 days.

Claimant disentitled by failure of diligence in keeping carcases, &c., and by making fraudulent or grossly excessive claim.

Penalty for fraudulent claim.

Meaning of "Stock."

Short title.

No. 1—1890.]

[June 27, 1890.

Act for Applying a further Sum not exceeding One Hundred and Ninety-one Thousand Two Hundred and Eighty-eight Pounds Sterling for the Service of the year ending the 30th June, 1890.

[Spent.]

No. 2—1890.]

[July 3, 1890.

Act to Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1891.

[Spent.]

No. 3—1890.]

[July 11, 1890.

ACT

To confer upon the Supreme Court of this Colony Jurisdiction as a Court of Appeal from any Court acting under the "Africa Order in Council, 1889," and from which Court appeals to the Supreme Court are authorised in manner provided in that Order.

Preamble.

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:—

Supreme Court to be Court of Appeal in respect of Courts for which it is prescribed as Court of Appeal by "Africa Order in Council, 1889."

1. The Supreme Court of this Colony shall have jurisdiction under this Act as a Court of Appeal to entertain, hear, and determine all appeals in matters brought before it from, and all cases stated for its opinion by, any Court in respect of which the said Supreme Court has been or may hereafter be prescribed as a Court of Appeal in manner provided in and by Her Majesty's Order in Council, made on the fifteenth day of October, 1889, and known as the "Africa Order in Council, 1889."

Powers, etc., of Supreme Court as Court of Appeal under this Act.

2. As such Court of Appeal the said Supreme Court shall have and exercise all powers, authorities, and jurisdiction in respect of all matters brought before it which are conferred upon Courts of Appeal under or by any article, provision, or rule of the aforesaid Order in Council.

Procedure for bringing appeals.

3. All appeals to the said Supreme Court under this Act shall be brought within such time and in such manner, as regards the form and transmission of the appeal, and as to the day of execution and otherwise, as may be prescribed by any rules of procedure made under the aforesaid Order in Council.

Procedure for prosecuting, &c., of appeals.

4. The judges of the said Supreme Court, as a Court of Appeal under this Act shall have power from time to time to make rules for the regulation of the procedure to be adopted in and about the prosecution, hearing, and determination of all matters brought before the said Supreme Court in appeal or on any case stated in writing: provided that no such rule shall be repugnant to or inconsistent with any article, provision, or rule contained in or made in manner prescribed by the aforesaid Order in Council.

Law to be applied by Supreme Court.

5. The said Supreme Court, as a Court of Appeal under this Act, shall determine any matter brought before it in accordance with the law which the Court from which such matter is brought either in appeal or upon a case stated in writing may, by the aforesaid Order in Council, or by any other order, law or rule binding upon the said Court, lawfully apply to the decision and determination of such matter.

Effect of Act.

6. This Act shall come into force from and after a day to be fixed by the Governor by notice in the *Gazette*. (1)

¹ 1st July, 1895, fixed by Proclamation No. 253, 1895, in *Gazette* of 2nd July, 1895. But see § 2, *et seq.*, Act 22, 1898 (p. 3916).

7. This Act may be cited as "The Supreme Court Appellate Jurisdiction Act, 1890."

No. 5—1890.
Short Title.

No. 4—1890.]

[August 19, 1890.

Act to provide for the taking of a Census and the Collection of certain Statistics in the Year 1891.

[Spent.]

No. 5—1890.]

[August 22, 1890.

ACT

To make provision for the Sale of Food and Drugs in a pure state, and to prevent the Adulteration of Seeds.

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.

GENERAL.

1. This Act may be cited as "The Sale of Food and Drugs and Seeds Act, 1890," and shall come into operation on a day to be fixed by the Governor by Proclamation in the *Gazette*. (1)

Title.

INTERPRETATION.

2. For the purposes of this Act the following terms shall, unless the context otherwise requires, have the meaning herein assigned to them, namely:—

Definitions.

"Food" shall include every article used for food or drink by man, other than drugs or water.

"Drug" shall include medicine for internal or external use.

"Butter" shall mean the substances usually known as butter, made exclusively from milk, or cream, or both, with or without salt, or other preservative, and with or without the addition of colouring matter.

"Butterine," "Margarine," or other similar article shall mean all substances, whether compounds, or otherwise, prepared in imitation of butter, and whether mixed with butter or not.

"Proof" shall mean the strength of proof as ascertained by Sykes' hydrometer.

"To kill Seeds" means to destroy by artificial means the vitality or germinating power of such seeds.

"To dye Seeds" means to apply to seeds any process of colouring, dyeing, or sulphur smoking.

"Resident Magistrate" means a Resident Magistrate having jurisdiction within the district in which any offence under this Act is committed.

¹ Came into force on 1st January, 1891; see Proclamation No. 325, 1890, dated 23rd December, 1890.

No. 5—1890.

“Schedule” means the schedule to this Act.

“This Act” includes any regulations made under the provisions hereinafter contained.

“The Minister” means the Minister to whose department the control and management of this Act shall be assigned.

DESCRIPTION OF OFFENCES.

Prohibition of the mixing of injurious ingredients, and of selling the same.

3. No person shall mix, colour, stain, or powder, or order, or cause or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold or offered, exposed, or kept for sale in that state, and no person shall offer, sell, expose, or keep for sale any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding twenty pounds for the first offence, and in default of payment he shall be liable to imprisonment, with or without hard labour, for a period not exceeding three months, unless such penalty be sooner paid, and for a second or subsequent offence a penalty not exceeding fifty pounds, and in default of payment he shall be liable to imprisonment, with or without hard labour, for a period not exceeding six months unless such penalty be sooner paid.

Prohibition of the mixing of drugs with injurious ingredients and of selling the same.

4. No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order, or cause, or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug with the intent that the same may be sold, offered, exposed, or kept for sale in that state, and no person shall sell, offer, expose, or keep for sale any such drug so mixed, coloured, stained, or powdered under the same penalty in each case respectively, as in the preceding section for a first and second or subsequent offence.

Exemption in case of proof of absence of knowledge.

5. No person shall be liable to be convicted under either of the two last preceding sections of this Act, if he shows to the satisfaction of the Court before whom he is charged that he did not know of the article of food or drug, in respect of which he is charged being so mixed, coloured, stained, or powdered as in either of these sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

6. No person shall sell, or attempt to sell to the prejudice of the purchaser any article of food, or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under the penalties provided by the third section of this Act, provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say:

- (1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an

article of commerce, in a state fit for carriage, or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof;

- (2) When the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;
- (3) When the food or drug is compounded as in this Act mentioned;
- (4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

7. No person shall sell or attempt to sell any compounded article of food, or compounded drug which is not compounded of ingredients in accordance with the demand of the purchaser under the penalties provided by the third section of this Act: Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label, distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

No. 5—1890.
Provision for the sale of compounded articles of food and compounded drugs, and protection from offences by giving of label.

8. No person shall, with the intent that the same may be sold, offered, exposed, or kept for sale in its altered state without notice abstract from an article of food any part of it, so as to affect injuriously its quality, substance or nature, and no person shall sell, offer, expose, or keep for sale any article so altered, without making disclosure of the alteration, under the penalties provided by the third section of this Act.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

9. If any person selling, offering, exposing, or keeping for sale any spirits, wine, malt, or other liquor, shall have upon his premises or in his possession any vitriol, coculus indicus, nux vomica, tobacco or tobacco juice, pepper, chillies, opium, aloes, salts of zinc or lead, copperas, faba amara, logwood, or any extract or preparation thereof respectively, or any other poisonous or deleterious substance whatsoever, otherwise than for some innocent purpose, the proof of which shall lie on such person, he shall be liable to the penalties by the third section of this Act, and all such vitriol, coculus indicus, nux vomica, tobacco or tobacco juice, pepper, chillies, opium, aloes, salts of zinc or lead, copperas, faba amara, logwood, or such extract or preparation thereof, or any such other poisonous or deleterious substance as aforesaid shall be forfeited to the Crown and may be seized without warrant by any Justice of the Peace, Field-cornet, Police Constable, or any person authorised to carry out the provisions of this Act.

Possession by dealer of deleterious substances.

10. In any prosecution under the provisions of this Act for selling or attempting to sell to the prejudice of the purchaser any

In sale of adulterated articles, no defence to allege

No. 5—1890.
purchase for
analysis.

article of food, or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser having bought only for analysis or any proceeding at law, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question though defective in nature, or in substance, or in quality, was not defective in all three respects.

APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

Appointment of
analysts.

11. The Governor may appoint one or more persons possessing competent knowledge, skill and experience as analysts of all articles of food and drugs, and seeds sold within this Colony, and may from time to time remove him or them as he shall deem proper, and such analysts shall discharge such duties as may from time to time be imposed upon them by the Minister at such rate of remuneration as Parliament may vote for the purpose: Provided that no person shall be appointed an analyst under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs, or seeds within this Colony.

Power to purchaser of an article of food to have it analysed.

12. Any purchaser of an article of food, or of a drug, or of seeds, shall be entitled to obtain from any analyst appointed under this Act, on payment to such analyst of a sum not exceeding twenty-one shillings, an analysis of such article by such analyst, and to receive from him a certificate of the result of such analysis: Provided that nothing herein contained shall be taken to impose upon any such purchaser the necessity to obtain such analysis and certificate before instituting any complaint or proceeding under this Act if he shall have sufficient evidence otherwise.

Search for adulterated articles and power to obtain a sample of food or drugs, or seeds.

13. Such officer as shall by notice in the *Gazette* have assigned to him the general administration of this Act, or any person duly appointed by him in that behalf, any Resident Magistrate or person appointed by him in that behalf, and any Justice of the Peace, Field-cornet, or police constable may enter with or without warrant, any shop, store, or other premises, or any place or vehicle wherein he shall have reasonable grounds to suspect that any food or drug or seeds are kept for the purpose of contravening this Act, and he may search for and demand to have delivered to him samples of any such food or drugs or seeds which he shall find therein, and on refusal or neglect to supply such samples he may seize and carry away a sufficient quantity for the purpose of investigation, and every person so refusing or resisting or declining entrance as aforesaid shall be liable to the penalties in the third section of this Act mentioned in addition to any other penalties by law provided.

14. If any officer or authorised official as in the last section mentioned shall apply to purchase any article of food or any drug or seeds exposed for sale, or on sale in any shop, or store, or premises, place, or vehicle, and shall tender the price of the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, or authorised official as aforesaid, such person shall 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 unless such penalty be sooner paid.

No. 5—1890.
Persons refusing to sell to officer liable to a penalty.

15. The person purchasing or otherwise obtaining any article with the intention of submitting the same to analysis shall forthwith notify to the seller or his agent selling the article his intention to have the same analysed by an analyst under this Act, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deem it right to have the article analysed, to the analyst as aforesaid.

Provision for dealing with samples purchased for analysis.

16. If the seller or his agent do not accept the offer to divide the said article in his presence, the analyst receiving the article for analysis shall if informed accordingly divide the same into two parts, and shall seal or fasten up one of those parts, and shall cause it to be delivered when he supplies his certificate to the person applying for the analysis, who shall retain the same for production, in case proceedings shall afterwards be taken in the matter.

Provision when sample is not divided.

17. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered parcel or letter, subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for postage of such article shall be deemed one of the charges of the prosecution.

Provision for sending article to analyst through the Post Office.

18. In any case in which an article may be of so perishable a nature, or so composed that it cannot safely be sent to an analyst appointed under this Act, and further, in case any Resident Magistrate upon application made to him, of which he shall keep a record, shall be of opinion that, for the purposes of any prosecution or proceeding under this Act, a sufficient analysis can be conveniently obtained within his district, he may take the evidence of such qualified person or expert as he may select in lieu of the certificate of an analyst appointed under this Act as aforesaid.

In certain cases evidence may be given by persons other than public analyst.

19. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Form of the certificate.

No. 5—1890.
Quarterly report
of the analyst.

20. Every analyst appointed under this Act shall report quarterly to the Treasurer of the Colony the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis, and the sum paid to him in respect thereof; and a copy of such report shall be laid before Parliament.

Suspected articles
to be examined on
importation.

21. From and after the taking effect of this Act all ⁽¹⁾ articles of food imported as merchandise into and landed at any port in this Colony may be subject to examination by the Customs or other officers appointed in that behalf, and samples may, when deemed necessary by such officers, be taken, and with all convenient speed be examined by an analyst as aforesaid; and if, upon such analysis, the same shall be found to be in contravention of this Act, the same shall be forfeited and destroyed, or otherwise disposed of as the Treasurer of the Colony may direct.

Exemption of em-
ployer from
penalty.

22. Where an employer is charged with an offence against this Act he shall be entitled to have any other person whom he charges as the actual offender brought before the Resident Magistrate before whom such employer is charged, and if after the commission of the offence has been proved the employer proves to the satisfaction of the Magistrate that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be convicted of such offence, and the employer shall be exempt from the penalty.

SPECIAL PROVISIONS AS TO BUTTER, &c.

Marking of cases
containing butter,
&c.

23. Every person importing into this Colony any butter, but-terine, margarine, or similar article shall conform to the following regulations:—

- (1) Every package, whether open or closed, and containing butter, butterine, margarine, or similar article, shall be branded or durably marked "Butter," "Margarine" (or other article as the case may be) on the top, bottom, and sides in printed capital letters.
- (2) If such article be exposed for sale, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters containing the word "Butter," "Margarine," (or other articles as the case may be).
- (3) Every person selling any such article save in a package duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters clearly visible to the purchaser the word "Butter," "Margarine" (or other article as the case may be). Any person contravening this section shall be liable to the penalties provided by the third section of this Act.

¹ In certain eventuality provisions of this section apply also to patent medicines. See § 16, Act 7, 1899 (Pharmacy Act), (p. 4050).

SPECIAL PROVISIONS AS TO SEEDS.

No. 5—1890.

24. Every person who with intent to defraud or to enable another person to defraud, sells, or causes to be sold, any killed or dyed seeds shall be punished as follows; that is to say:

Offences in relation to seeds.

- (1) For the first offence he shall 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, unless such penalty be sooner paid.
- (2) For the second and any subsequent offence he shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months, unless such penalty be sooner paid.

PROCEEDINGS AGAINST OFFENDERS.

25. In any proceeding for any offence under this Act it shall be sufficient to allege that the person accused did the act charged with intent to defraud, or to enable some other person to defraud without alleging an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person, and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person, or to enable any particular person to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with an intent to defraud, or with intent to enable some other person to defraud, or with the intent that any other person might be enabled to defraud.

Intent to defraud particular person need not be alleged.

26. All proceedings against the person charged with violating the provisions of this Act shall be commenced within a reasonable time, and, in the case of a perishable article, not more than twenty-one days from the time of purchase from such person for test purposes of the food or drug for the sale of which in contravention to the terms of this Act the seller is rendered liable to prosecution.

Proceedings against offenders.

27. In such proceedings the production of the certificate of the analyst shall be evidence of the facts therein stated, unless the defendant shall at his expense require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased or obtained the same shall be produced: Provided that the defendant instead of requiring the attendance of the analyst as a witness shall be entitled to put interrogatories, approved of by the Resident Magistrate to such analyst, and such interrogatories and the answers thereto shall be received in evidence in any such proceeding.

Certificate of analyst *prima facie* evidence for the prosecution, but analyst may be called if required.

28. In any prosecution under this Act when the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to prove that he is protected by exemption or provision.

No. 5 1890.

Defendant to be discharged if he prove exemption or provision.

29. If the defendant in any prosecution under this Act prove to the satisfaction of the court before whom he is charged that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the charges and costs incurred by the prosecutor unless he shall have given due notice to him that he will rely on the above defence.

Contracts not to be affected.

30. Nothing in this Act contained shall in any way interfere with contracts and bargains between individuals and the rights and remedies belonging thereto: Provided that in any action brought by any person for a breach of contract on the sale of any article of food, or of any drug, or of any seed, such person may recover alone or in addition to any other damages recoverable by him the amount of penalty in which he may have been convicted under this Act, together with the costs paid by him upon conviction, and those incurred by him in and about his defence thereto, if he prove that the article, or drug or seed the subject of such conviction and sold to him as and for an article or drug or seed of the same nature, substance and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful or that the amount of costs awarded or claimed was unreasonable.

Forging certificate of warranty.

31. (1) Every person who shall forge or shall utter, knowing it to be forged for the purpose of this Act, any certificate, or any writing or signature, shall be guilty of the crime of forgery or uttering a forged instrument as the case may be, and punishable accordingly.
- (2) Every person who shall wilfully apply to an article of food, or a drug, or seed in any proceedings under this Act, a certificate, or invoice, or warranty given in relation to any other article, or drug, or seed, shall be guilty of an offence under this Act, and be liable to imprisonment, with or without hard labour, for a period not exceeding twelve months.
- (3) Every person who shall give a false warranty, or invoice in writing to any purchaser of an article of food, or drug, or seed, sold by him as principal or agent, shall be guilty of an offence under this Act, and shall be liable to the penalties provided by the third section of this Act.
- (4) Every person who shall give a label with any article sold by him which shall falsely describe the article sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to the penalties provided by the third section of this Act.

32. In determining whether an offence has been committed under the sixth section of this Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin or any other spirits.

No. 5—1890.
Reduction of strength of brandy, whisky, rum and gin.

33. The Governor may, by Proclamation in the *Gazette*, at the request of the Government of any state or territory beyond the boundaries of this Colony, exempt, under such regulations as to him may seem fit, any food, or drugs, or seeds imported through the sea ports of this Colony into such state or territory directly: Provided that foods, drugs or seeds so exempted shall, in case of re-importation into this Colony, become subject to the provisions of this Act.

Governor may exempt food, drugs or seed imported direct for any State or Territory beyond the Colony from the operations of this Act.

34. The Governor shall have power to make rules and regulations for the guidance and conduct of officers and persons employed in carrying this Act into effect, and for prescribing all things necessary to be done for effectually carrying the provisions of this Act into effect, and such regulations shall have the force of law.

Governor may make regulations.

SCHEDULE.

Schedule.

FORM OF CERTIFICATE.

To (1)
I, the undersigned, Public Analyst for the
do hereby certify that I received on the _____ day of
18____, from (2)
of
a sample of
for analysis (which then weighed (3) _____), and have
analysed the same, and declare the result of my analysis to be as
follows:

I am of opinion that the same is a sample of genuine _____ or
I am of opinion that the said sample contained the parts as under,
or the percentages of foreign ingredients as under:—

OBSERVATIONS. (4)

As witness my hand, this _____ day of _____ 18____
at _____

A.B.

- (1) Here insert the name of the person submitting the article for analysis.
- (2) Here insert the name of the person delivering the sample.
- (3) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.
- (4) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it or for improving its appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

No. 6—1890.]

August 2, 1890.

Act to Apply a Sum not exceeding Two Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1891.

[Spent.]

No. 7—1890.]

[August 19, 1890.

Act to amend the “Scab Acts Extension Act, 1889.”

[Repealed by Act No. 20, 1894.]

No. 8—1890.]

[August 22, 1890.

ACT

To enable the Municipal Council of Port Elizabeth to raise a further Loan of £30,000 for the better Storage and supply of Water for the use of the Inhabitants of Port Elizabeth.

[Repealed by Act 27, 1897.]

No. 9.—1890.]

[August 19, 1890.]

Act to amend the Act No. 33 of 1888.

[Repealed by Act No. 20, 1894.]

No. 10.—1890.]

[August 22, 1890.]

ACT

To provide for Constructing, Equipping and Working a certain Line of Railway, for the completion of certain Lines of Railway under construction, and for certain Additional Works in connection with existing Railways.

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 Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be constructed and equipped the line of railway set forth in Schedule A to this Act, 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 purpose.

Government authorised to construct certain line of railway: Schedule A.

2. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be completed the lines of railway now under construction which are referred to in Schedule B.

Governor authorised to complete certain lines of railway: Schedule B.

3. The Governor shall likewise cause to be constructed and provided the additional works in connection with existing lines of railway which are set forth in Schedule C to this Act.

Governor authorised to construct and provide certain additional works: Schedule C.

4. For the purposes of constructing and equipping the line of railway set forth in Schedule A, the Governor may expend a sum not exceeding Nine Hundred and Eighty Eight Thousand Eight Hundred and Seventy Nine Pounds Sterling, for the purpose of

Authority to expend for above purposes, the sums of £888,879. £102,200, and £499,276. or £1,590,355 in all.

No. 10—1890.

completing the lines of railway set forth in Schedule B, the Governor may expend a sum not exceeding One Hundred and Two Thousand Two Hundred Pounds Sterling, and for the purpose of constructing and providing the additional works set forth in Schedule C, the Governor may expend a sum not exceeding Four Hundred and Ninety Nine Thousand Two Hundred and Seventy Six Pounds Sterling.

Authority to raise a sum of £1,590,355, in Debentures or Stock.

5. For the several purposes aforesaid, the Governor may from time to time as he may deem expedient, raise a sum of One Million Five Hundred and Ninety Thousand Three Hundred and Fifty-five Pounds Sterling, 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.

Sections 2, 3, 4, 5, of Act No. 19 of 1874, to apply *mutatis mutandis*.

6. For the purposes of this Act the provisions of the second to the fifth sections inclusive of the "Railway Act, 1874," shall be deemed *mutatis mutandis* to be in this Act re-enacted.

Short title.

7. This Act may be cited as the "Railway Extension and Additional Works Act, 1890."

SCHEDULE A.

Schedule A.

No.	Description.	Amount.
1	A line from the Indwe Coal Mines to a point between Cyfergat and Molteno, and from a point on the Eastern Line about ten miles north of Molteno, <i>via</i> Steynsburg, to Middelburg-road Station	£988,879 ⁽¹⁾

SCHEDULE B.

Schedule B.

Completion of Lines under construction.

No.	Description.	Amount.
1	Kalk Bay to Simon's Town	£47,500
2	Eerste River to Sir Lowry Pass	16,900
3	Colesberg Junction to Norval's Pont (including a Bridge)	37,800
		£102,200

¹ Reduced by £531,468, being that portion of the amount which provides for the construction of a line of railway from the Indwe Coal Mines to a point between Cyphergat and Molteno. See Act 36, 1894, § 4.

SCHEDULE C.

No. 11—1890.
Schedule C.

Additional works to be constructed and provided in connection with existing lines.

Description.	Amount.
Additional Works on Existing Lines :—	
(a) Renewing Main Line with Heavier Rails ...	£67,012
(b) Reducing Gradients	7,000
(c) Rolling Stock, Passenger Carriages	35,000
(d) Vacuum Brakes	15,000
(e) Workshops—Salt River and Uitenhage... ..	31,539
(f) Stations and Sidings (Port Elizabeth)	150,000
(Cape Town)	47,605
(g) Additional Accommodation on Three Systems	51,750
(h) Accommodation for Railway Employés... ..	62,475
(i) Telegraphs, Electric Lights and Signals... ..	14,430
(j) Stores and Warehouses	8,000
(k) Water Supply	9,465
	£499,276

No. 11—1890.]

[August 22, 1890.

ACT

To amend the Table Bay Harbour Board Act, 1881.

[Repealed by Act 36, 1896.]

No. 12—1890.]

[August 22, 1890.

ACT (1)

To Provide for the Registration of Brands, and to facilitate the identification and recovery of Lost or Stolen Horses, Cattle and Ostriches.

Preamble.

BE it enacted by the Governor or the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Act to come into force on appointed day in scheduled districts.

1. This Act shall come into force in the districts named in the Schedule thereto, on a day to be appointed by the Governor by Proclamation in the *Gazette*, and may be cited as the "Brands Registration Act, 1890."

Extension of operation of Act to adjoining divisions, but only after request by Divisional Council in accordance with resolution taken at meeting held after 6 weeks' notice.

2. The operation of this Act may thereafter be by similar Proclamation extended to and throughout any division, ⁽¹⁾ but no such Proclamation shall issue unless and until

- (a) The Divisional Council of such first-named division shall have passed by a majority of the elected members of such Council, a resolution requesting the Governor to issue such Proclamation; and
- (b) It shall be proved to the satisfaction of the Governor that at least six weeks before the date of such resolution notice has been given in some newspaper circulating in such division of the proposal to pass such a resolution at some meeting referred to in such notice.

¹ Printed as amended by Act No. 18, 1892 (p. 3026). Amended further by Act 4, 1897 (p. 3706). The provisions of this Act extended to sheep and goats by Act 4, 1897. This Act may be suspended, § 7, Act 4, 1897 (p. 3706).

3. In this Act the following terms shall have the following meanings:—

No. 12-1899.

Meaning of terms.

“Horse.”—Any horse, mare, gelding, colt, filly, ass, or mule.

“Cattle.”—Any bull, cow, ox, heifer, steer, or calf.

“Registrar.”—The Registrar of Brands appointed under this Act.

“Register.”—A Register Book containing a list of the brands of horses, cattle, or ostriches, registered with the Registrar.

“Proprietor.”—The registered proprietor of any brand.

“Brand.”—The impression of any letter, sign, or character branded upon any horse, cattle, or ostrich. ⁽¹⁾

“Similar Brand.”—A brand so like another brand as to be likely to be mistaken for it.

“Brand Directory.”—The list of the brands of horses, cattle or ostriches, compiled by the Registrar and published by the Government printers whether in the shape of a book or of quarterly lists in the *Gazette*.

“Fees.”—Any fees, ⁽²⁾ rates, or charges which any person may be liable to pay under this Act or the Regulations made in pursuance thereof.

4. The Governor may from time to time appoint, and as occasion may require remove some officer or officers in the service of the Colonial Government to exercise under this Act the functions of

Appointment of Registrar and Deputy Registrars of Brands; their functions and offices.

(a) The Registrar of Brands for all parts of this Colony wherein this Act shall be in force,

(b) Deputy Registrars, for the different districts or divisions wherein this Act shall be in force, who shall be subordinate to the Registrar for the purposes of this Act,

and the Governor may from time to time by notice in the *Gazette* determine the place or places at which shall be situated the office or offices of the Registrar or Deputy Registrars.

5. The Registrar shall keep three registers for the registration of the brands of horses, cattle or ostriches respectively.

Three registers to be kept for brands of horses and cattle respectively.

6. Every owner of any horse, cattle or ostrich, running in any part of any district or division, in which this Act shall be in force, may deposit the prescribed ⁽²⁾ fees and make application in writing to the Registrar, or to the Deputy Registrar of such district or division, to be registered as the proprietor of one brand for horses or one brand for cattle, or one brand for ostriches, running in such district or division, or of all such brands, and all such applications made to any Deputy Registrar shall forthwith be forwarded by him to the Registrar, together with the fees deposited.

Application to be registered as proprietor of brand or brands for any district or division in which Act is in force; fees to be deposited.

7. Upon receiving any such application and fees, every Deputy Registrar, and the Registrar, upon receiving any such

Certificate of receipt of application.

¹ Definition of “brand” extended (sheep or goats) by Act 4, 1897, § 3.

² Fee not to exceed 2s. 6d. § 4, Act 4, 1897.

No. 12—1890.

application and fees direct from the applicant, shall send to the applicant a certificate of such receipt in the form hereinafter provided for.

If brand applied for already registered for same district or division, or if other objections under Act or regulation, Registrar must give immediate notice and return fees deposited

8. (1) If at the time when the Registrar shall receive either directly from any applicant, or through any Deputy Registrar, any such application in respect of any district or division, in which this Act shall be in force, there shall already be in the appropriate register, a registered proprietor for the same district or division of the brand the registration of which is applied for, or any brand which the Registrar shall deem to be similar thereto, or if the registration of any brand is applied for, the registration of which is prohibited by any provision of this Act, or any regulation made as hereinafter provided, the Registrar shall forthwith return to the applicant the fees deposited, and give notice, in writing, to the applicant of the reason why his application cannot be entertained, and shall proceed no further on such application, but shall keep a record thereof.

Admissible applications to be numbered and entered in a special book, and notice thereof giving description of brand, etc., to be published thrice in Gazette.

9. Whenever the Registrar shall receive any application in respect of which it shall not be necessary to give the notice prescribed by the last preceding section of this Act, and in respect of which the prescribed fees shall be deposited, such application shall be numbered and entered by the Registrar in a book to be kept for the purpose, and shall without delay cause the name and residence of the applicant and the description of his brand to be published three times in the *Gazette*.

If no other applications within two months from first notice, applicant to be registered as proprietor of brand.

10. If, within two months from the date of the first publication in the *Gazette*, no application shall be made by any other person for the registration of the same or a similar brand in the same register for the same district or division, the brand notified shall be deemed to be the brand of the applicant, and he shall be registered accordingly as the proprietor thereof.

Modification of brands, when the same or similar brands are applied for by different persons; if applicants do not agree, Registrar may decide on necessary modifications.

11. If at the expiry of the aforesaid period of two months, one or more other applications shall have been received and entertained for the registration of the same or a similar brand, in the same register for the same district or division, the Registrar shall cause notice, in writing, to be given to every applicant, setting forth every other application, and calling upon the applicants within two months from the date of such notice to arrange such modifications of their proposed brands that they shall no longer be the same as or similar to each other, and unless the applicants shall, within the said two months or such further time as the Registrar may by regulations be authorised to allow, agree upon and by common consent communicate in writing to the Registrar modifications approved by him, the Registrar shall and may make such modifications as may be necessary in all or any of the proposed brands, and shall give notice of such modification to the several applicants, and forthwith after any modification shall be approved of or made and notified by the Registrars under the

¹ See § 5, Act 4, 1897.

provisions of this section, he shall register the several applicants as proprietors of the respective brands determined by him after such modification.

12. The Registrar shall send to every applicant a certificate of registration so soon as such applicant shall be registered under this Act as the proprietor of any registered brand.

13. The letter, sign, or character prescribed by regulations under this Act for any district or division shall form part of every brand to be registered for the district or division to which such letter, sign, or character refers.

14. If any brand shall contain any sign or character other than letters or numerals, such brand shall not be registered until the applicant shall have defrayed the costs of preparing a type or block of such brand for the purpose of advertisement in the *Gazette*.

15. At the end of each quarter of every year after this Act shall come into force, the Registrar shall prepare alphabetical lists of the brands of horses, cattle and ostriches, and of the names and residences of the proprietors of brands registered under this Act in each district or division during such quarter, and such list shall be published in the *Gazette*.

16. As soon as may be after the 31st day of (1) December in each year after this Act shall come into force, the Registrar, or such other officer as the Governor shall appoint, shall compile and publish a Brand (1) Directory containing a correct and complete list of all registered brands and of names and residences of all proprietors registered for every district or division up to that date.

17. Any registered proprietor may cede and transfer his right to any registered brand to any person, provided that such cession and transfer shall only take place in the prescribed form, and be of validity when registered by the Registrar upon payment of the prescribed fee; and every person receiving such cession and transfer shall be entitled to a certificate thereof under the hand of the Registrar.

18. Any person, not being the registered proprietor of any brand in any district or division, and not acting with the authority of such registered proprietor, who shall within any district or division wherein this Act shall be in force, impose or cause to be imposed upon any horse, cattle, or ostrich as the case may be, any such registered brand, shall be liable upon conviction to a fine not exceeding ten pounds, and in default of payment to imprisonment with or without hard labour for any term not exceeding one month.

19. On the trial of any person for the theft of any horse, cattle, ostrich, or for receiving such horse, cattle, or ostrich, or any part or portion thereof knowing the same to have been stolen, it shall be competent for the prosecution to give evidence that the brand upon the animal or ostrich alleged to have been stolen is the

No. 12—1890.

Certificate of registration to be sent by Registrar to proprietor.

Letter, numeral, sign, or character, prescribed by regulations to form part of every brand registered for that district or division. Brands containing signs or characters other than letters or numerals not to be registered till cost of type or block paid for by applicant.

Quarterly return of brands and proprietors to be published.

Annual compilation of Brand Directory.

Cession and transfer of registered right to brands: registration of such cession and transfer.

Penalty for unauthorised imposition of brand.

Evidence in criminal trials may be given to prove registered brands: certificate of Registrar admitted in evidence.

¹ To be compiled up to 1st October annually. § 6. Act 4, 1897.

No. 12—1890.

registered brand of the person alleged to be the owner of such animal or ostrich, or of some person through or from whom such owner derived his right to such animal or ostrich, and a certificate purporting to be under the hand of the Registrar shall constitute *prima facie* proof of the facts therein alleged.

Burden of proof rests on accused found in possession of horse, cattle, ostrich, branded with registered brand, upon proof of ownership and that a theft has been committed.

20. On the trial of any such person as aforesaid who shall have been apprehended in possession of any horse, cattle or ostrich branded with any registered brand upon proof being given of the ownership of such horse, cattle or ostrich, and that a theft thereof has been committed, the onus of proving that such horse, cattle, or ostrich was or were lawfully or innocently in his possession shall rest upon the accused person.

Poundmaster to keep Brand Directory and *Gazette*.

21.⁽¹⁾ Every poundmaster in any district or division wherein this Act shall be in force shall keep a copy of the latest edition of the Brand Directory, and a file of the *Gazettes* containing the alphabetical lists required to be published quarterly as aforesaid, and on receipt of a fee of one shilling shall at all reasonable hours permit a search in the Brand Directory and such *Gazettes*, and copies of any entries to be made by any person. Every poundmaster contravening this section shall be liable to a fine of two pounds sterling.

Duty of poundmaster to give notice to registered proprietor of last brand on impounded horse, cattle or ostriches.

22. ⁽¹⁾ Whenever any horse, cattle, or ostrich shall be impounded within any district or division wherein this Act is in force, the poundmaster shall forthwith give notice, verbally or by letter, to the registered proprietor or proprietors of any brand or brands which shall appear on such horse, cattle, or ostrich, and every such poundmaster contravening this section shall be liable to a fine of one pound sterling.

Additional pound fee for unbranded horse, cattle or ostrich over one year old.

23. ⁽¹⁾ The council of every division in which this Act shall be in force may fix and determine a pound fee ⁽²⁾ to which every poundmaster in such division shall be entitled, to wit, an additional pound fee not exceeding three pence for and in respect of any horse, head of cattle, or ostrich, above the age of one year, which shall be impounded in his pound, if such horse, cattle, or ostrich shall bear no registered brand.

Regulations to be made by Governor.

24. The Governor may from time to time, by Proclamation in the *Gazette*, make, amend, alter, or repeal such regulations as may be necessary in pursuance and for the proper carrying out of the provisions of this Act, and specially for the following purposes:—

- (1) To prescribe, in detail, the duties of the Registrar and Deputy Registrars;
- (2) To provide the forms in which application for registration shall be made;
- (3) To prescribe the forms in which any certificates provided for by this Act shall be given by the Registrar or Deputy Registrars;

¹ See Act 15, 1892, § 24 (p. 3010).

² See Act 15, 1892, § 59 (p. 3020).

- (4) To prescribe the form and manner of giving any notice required but not specially provided for by this Act;
- (5) To prescribe the manner in which the registers, alphabetical lists, brand directory, books, and records required by this Act shall be kept and made;
- (6) To prescribe the letters, numerals, signs, or characters by which districts or divisions shall be known for the purposes of this Act;
- (7) To prescribe the fees to be paid to the Registrar or Deputy Registrars under the provisions of this Act;
- (8) To prescribe the form in which any cession or transfer of the right to any registered brand shall be effected;
- (9) To prescribe the size of any brands entitled to registration, the portions of the body on which horses, cattle, or ostriches shall respectively be branded, and the order in which different brands shall be imposed;
- (10) To prescribe a penalty not exceeding a fine of two pounds sterling for any breach of any regulation made in accordance with any provision of this Act.

25. All fees, other than pound fees, received, and all penalties recovered under the provisions of this Act shall be paid into the Colonial Treasury.

Fees and penalties to be paid into Treasury.

SCHEDULE.

Schedule.

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

No. 13—1890.]

[August 22, 1890.

ACT

To Provide for the Acquisition, Construction, or Completion, and for the equipment of Certain Lines of Railway, and for the Purchase of Additional Rolling Stock. ⁽¹⁾

Preamble.

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:—

Governor may raise £296,800 for cost of line from Kimberley to Warrenton.

1. It shall be lawful for the Governor to raise from time to time as he may deem expedient, either by debentures or in stock, or partly by debentures and partly in stock a sum not exceeding in the whole the sum of two hundred and ninety-six thousand eight hundred pounds sterling to provide for the cost of the construction of a line of railway from Kimberley to Warrenton, in accordance with the terms of certain agreements, dated the 29th day of October, 1889, and the 23rd day of January, 1890, respectively, between the Colonial Government and the British South Africa Company, which agreements are set forth in full in the Schedule to this Act.

Governor authorised to acquire above lines, or to acquire the completed portion and construct the uncompleted portions

2. It shall also be lawful for the Governor to raise in manner provided by the preceding section a further sum not exceeding in the whole the sum of five hundred and sixty-two thousand two hundred pounds sterling, to provide for the cost of the continuation of the aforesaid line from Warrenton to Vryburg in the territory of British Bechuanaland in accordance with the terms of the said agreements.

Governor may raise £562,200 for cost of the construction of line from Warrenton to Vryburg.

3. It shall be lawful for the Governor, as soon as he may deem expedient after the passing of this Act to acquire or take over, for and on behalf of the Colonial Government, from the British South Africa Company the aforesaid lines of railway from Kimberley to Warrenton and from Warrenton to Vryburg in accordance with the terms and conditions of the agreements in the Schedule to this Act; or to acquire and take over such portions of the said lines as may at the time be completed, and to cause to be constructed the remaining portions of the said lines.

Governor authorised to cause lines to be equipped and worked.

4. In the event of the Governor acquiring or constructing the said lines or portions of the said lines in manner provided by the preceding section, it shall be lawful for him to cause the whole of the said lines to be equipped, maintained, and worked, and he 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 purpose.

¹ Amended by Acts 23, 1893 (p. 3201), and 13, 1903 (p. 4606).

5. From and after the date of the acquisition or taking over of the said lines or portions of the said lines as aforesaid by the Governor, the Colonial Government shall be vested with the same rights, powers, duties, functions and privileges as to working the said railways, and with the same rights and powers as to the construction of the uncompleted portions of the said railways, if any, as were theretofore secured to or vested in the said British South Africa Company by virtue of any agreement entered into either with the High Commissioner and Governor of British Bechuanaland, or with any private person.

6. The several provisions of Act 19 of 1861, entitled "An Act for the Regulation of Railways in this Colony," save and except the 29th and 30th sections thereof, shall *mutatis mutandis* apply to so much of the said railway lines as are within this Colony, precisely as if the said railways 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.

7. It shall be lawful for the Governor to raise from time to time, as he may deem expedient, either by debentures or stock, or partly by debentures and partly by stock, and to expend the sum of one hundred and twenty-five thousand pounds for the completion of a railway now under construction from a point on the north bank of the Orange River near Norval's Pont to Bloemfontein in the Orange Free State, and the sum of one hundred and thirty-five thousand pounds for the purchase of additional rolling stock.

8. The costs necessarily incurred in raising the aforesaid sums, including discount, commission and other incidental charges shall be a first charge against the amount thereof.

9. This Act may be cited as the "Northern Railways Act, 1890."

No. 13—1890.

Colonial Government to be vested with the rights and duties of the British South Africa Company as to working and construction of lines.

Act 19 of 1861 to apply to railways under this Act within the Colony.

Governor may raise £125,000 for completion of Norval's Pont - Bloemfontein line, and £135,000 for additional rolling stock.

Cost of raising loan to be a first charge thereon.

Short title.

SCHEDULE.

Schedule.

I.

MEMORANDUM OF AGREEMENT between the COLONIAL GOVERNMENT, represented by the COMMISSIONER OF CROWN LANDS AND PUBLIC WORKS, of the one part, and the Honourable CECIL JOHN RHODES, M.L.A., representing the BRITISH SOUTH AFRICA COMPANY, under Royal Charter, of the other part, in the matter of the said Company's proposal to construct a line of Railway through Colonial Territory from the present terminus at Kimberley, *via* Fourteen Streams to the boundary of British Bechuanaland and from thence through the Territory of British Bechuanaland to a terminal point at or near Vrijburg.

1. This Agreement is based upon the letter dated Cape Town, 24th October, 1889, addressed by the said Cecil John Rhodes to the Prime Minister, and the Prime Minister's answer thereto of 26th October, copies of which are hereunto annexed.

MM

No. 13—1890.

2. The Colonial Government consents to the said Company's proposal of constructing, at its (the said Company's) own risk and expense, the said line from the Kimberley Terminus to a point on the North Bank of the Vaal River, near Fourteen Streams, including a Bridge over the Vaal River, and for that purpose agrees to place the said Company in possession of the powers granted to the said Government, under and by virtue of Section 2 of Act 20 of 1888, for the due construction of the said railway, and for expropriation of the land required for such construction; and in regard to further extension from a point on the North Bank of the Vaal River through Colonial Territory to the boundary of British Bechuanaland, and from thence through the territory of British Bechuanaland to a point at or near the town of Vrijburg, the said Colonial Government promises to give to the said Company every facility in its power; provided, always, that the said Company shall, at its own risk, obtain or secure the concurrence, if required, of the Government for the time being of British Bechuanaland for the construction of such portion of the said line of railway as passes through the said territory of British Bechuanaland.

3. The said railway is to be constructed in every respect as regards gauge, weight of rails, gradients, curves, buildings necessary for the safe working of the line, and general efficiency, equal to the existing Colonial Government railways.

4. The line of survey from the Kimberley Terminus to Fourteen Streams, made by Mr. Dalton, to be followed as far as practicable, and Mr. Dalton's survey, with plans and indent of bridge over the Vaal River, to be placed at the disposal of the said Company, the said Company paying the expenses thereof.

5. The Company aforesaid to have the use of the line of main road, as far as is already constructed from Kimberley to Warrenton, for the purposes of the said railway; the said Company paying into the Colonial Treasury the actual amount of expenditure already incurred and to be incurred in the construction of the said main road up to the 30th November, 1889.

6. The work of construction of the said railway to be done under the inspection and to the satisfaction of the General Manager of Railways of the Cape Colony or such other officer as he may appoint to represent him.

7. The Colonial Government aforesaid shall have the right at any time, during or after construction, to take over the said line, or any portion thereof, subject to the provisions of the next succeeding section of this Memorandum of Agreement, on payment to the said Company of the actual cost incurred by the said Company in construction of the said line or portion of the said line, the term "actual cost" to mean the capital sum expended on construction, certified to by the General Manager of Railways as per Section 6, including so much interest on the capital sum, not exceeding three and three-quarters per centum per annum, reckoned from the respective dates of the raising of the sums necessary from time to time for the construction of the said line to the day of its being taken over by the said Colonial Government, as shall not have been paid out of net earnings, it being understood that the said interest shall be the first charge against the net earnings; and the term "actual cost" shall not include any loss or deficiency arising from the working and maintenance of such line or portion of such line while in the hands of the said Company or the said Company's representatives, such loss or deficiency being borne entirely by the said Company.

8. If the said Colonial Government, by virtue of the reservation of right of taking over the said line or any portion thereof, shall, at any time before the completion of the said line of railway from the terminus at Kimberley to the terminus at or near Vrijburg, require the said Company to hand over to the said Colonial Government that portion of the line from Kimberley Terminus to a point on the North Bank of the Vaal River, as described in Schedule B to Act No. 20 of 1888, the said Colonial Government, having

taken over the said portion of the said line, shall not any longer have the option of refusing to take over the remaining portion of the said line when completed and declared open for traffic to the terminus at or near Vrijburg, under the conditions set forth in the preceding section of this Memorandum of Agreement.

9. In the event of the Colonial Government taking over the said line or any portion thereof, on the aforesaid conditions, payment shall be made to the said Company either in Colonial Debentures bearing interest at three and three-quarters per centum per annum, or in cash payable at the Colonial Treasury, Cape Town, at the option of the Colonial Government.

10. The traffic rates on any portion of the said line within the Cape Colonial boundaries shall be in conformity with the existing Colonial tariff in every respect, and in the same proportion of mileage, unless otherwise agreed upon by mutual consent; the same shall apply to the extra-Colonial portion of the said line; provided, however, that the said Company (at its own risk) shall obtain or secure any concurrence which may be required on the part of the Government for the time being of British Bechuanaland.

11. As soon as the said line or any portion thereof is declared open for traffic the Colonial Government will, if so desired, undertake to work the same in conjunction with the Colonial Government Railway, Western and Midland Systems, on such conditions as may then be agreed upon between the parties, and subject to notice of termination on either side at not less than six months, or on the part of the said Colonial Government at one month's notice in the event of the said Colonial Government deciding upon taking over the said line, or portion of line, as provided for in Sections 7 and 8 of this Memorandum of Agreement.

12. A formal contract on the lines herein set forth is to be drawn up in due legal form, and the agreement herein accepted by both parties is considered to be from this date binding upon both parties, subject, however, as far as the Government of the Colony is concerned, to the approval and sanction of both Houses of Parliament, which will be asked for during next Session of Parliament.

Dated at Lourensford, Somerset West, this 29th day of October, 1889, in the presence of the subscribed witnesses.

(Signed) F. SCHERMBRUCKER,
Commissioner of Crown Lands and Public Works.

(Signed) C. J. RHODES,
For British South Africa Company.

Witnesses :
(Signed) J. SIVEWRIGHT.
(Signed) C. B. ELLIOTT.

II.

AGREEMENT DATED 23RD JANUARY, 1890, BETWEEN THE COLONIAL GOVERNMENT AND THE HONOURABLE C. J. RHODES.

Agreement,

Made at Cape Town on the twenty-third day of January, 1890, by and between the Honourable Cecil John Rhodes, M.L.A., as representing the British South Africa Company, of the one part, and Sir John Gordon Sprigg, K.C.M.G., on behalf of the Government of the Colony of the Cape of Good Hope, of the other part, with reference to Railway Extension from Kimberley through British Bechuanaland, on the following terms and conditions, to wit :—

1. The Railway to Vryburg to be built on the following terms :—

The Cape Government to raise and advance to Mr. Rhodes the necessary money on the same terms as they raise it.

MM 2

No. 13—1890.

2. The Cape Government to hold as security the line of railway in addition to the six thousand square miles of land in Bechuanaland, which shall be duly hypothecated.

3. In case the Cape Government shall take over the line on or before the 30th June, 1891, the Cape Government shall be entitled to share in the proportion of two to one with Mr. Rhodes in the proceeds of all lands that may have been realized, and to be a partner in the proportion of two to one in whatever lands may at the date of purchase remain unsold.

4. It is understood that all lands sold must be subject to a substantial quitrent of not less than One Pound Sterling per thousand acres, and any lands unsold at date of taking over railway shall be jointly dealt with in the aforementioned proportion; it being understood that for a period of twelve months after the date of purchase of railway neither party shall sell his share without first giving the refusal to the other party, and in the event of this right of pre-emption not being acted upon, any lands sold subsequently shall be subject to the same substantial quitrent.

5. If either the Government of the Cape Colony or Mr. Rhodes shall at any time object or refuse consent to any proposal of the other for the sale or other disposition of the whole or any portion of the land referred to in this Agreement, or if any question or dispute shall arise between them relative to the management, sale, or other disposition of the whole or any portion of the said land, either party may call upon the other to refer and submit such proposal, question, or dispute to the arbitration of one arbitrator jointly appointed; or if no joint appointment can be agreed upon, then to the arbitration of the Chief Justice of the Cape Colony; and the decision of such arbitrator or of the Chief Justice, as the case may be, shall be given with due observance of the terms of this agreement and consideration of what is fair and reasonable, and shall, when given, be binding, final, and conclusive with respect to such proposal, question, or dispute.

6. In the final liquidation of the account either party shall have the right to purchase all the quitrents accruing to the other on a basis of twenty years' purchase.

7. It is further understood that Mr. Rhodes binds himself to proceed with the Railway Extension from Vryburg to Mafeking, provided the Cape Government purchases the Kimberley-Vryburg Section on the foregoing terms, and he receives a further grant of six thousand square miles in Bechuanaland.

In witness whereof the parties hereto have hereunto affixed their respective signatures at the time and place first above written.

(Signed) C. J. RHODES,
For the British South Africa Company.
(Signed) J. GORDON SPRIGG.

In presence of :

(Signed) SYDNEY COWPER, }
(Signed) JAMES D. CORMACK, } Witnesses.

No. 14—1890.]

[August 22, 1890.]

ACT

To amend in certain respects Act No. 3 of 1867, entitled the
“Uitenhage Water Act, 1867.”

WHEREAS it is expedient to amend in certain respects the Act No. 3 of 1867, entitled the “Uitenhage Water Act of 1867”; Be it enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Anything in the provisions of the Act No. 3 of 1867 to the contrary notwithstanding, the section seven of the said Act No. 3 of 1867 shall be read and construed as if the words “Act No. 30 of 1877 as amended by Act No. 12 of 1883” had been originally inserted in the said section in place of the words “Ordinance No. 9 of 1836, or of the Act No. 13 of 1864,” contained in the said section.

Amending section 7, Act No. 3 of 1867.

2. The necessary costs, charges and expenses of obtaining this Act may be paid by the “Mayor, Councillors, and Ratepayers of Uitenhage,” out of the ordinary revenues of the Municipality, or out of the proceeds of any rate levied under the provisions of the said Act No. 3 of 1867.

Cost of Act how to be borne.

3. This Act may for all purposes be cited as the “Uitenhage Water Act Amendment Act, 1890.”

Short title.

No. 15—1890.]

[August 22, 1890.]

ACT

To amend Act No. 11 of 1871.

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. The first section of the Act No. 11 of 1871 shall be read as if the words “or British Bechuanaland” were inserted after the word “Colony” in the said section.

Free hawking of produce or manufactures of British Bechuanaland; Act No. 11 of 1871, section 1, amended accordingly.

No. 16—1890.]

[August 22, 1890.]

ACT

To Facilitate the Transfer of Land Mortgaged under the
“Crown Lands Disposal Act, 1887.”⁽¹⁾

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. (2) Whenever any person, hereinafter called the seller, being the registered owner of any land disposed of under the provisions

Notice may be given by seller and purchaser of land

¹ See Acts 23, 1892, 30, 1893, and 18, 1896. Extended by Proclamation No. 99 of 1891 to Transkei, Tembuland and Griqualand East.

² See Act 30, 1893, § 1, sub § (a) (p. 3281). As to sale and transfer of defined part or share, see Act 3, 1905, § 3 (p. 4806).

No. 16—1890.

disposed of under Act No. 15 of 1887, and bonded in favour of Government; such notice to be given to Treasurer of the Colony, and to set forth particulars respecting such land and the mortgage bond thereon

Notice to be accompanied by certificate of Civil Commissioner of division or resident magistrate as to amount unpaid under bond, as to payment of interest due or becoming due thereunder and as to *bona fides* of proposed transfer.

Bond, notice and certificate to be forwarded to Registrar of Deeds to be dealt with under this Act.

Transfer to be passed within six weeks, if all other legal requisites fulfilled, without cancellation of bond; and entries to be made in Debts Register and endorsement on bond

of the Act No. 15 of 1887, commonly called the "Crown Lands Disposal Act, 1887," shall be the debtor to the Colonial Government under any mortgage bond affecting such land and passed in accordance with the provisions of the second section of the said Act, shall have lawfully agreed to transfer such land to any other person, hereinafter called the purchaser, the seller and purchaser may jointly give notice in writing, signed by them or their duly authorised agents, to the Treasurer of the Colony, which notice shall be substantially in the form set forth in the schedule hereto.

2. (2) Such notice shall be accompanied by a certificate which shall be signed and granted, upon payment of a fee of five shillings, by the Civil Commissioner of the Division, or if there be no Civil Commissioner then by the Resident Magistrate of the District in which such land as aforesaid is situated, which certificate shall set forth the amount remaining unpaid under such mortgage bond, and that all interest has been paid which is either due or will become due up to or upon the next date fixed for the payment of interest under such bond after the date of such notice as aforesaid, which certificate shall moreover set forth that to the best of the knowledge and belief of such Civil Commissioner or Resident Magistrate as the case may be, the transfer proposed to be made *bona-fide* and without intention in any way to defeat or delay the Government in the enjoyment of its rights against the seller.

3. Within fourteen days after the receipt of such notice and certificate as aforesaid, the Treasurer of the Colony may cause to be delivered to the Registrar of Deeds, in whose office the said mortgage bond is registered or recorded, such mortgage bond, notice, and certificate as aforesaid, together with a written instruction to such Registrar at any time within six weeks from the date of such notice, to deal with the said mortgage bond in manner provided by this Act.

4. After receiving such mortgage bond, notice, and certificate, as aforesaid, and upon being satisfied that all other legal requisites have been complied with for the purpose of passing and registering the transfer of such land, the Registrar of Deeds shall, if duly required so to do within the aforesaid period of six weeks, allow transfer of such land from the seller to the purchaser to be passed and registered in his office, notwithstanding that such mortgage bond shall not be cancelled; but in every such case such Registrar shall, at the time of allowing such transfer to pass and be registered, cause entries to be made in the Debts Register in his office and an endorsement upon such mortgage bond in manner hereinafter provided.

¹ The provisions of these sections apply to transfers under Act 3, 1905 (p. 4806) of land mortgaged to Government disposed of under Act 40, 1895 (p. 3566).

² See Act 30, 1893, § 1, sub § (b) (p. 3281).

5. (1) The entries in the Debts (2) Register shall be
- (a) an entry setting forth that the debt of the seller is cancelled in accordance with the provisions of this Act, and (b) an entry setting forth that the purchaser is the debtor to the Government in the amount which remains due and unpaid under such mortgage bond.
6. (2) The endorsement upon such mortgage bond shall set forth
- (a) the name of the purchaser, (b) the date of registration of transfer, and (c) that, in accordance with the provisions of this Act the purchaser has been substituted for the seller as debtor to the Government under such mortgage bond.
7. (1) Forthwith after the completion of such entries and endorsement the mortgage bond, together with the aforesaid notice and certificate, shall be returned by the Registrar of Deeds to the Treasurer of the Colony.
8. (1) Nothing in this Act contained shall be deemed to relieve any person from any liability in respect of any duty, stamp, or fee of office which would have been payable upon such transfer, and for and in respect of the making of such entries and endorsement as aforesaid there shall be payable to the Registrar of Deeds a fee of one pound sterling, which shall be paid by way of stamps to be affixed before such endorsement to such mortgage bond as aforesaid, and to be cancelled in the manner required by any law for the cancellation of stamps upon mortgage bonds.
9. (1) Upon the completion of such entries (3) and endorsement as aforesaid, the seller shall be deemed to be absolved from any obligation to the Government under such mortgage bond, and the purchaser shall, from and after the date of such completion, be substituted for the seller as the debtor to Government under such mortgage bond.
10. (1) Any person who shall make or transmit to the Treasurer of the Colony any such notice or certificate as aforesaid which shall, to his knowledge, be false in any material particular, shall be liable, on conviction, to a fine not exceeding fifty pounds sterling, or in default of payment to imprisonment, with or without hard labour, for any term not exceeding six months, unless such fine be sooner paid.
11. This Act shall be cited as the "Transfer Facilitation Act, 1890."

No. 16—1890.
Form of entries
in Debts Register.

Form of endorsement
on bond.

Return of bond,
&c., by Registrar to
Treasurer of the
Colony.

Act not to relieve
from payment of
duty, stamps, or
fees of office or
transfers: stamps
how affixed and
cancelled in pay-
ment of fee of office
for entries and en-
dorsement.

After completion
of entries and en-
dorsement seller
absolved, and pur-
chaser substituted
for seller as debtor
to Government.

Penalty for mak-
ing or transmitting
notice or certificate
known to be false
in any material
particular.

Short Title.

SCHEDULE.

NOTES UNDER SECTION 1 OF ACT NO. 16 OF 1890.

To the Honourable the Treasurer of the Colony.

WHEREAS I, the first undersigned, A.B. (a) am the registered owner, by virtue of a Title Deed, under the provisions of Act No. 15 of 1887, dated the day of , of a certain piece of land in

Schedule.

(a) Insert full
name of seller.

¹ See note to page 2814.

² See Act 30, 1893, § 1, sub § (c) (p. 3281).

³ See Act 30, 1893, § 2.

No. 17—1890. the Division of _____, Field-cornetcy of _____ being
 Lot No. _____, called _____
 and whereas a Mortgage Bond on the said land for the sum of £ _____
 was passed in favour of the Colonial Government on the _____ day
 of _____, and there still remains due and owing on the said
 Bond the sum of £ _____: Now, therefore, I do hereby give
 notice that I have agreed to give transfer of the said land to C.D. (b), the
 second undersigned:

†(b) Insert full name of purchaser.

And I, the said C.D., do hereby notify that I have agreed to take transfer of the said land, and that I am ready and willing to take over the liability to the Colonial Government under the Mortgage Bond aforesaid.

Dated at _____ this _____ day of
 A.B.
 C.D.

AS WITNESSES.
 E.F.
 G.H.

No. 17—1890.]

[August 22, 1890.

ACT

To Provide for the Construction of certain Telegraphs and other Public Works.

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:—

Governor may cause certain works to be constructed.

1. The Governor shall as soon as may seem to him expedient after the passing of this Act, cause to be constructed the several works set forth in the Schedules A B C D to this Act at a cost not exceeding the amounts set forth in the said Schedules.

It shall be lawful to apply certain unexpended balances of loans and to charge balance of certain loans with expenditure.

2. For the purposes of constructing the works set forth in Schedule A (Telegraphs) it shall be lawful to apply the unexpended balances of the loans raised under the following Acts: 15 of 1879; 21 of 1883, in respect to items 3 and 6 in the Schedule to said Act; 17 of 1884, in respect to item 3 in Schedule to said Act; 38 of 1885, in respect to that part of item 3 in Schedule to said Act "Public Offices at Port Elizabeth" and items 4 and 5; 6 of 1877; and 30 of 1882 in respect to that part of Schedule to said Act "For the Cradock Bridge."

Unexpended balances of loans to be charged with certain expenditure.

3. For the purpose of constructing the works set forth in the Schedule B (Irrigation) the unexpended balances of loans raised under the following Acts for irrigation loans on works, viz.:—30 of 1882, 17 of 1884, 38 of 1885, shall be charged with the amount set forth in this Schedule.

It shall be lawful to borrow under temporary Loans Act for certain purposes.

4. For the purpose of constructing the works set forth in Schedules C and D, it shall be lawful for the Governor to apply a sum of £100,000 out of moneys authorised to be raised under the provisions of the Temporary Loans Act, being the Act No. 20 of 1883.

Short title.

5. This Act may be cited as the "Public Works and Telegraphs Act, 1890."

SCHEDULES.

No. 18—1890.

A. Telegraphs :		Additional Schedules.	
For telegraphic lines and additions to existing lines.		Additional Schedules.	
wires :			
Port Elizabeth to Alicedale, 2 wires)			
Alicedale to Naauwpoort, 2 wires)	£8,000		
Naauwpoort to Kimberley, 1 wire)			
Kokstad to Matatiele ... ..	...	2,100	
Mount Stewart to Steytlerville ... ..	...	880	
Belmont to Douglas ... ..	...	2,650	
Clanwilliam to Springbok <i>via</i> Van Rhy'n's Dorp...	...	13,300	
Majestfontein to Sutherland ... ..	...	3,850	
			£30,780
B. Irrigation Works :			
Completion Van Wyk's Vlei ... ..	...	1,375	
Douglas Irrigation Works ... ..	...	6,000	
			7,375
C. Harbour Works :			
Improvement East London Harbour...	...	...	50,000
D. Bridges :			
Gouritz River Bridge ... ..	...	...	50,000

No. 18—1890.]

[December 12, 1890.

ACT

To add to the Provisions of the "Customs Union Tariff Act, 1899."

BE it enacted by the Governor of the Colony of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. With the authority of the proper officer of Customs, and subject to such regulations as are referred to in the next section of this Act, goods warehoused under bond in any bonded warehouse lawfully appointed at any free warehousing port in this Colony may, without the payment of duty before removal, be removed (1) under bond from such warehouse to and into any colony, state, or territory within the Customs Union, which bond shall be in accordance with regulations made under the next succeeding section of this Act, and shall secure the due re-warehousing of the said goods in such colony, state or territory, whether such goods be or be not intended for consumption therein.

Removal of goods under bond, without payment of duty, from this Colony to colony, &c., within Customs Union, subject to regulations.

2. The Governor may, by notice in the *Gazette*, from time to time, make and alter regulations governing the removal and conveyance under bond of such goods as are referred to in the last preceding section of this Act, and providing for the due collection on behalf of the Colonial Treasury by any colony, state or territory within the Customs Union to which such goods are removed of the duties of Customs to which this Colony is lawfully entitled in respect of such goods, to all which regulations the provisions of

Regulations governing removal and conveyance of goods under bond, and providing for collection of duty.

¹ Printed as amended by Act 6, 1898.

No. 20—1890.

Effect and short
title.

the eighth section of the Act No. 1 of 1889, commonly called the "Customs Union Tariff Act, 1889," shall apply.

3. This Act shall be read and construed as one with the last mentioned Act, and may be cited as the "Customs Union Tariff Act, 1890."

No. 19—1890.]

[August 22, 1890.

ACT

For rendering valid certain Transfers of Land in Griqualand East. (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:—

Validity of certain
transfers of land in
Griqualand East
established.

1. All Deeds of Transfer of Immovable Property which have heretofore been passed and unregistered by the Registrar of Deeds of the Colony in pursuance of orders purporting to have been issued by the Chief Magistrate of Griqualand East under the provisions of the "Titles Registration and Derelict Lands Act, 1881," shall be judged of and considered to be as valid and effectual as if the said orders had been issued by a Judge of the Supreme Court.

Short title.

2. This Act may be cited for all purposes as "The Griqualand East Transfers Act, 1890."

No. 20—1890.]

[August 22, 1890.

ACT

To regulate the Sale of Spirits compounded of spirits of different classes.

Preamble.

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:—

Seller of com-
pounded spirits to
give notice to pur-
chaser that spirits
are compounded;
penalty for failure
to give notice.

1. Every person who shall knowingly sell or dispose of or attempt to sell or dispose of any spirits distilled in the Colony from grapes, wine, or any produce of the vine, compounded with spirits distilled from any other thing or substance, shall be guilty of contravening this section, and shall be liable upon conviction to a fine not exceeding ten pounds, or to imprisonment with or without hard labour for any term not exceeding three months, or to both such fine and such imprisonment, unless such person shall before the completion of such sale or before such attempted sale clearly notify that the spirits so sold, disposed of, or which he attempted to sell or dispose of, are so compounded.

¹ Extended by Proclamation No. 189 of 1890, to Griqualand East.

2. "Wine" for the purposes of this Act, and of the Excise Spirits Act, (1) 1884, and the Excise Law Amendment Act, (2) 1886, shall, anything in any other Act or Acts to the contrary notwithstanding, be held to mean 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.

No. 21—1890.
Definition of
"Wine."

3. This Act shall be read as one with the Excise Spirits Acts of 1884, and the Excise Law Amendment Act of 1886.

Act to be read
with Spirits Acts,
1884 and 1886.
Short title.

4. This Act may be cited as the "Compounded Spirits Regulation Act, 1890."

No. 21—1890.]

[November 29, 1890.

ACT

To Prohibit the Introduction of Rabbits into, and to Restrict the Breeding of them in, this Colony.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. From and after the passing of this Act no live rabbit shall be introduced into this Colony from any place beyond the boundaries thereof, and no master or owner of any vessel, or owner, driver or person in charge of any conveyance by land, or any other person whatever, shall carry or bring, or allow to be carried or brought by any such vessel or conveyance, or by any other means, any live rabbit to any place within this Colony from any place beyond the colonial boundaries, or from any island within the limits of this Colony to the main land thereof.

Introduction of
rabbits into this
Colony prohibited.

2. No person shall have in his possession or keep on his premises any live rabbits, unless they are securely confined within such hutches or boxes, to be constructed of such material and in such manner and with such provisions against the escape of the rabbits as may be prescribed by regulations framed by the Governor for the purposes of this Act, and proclaimed in the *Gazette*. (3)

Restrictions on
the manner of
keeping rabbits al-
ready in this
Colony: power of
Governor to make
regulations as to
keeping of rabbits.

3. It shall be lawful for any person to destroy any rabbit found upon his land or premises, or upon any unalienated Crown lands, not being islands along the coast, in which case the existing law shall apply, or any public road or place dedicated to public uses, and the owner of any rabbit so destroyed shall not be entitled to recover any sum by way of compensation for any loss or damage that he may have sustained by the destruction of such rabbit.

Provision for de-
struction of rabbits
found on private
property of any
person, or on Crown
land or in public
place.

4. Any person who turns loose any rabbit, or negligently suffers any rabbit to run loose, shall be liable for all loss and

Liabilities of per-
sons turning loose
any rabbit, or neg-
ligently allowing it

¹ No. 18.

² No. 19.

³ Regulations proclaimed in *Gazette* of 28th November, 1890.

No. 23—1890.

to run loose, for damage done by rabbit, also for penalties: informer to receive half of penalty.

Returns to be made of number of rabbits bred and kept.

Penalties for contravening Act or regulations thereunder.

Repugnant laws repealed.

Short title.

damage occasioned by such rabbit to any person, as well as to the penalties imposed by this Act, and any person giving information whereby any other person is convicted of allowing any rabbit to run loose, shall be entitled to receive half of the fine inflicted upon such other person.

5. Every person keeping rabbits within this Colony shall, within one week after the first day of January and July respectively in each year, render to the Civil Commissioner of the division a return of the numbers and descriptions of rabbits bred by him, for the six months immediately preceding the said first day of January or July as the case may be, and of the number in his possession at such date.

6. Any person offending against any of the provisions of this Act, or of any regulation proclaimed for the purposes of this Act, shall, for every such offence, on a first conviction be liable to a fine not exceeding five pounds, and on every second or subsequent conviction to a fine not exceeding ten pounds. In default of payment of any fine as aforesaid, such offender shall be liable to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

7. So much of the "Game Law Amendment Act, 1886," or of any other law as may be inconsistent with the provisions of this Act, shall be and the same is hereby repealed.

8. This Act may be cited as the "Rabbit Act, 1890."

No. 22—1890.]

[August 22, 1890.

Act to apply a Sum not exceeding Thirty-eight Thousand Two Hundred and Ninety-five Pounds Four Shillings and Three Pence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure and Excess Expenditure upon certain Loan Acts.

[Spent.]

No. 23—1890.]

[August 22, 1890.

ACT (1)

To authorise the Raising of a further Sum of one Hundred Thousand Pounds sterling for carrying out certain further works necessary for the improvement of the Harbour of Port Elizabeth.

Preamble.

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 See Act No. 10, 1894.

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 purpose of carrying out certain further works necessary for the improvement of the Harbour of Port Elizabeth.

No. 24—1890.

Power to raise public loan of £100,000 for harbour of Port Elizabeth.

2. The application of the moneys to be raised as aforesaid shall be entrusted to the Port Elizabeth Harbour Board (1) appointed or to be 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.

Application of moneys entrusted to Port Elizabeth Harbour Board.

3. This Act may be cited as the "Port Elizabeth Harbour Loan Act, 1890."

Short title.

No. 24—1890.]

[August 22, 1890.

ACT

For constituting an additional Fiscal Division.

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 the Ordinance for constituting a Parliament in this Colony and commonly called the "Constitution Ordinance," and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Repeal of repugnant laws.

2. The district of Kenhardt shall, from and after the date of any Proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes.

District of Kenhardt may be proclaimed a fiscal division.

3. The Proclamation provided for in the last preceding section shall define the several boundaries of the Division of Kenhardt, and the boundaries so proclaimed shall be the boundaries of the said division.

Boundaries to be defined by the same Proclamation.

4. From and after the date of any Proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division, to which the whole or any part of the division of Kenhardt, so constituted for fiscal purposes only and named in such Proclamation, belonged shall stand dissolved, and the provisions of Act No. 40 of 1889, commonly called "The Divisional Councils Act, 1889," and of every other law relating to Divisional Councils, shall apply to the Division of Kenhardt constituted under this Act, and to the divisions to which the said division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for such divisions had ever been elected: Provided that the per-

Effect of Act on divisions and Divisional Councils affected by Proclamation; new division to be a division for purposes of Act No. 40 of 1889 and other relative laws.

¹ See Act No. 36, 1896.

No. 24—1890.

sons who shall be registered as voters for the Divisional Council of any such former division which down to the date of such Proclamation comprised the whole or any part of the new division of Kenhardt, and who in accordance with the Act No. 40 of 1889, are duly qualified to be registered as voters for the Divisional Council of the new division of Kenhardt shall be entitled to vote at the election of Councillors for the Divisional Council of such new division.

Provisions of Act No. 24 of 1858 to apply to division of Kenhardt.

5. The 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 so far as applicable *mutatis mutandis*, as soon as any Proclamation under this Act shall have been issued, apply to the new division of Kenhardt, and to the divisions to which the said new division in whole or in part belonged before the issuing of such Proclamation, just as though such new division of Kenhardt were named in the Schedule to the Act No. 12 of 1857.

No change of electoral divisions.

6. Notwithstanding the creation of the new division of Kenhardt by virtue of any Proclamation under this Act, such new division and every part thereof shall, for electoral purposes, continue to form part of whatever electoral division such new division or part thereof belonged to before the date of such Proclamation, precisely as if this Act had not been passed.

Short title.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1890."

No. 25—1890.]

[August 22, 1890.

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1891.

[Spent.]

No. 26—1890.]

[August 22, 1890.

Act to abolish the Tenants' Rate levied by the Municipality of Cape Town, and to make other provision in lieu thereof, and to authorise the Town Council of Cape Town to contribute a certain sum towards the maintenance of the South African Public Library and the New Somerset Hospital.

[Repealed by Act 26, 1893.]

No. 27—1890.]

[August 22, 1890.

Act to amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

[Lapsed.]

No. 28—1890.]

[August 22, 1890.

ACT

For the Expropriation for public purposes of the Land and Buildings thereon, situated at Cape Town, and commonly called the "Commercial Exchange."

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. This Act shall take effect from and after a day to be fixed by the Governor by Proclamation in the *Gazette*, and may be cited as the "Commercial Exchange Expropriation Act, 1890."

Effect and short title of Act.

2. From and after the taking effect of this Act, the ownership of the landed property ceded and granted from the Crown on the 22nd day of March, 1819, to a certain Committee in manner and subject to the terms and conditions detailed in a deed of grant of the said date, which is set forth in full in the Schedule to this Act shall, together with all buildings, erections and structures thereon, and all fixtures thereto, be vested in the Colonial Government in full and free ownership for the purposes of this Act; and from and after the said date the said deed shall be considered as cancelled.

Property granted by deed of 22nd March, 1819, set forth in Schedule, together with buildings, &c., vested in Colonial Government for purposes of this Act.

3. Every person who is the lawful proprietor of any share or shares in the property in the preceding section mentioned shall be entitled to receive from the Colonial Government the just value thereof by way of compensation, and it shall be lawful for the Commissioner of Crown Lands and Public Works to treat and agree with every such proprietor for the amount so to be paid; provided always that the committee and subscribers in the said deed mentioned shall be provided by the said Commissioner with such reasonable accommodation in the said building or elsewhere, as to the Governor may seem fit and upon such terms as may to him seem reasonable, in lieu of the accommodation at present enjoyed by them.

Proprietors of shares to be compensated.

4. In case such proprietor and the said Commissioner shall not agree upon the amount of such compensation, then such amount shall be determined by arbitration in accordance with the provisions of the "Lands and Arbitrations Clauses Act of (1) 1882."

Committee and subscribers to receive other accommodation.

5. In case the lawful proprietor of any share as aforesaid shall be absent from the Colony, and not represented therein by any agent duly accredited, or shall not be discoverable, the said Commissioner of Crown Lands and Public Works shall cause a notice to be inserted in the *Government Gazette* at least once a week for three successive months, calling upon such proprietor by name, if known, or if not known, upon such proprietor, whoever he may be, to take notice that the said Commissioner is ready and willing to

Amount of compensation, how to be determined.

How as to proprietors of shares absent from Colony, or unknown.

No. 28—1890.

treat and agree with him, or any person duly authorised by him for the amount of compensation to be paid to him in respect of his said share, and requiring such proprietor to apply within six months from the day of the first publication of such notice to the said Commissioner, stating the compensation claimed; and if such proprietor shall so apply within the said period, the like proceedings in regard to the agreeing for or otherwise determining the compensation to be paid shall be had and taken as are hereinbefore described; and if the said proprietor shall not apply to the said Commissioner within the said period, the said Commissioner shall pay or cause to be paid 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 such proprietor, a sum of money for and in respect of each share of such proprietor equal to the highest sum which shall have been paid or agreed to be paid for any other share under this Act: and if any sum or sums so paid to the said Master shall not have been claimed by any person having a just and lawful right thereto for a period of eight years from the date of such payment to the Master, every such sum of money and every right thereto shall become and be forfeited to the Crown, and shall be paid by the said Master to the Treasurer of the Colony.

How property to
be used.

6. The Colonial Government shall devote the property expropriated by this Act to such purposes as the Governor may from time to time approve.

Schedule.

SCHEDULE.

By His Excellency the Right Honourable General Lord CHARLES HENRY SOMERSET, one of His Majesty's Most Honourable Privy Council, Colonel of His Majesty's 1st West India Regiment, Governor and Commander-in-Chief of His Majesty's Castle, Town and Settlement of the Cape of Good Hope in South Africa, and of the Territories and Dependencies thereof, and Ordinary and Vice-Admiral of the same, Commander of the Forces, &c., &c., &c.

I do hereby cede and grant unto Messrs. Abraham Faure, John Bardwell Ebden, Anthony Chiappini, Andries Brink, Stephen Twycross, Daniel Dixon, and John Collison; forming the Committee for the erection and management of an intended Mercantile Exchange, for themselves and subscribers thereto, a certain piece of land situate within this Table Valley on the Grand Parade, for the purpose of building thereupon an Exchange, with suitable offices, for the accommodation and resort of all persons engaged in the trade and commerce of this settlement, according to the diagram and plan transmitted to me with their memorial of the 25th January, 1819, and registered herewith, measuring two hundred Rhinland feet in length, and one hundred and ninety Rhine feet and nine inches in breadth, extending N.W. to the Heere Gragt, N.E. towards Strand-street, S.E. towards the Castle, and S.W. towards the Keizer's Gragt, and with full power and authority to them, or the Committee to be from time to time chosen by the subscribers to the said Exchange, to possess said piece of land for the above purposes solely, but not to be appropriated to any other purpose or purposes whatsoever without my special permission or that of the Governor of this Colony for the time being. And for the greater security and

convenience of the several proprietors I have authorised and directed a certificate to be granted to each holder of a share (the number of shares being two hundred), which certificate will be transferable by endorsement, and the property in the said land and buildings thereby vested in the endorser, provided such endorsement be first registered in the Colonial Office, and that the usual duties of transfer be previously paid thereon.

Given under my Hand and Seal, at the Cape of Good Hope, the 22nd March, 1819.

CHARLES H. SOMERSET.

By His Excellency's command,
C. BIRD

No. 29—1890.

No. 29—1890.]

ACT (1)

[August 22, 1890.]

For the Protection of Fish in the Territorial Waters of this
Colony.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. [Repealed by Act 15, 1893.]

2. No person shall discharge or cause to explode, or attempt to discharge or cause to explode in any of the aforesaid waters, or in any rivers or lakes in this Colony any dynamite or other explosive substance: provided that this section shall not apply to the discharging or causing to explode of any such dynamite or other explosive substance in the course of any military practice duly authorised by a proper officer of Her Majesty's Military or Volunteer Forces in this Colony, or in the course of any duly authorised public work undertaken for the improvement of any bay, harbour, or creek in the said territorial waters.

No dynamite, &c. to be exploded in territorial waters, or rivers, or lakes.

3. Every person convicted of any contravention of any provision of this Act shall be liable to a fine not exceeding fifty pounds sterling, and, in default of payment of such fine, to imprisonment with or without hard labour for any term not exceeding six months.

Penalty.

4. This Act shall take effect on or after a day to be appointed by the Governor by Proclamation in the *Gazette*, and may be cited as the "Fish Protection Act, 1890."

Short title.

¹ Amended by Acts 15, 1893 (p. 3155); 43, 1899. See also Act 7, 1883 (Zwartkops); 10, 1867 (Introduction of Fish). The provisions of this Act do not apply to the Marine Biologist. See Act 43, 1899 (p. 4225).

No. 30—1890.]

[August 22, 1890.

ACT

To amend certain provisions of Act No. 33 of 1889, known as
 “The Wild (1) Ostriches Act, 1889.”

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:—

Close season to
 be proclaimed by
 Governor in *Gazette*

1. The Governor may by proclamation in the *Gazette*, fix and
 prescribe within any division of this Colony (whereof the Divisional
 Council shall by resolution in that behalf duly passed at a meeting
 of such Council so request), a close or fence season within which
 it shall not be lawful to kill, wound or shoot at any wild ostrich,
 either with or without a licence under Act No. 33 of 1889.

Penalty for kill-
 ing, wounding or
 shooting at wild
 ostrich during close
 season.

2. Any person contravening the provisions of the last section
 by killing, wounding or shooting at any wild ostrich during such
 close or fence season in any division wherein such season shall be
 fixed and prescribed as aforesaid, shall be liable upon conviction
 to a fine not exceeding twenty pounds sterling, or in default of
 payment to imprisonment with or without hard labour for a
 period not exceeding three months, unless such fine be sooner paid.

No. 1—1891.]

[June 30, 1891.

Act for Applying a further Sum not exceeding One Hundred
 and Ninety-one Thousand Six Hundred and Seventy-seven Pounds
 Sterling for the Service of the year ending the 30th June, 1891.
 [Spent.]

No. 2—1891.]

[June 30, 1891.

Act to Apply a Sum not exceeding Four Hundred Thousand
 Pounds Sterling towards the Service of the year ending the 30th
 day of June, 1892.

[Spent.]

No. 3—1891.]

[June 30, 1891.

(2) ACT

To amend the Act No. 23 of 1888, commonly called the “Convict
 Stations and Prisons Management Act, 1888.”

Preamble.

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 Section
 46 of Act No. 23 of
 1888, except as to

1. The forty-sixth section of the Act No. 23 of 1888, commonly
 called the “Convict Stations and Prisons Management Act, 1888,”

¹ Page 2682.

² Extended to all Native Territories and to Walfish Bay by Proclamations 367,
 1891, and 371, 1894.

is hereby repealed, but notwithstanding such repeal the said section shall be deemed to be and remain in force in respect of any contract or engagement of service by any officer therein referred to which shall subsist at the time of the passing of this Act, and every such contract or engagement, and the rights of any officer thereunder, shall be judged of as though this Act had not been passed.

No. 3—1891.
subsisting contracts or engagements.

2. No subordinate officer belonging to any convict station or prison shall be at liberty to resign or withdraw himself from his office

Limitation of right of officer at convict station or prison to resign his office.

- (a) Unless expressly permitted so to do in writing signed by the Resident Magistrate of the district in which such convict station or prison shall be situate, or by the superintendent of such convict station,
- or (b) until the expiration of the period during which such officer shall have elected to serve under any agreement duly entered into in accordance with regulations made by the Minister.

If any such officer shall desert from a convict station or prison, or shall withdraw himself from his office in violation of the provisions of this section, he shall, on conviction before a Resident Magistrate, be liable to imprisonment, with or without hard labour, for any period not exceeding three months, or to a fine not exceeding forty pounds, and in default of payment thereof to imprisonment as aforesaid, unless such fine be sooner paid; and shall, in addition, be liable to forfeit all arrears of pay due to him.

Penalties for desertion or unlawful withdrawal from office.

3. In the case of the trial of any officer, or convict or prisoner, for any offence under Act No. 23 of 1888, or this Act, it shall be lawful for a Resident Magistrate to try the case

Where offences of officers, convicts or prisoners may be tried.

- (a) At the convict station or prison where or in respect of which the offence was committed;
- or (b) At the convict station or prison to which the officer was attached when the offence was committed;
- or (c) At any convict station or prison in which the convict or prisoner may at any time be confined when brought to trial.

4. In any case in which a convict or prisoner shall be convicted of the unlawful or unauthorised possession, within any convict station or prison, of money or any other article, it shall be lawful for the Court, in addition to any other competent sentence, to direct that the said money or other article shall be forfeited to the Crown.

Liability of convicts and prisoners with respect to unlawful possession of property.

5. All power and jurisdiction conferred upon or possessed by any Resident Magistrate under Act No. 23 of 1888, or this Act, may in regard to offences by officers and convicts be exercised by any Visiting Magistrate who is also an Assistant Resident Magistrate or an Additional Resident Magistrate.

Certain Visiting Magistrates empowered to exercise jurisdiction conferred on Resident Magistrates.

No. 4—1891.

Power of Governor to make rules respecting money and other articles of convicts and of prisoners.

6. It shall be lawful for the Governor from time to time to frame rules regulating the receipt and custody by officers of convict stations and prisons of money, valuables, or other articles belonging to any convict or prisoner, and defining the conditions and circumstances under which payment or delivery of such money, valuables, or other articles shall be made during the term of imprisonment of such convict or prisoner.

—Meaning of “subordinate officer.”

7. The words “subordinate officer” mean and include every officer attached to a prison or convict station, not being a Resident Magistrate, Visiting Magistrate, superintendent, assistant superintendent, chaplain, or medical officer.

Effect and short title of Act.

8. This Act shall be read as one with the Act No. 23 of 1888, and may be cited as the “Convict Stations and Prisons Management Amendment Act, 1891.”

No. 4—1891.]

[June 30, 1891.

ACT

To provide for the Regulation of Dairies, Cowsheds, and Milkshops.

Preamble.

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:—

Governor may frame regulations.

1. The Governor may from time to time frame regulations for the following purposes, or any of them:—

- (1) The registration with the local authority of all persons carrying on the trade of cowkeepers, dairymen, or purveyors of milk, within any municipality, corporate town, borough, or area under the operation of the “Villages Management Act, (1) 1881.”
- (2) The inspection of the grazing ground of cattle used for dairy purposes by such persons, and the dealing with and prohibiting, if necessary, the use of such ground for such grazing.
- (3) The inspection of cattle used for dairy purposes by such persons, and the prevention or regulation of the use of the milk of such cattle, if suffering from any disease which would cause their milk to be prejudicial to health.
- (4) The inspection of cowsheds, dairies, and houses used for dairy purposes by such persons; and the regulation of the lighting, ventilation, drainage, cleansing, and water supply thereof.
- (5) For inspecting and securing the cleanliness of milkstores, milkshops, and vessels used by such persons for holding milk.

¹ No. 29,

- (6) For inspecting milk exposed for sale or deposited in any place for the purpose of sale and dealing with such milk if found unfit for food, and prescribing precautions to be taken for protecting milk against infection or contamination.
- (7) For providing against the sale or the use of any milk presenting any marked deviation from ordinary appearances as regards colour, odour, taste or general condition.
- (8) For obtaining from any such dairyman or milkvender the names and addresses of persons supplied by him with milk, if such information is required for preventing the spread of any infectious disease.

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2. Every regulation so framed by the Governor, from time to time, shall be published in the *Gazette*.

Regulations published in *Gazette*.

3. Any local authority may, by resolution carried at any meeting, adopt the regulations so framed by the Governor and published in the *Gazette*; but no such resolution shall be so adopted, unless three weeks notice of an intention to propose such a resolution has been published in some newspaper circulating in the district, and unless a printed copy of the regulations aforesaid shall have been deposited at the office of the local authority, and remained there open to public inspection at all reasonable times for a period of one week.

Local authority may adopt regulations.

4. Upon the adoption of the said regulations so framed and published as aforesaid, the local authority shall, by notice in the *Gazette*, notify such adoption, and from and after the publication of such notice, the said regulations shall have the force of law within the area under the jurisdiction of such local authority.

If adopted have force of law.

5. Any regulation framed in pursuance of the provisions of 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-five pounds, and every person guilty of an offence against any regulation framed, published, adopted and proclaimed under the provisions of this Act shall, for every offence, be liable to the penalty expressly imposed by such regulations, and if no other penalty be imposed to a penalty not exceeding five pounds.

What penalties may be imposed by regulations.

6. The local authority of any place where the said regulations have been duly adopted, and their adoption notified in manner aforesaid, may order proceedings to be taken for the recovery of any penalties due under and for the punishment of any person offending against such regulations, and may order the expenses of such prosecution or other proceeding to be paid out of any fund at its disposal, and all penalties so recovered shall be paid to the local authority of the place where the offence for the commission of which such penalty is so recovered was committed.

Penalty for offences against regulations.

Local authority may order proceedings against offenders under this Act.

Penalties paid into Municipal fund.

7. All penalties payable in respect of any offence under this Act may be recovered in the Court of the Resident Magistrate of the district or in any Periodical Court having jurisdiction, and when

How penalties recoverable.

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any penalty shall be imposed for any offence under this Act, or the regulations made thereunder, 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 three months, unless he shall sooner pay the penalty.

Regulations may be repealed by Governor.

8. Any regulation framed under the provisions of this Act may be repealed by the Governor.

Meaning of "local authority."

9. Local authority as used in this Act shall mean the Council of any Municipality, Borough, or Corporate Town, or the Board of Management of any place where the "Villages Management Act, (1) 1881," is in force.

Short title.

10. This Act shall be cited for all purposes as "The Dairy Act, 1891."

No. 5—1891.]

[January 1, 1892.

Act to make further provision with regard to the Establishment of a Widows' Pension Fund, and to provide for the Commutation of certain Pensions.

[Repealed by Act 32, 1895.]

No. 6—1891.]

[October 23, 1891.

ACT

To Consolidate and Amend the Law relating to Banking and to Secure and Regulate the Circulation of Bank Notes. (2)

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:—

Laws repealed.

1. The laws mentioned in the first Schedule to this Act, to the extent therein stated, and so much of any other law as may be inconsistent with the provisions of this Act, are hereby repealed.

Interpretation of terms.

2. In this Act, unless the context otherwise requires, the following words in inverted commas shall have the meaning set opposite them respectively:—

"Bank": Every foreign banking company and every joint stock company engaged in the ordinary business of banking by receiving moneys on deposit and by issuing in this Colony or elsewhere bills or notes payable at sight or on demand.

"Bank Note": Any bill, draft, or note issued by any bank for the payment of money to the bearer on demand, or entitling or being intended to entitle the holder without endorsement, or without any further endorsement than may exist thereon at the

¹ No. 29.

² Extended by Proclamation No 370 of 1891 to all the Native Territories. The provisions of the Companies' Act, 1892, do not apply to Banking Company in cases where they would be inconsistent with this Act. See § 222, Act 25, 1892 (p. 3086).

time of issue, to the payment of any sum of money on demand, whether the same shall be so expressed or not.

“Cheque”: A bill of exchange drawn on a bank and payable on demand.

“Issue”: The delivery of any bill or note complete in form to a person who takes it as holder.

“Treasurer”: The Treasurer of the Colony for the time being.

“Government Securities”: Any bonds, scrip, certificates, stock or debentures of the Colony of the Cape of Good Hope.

“Coin”: Gold, silver and bronze coin of British coinage current in the Colony, and all gold coin coined by lawful authority in any of the Colonies of the Crown, and such other coin as the Governor may by proclamation from time to time determine.

For the purposes of this Act every bank-note not in the possession of the bank which issued it or any of its branches shall be deemed to be in circulation.

Bank notes, when to be deemed in circulation.

3. Every bank hereafter constituted shall before commencing business in this Colony, and every bank already carrying on business in the Colony shall, within sixty days after the taking effect of this Act, transmit to the Treasurer and to the Registrar of Deeds at Cape Town, a true copy of the deed of settlement or agreement under which such bank has been constituted, and a document giving the names of the chairman and directors of the bank, and full particulars with regard to its capital, each copy and document to be signed and certified—

Bank to transmit copy of Deed of Settlement to Treasurer and Registrar of Deeds. Also document containing certain particulars.

(a) If the head office of the bank be within the Colony, by two directors.

(b) If the head office be outside the Colony, by the chief colonial agent of the bank.

Copy of Deed and Document how to be signed.

4. Every bank having its head office within the Colony shall, within fourteen days, and every bank having its head office outside the Colony shall, within sixty days, after the date of any alteration or amendment of its deed of settlement or agreement, or after the date of any increase or diminution of its nominal capital, transmit and lodge as aforesaid a copy of such alteration or amendment, or a document setting forth the particulars of each increase or diminution, signed and certified as in the last section provided.

Alteration in Deed of Settlement, &c., to be notified to Treasurer and Registrar of Deeds.

5. Every bank which shall fail to comply with any of the provisions of the third and fourth sections of this Act, shall be liable to a penalty of not exceeding one hundred pounds for each day during which it shall so make default.

Penalty for failure to comply with provisions of sections 3 and 4.

6. The Treasurer shall lay before Parliament within fourteen days after its first meeting, after the receipt of the same, a copy of every instrument or document transmitted to him as herein-before provided, together with any further information respecting the same which may seem to him desirable.

Duty of Treasurer in laying before Parliament copies of such documents.

7. Every bank having its head office outside the Colony shall, before commencing business therein, lodge with the Treasurer a

Power of Attorney appointing Agent in the Colony shall

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be lodged with
Treasurer by Bank
having head-office
outside Colony.

Particulars to be
contained in Power
of Attorney.

power of attorney appointing a chief agent in the Colony for the purposes hereinafter mentioned. Such power of attorney shall be executed and authenticated in accordance with the law of the country where the head office of the said bank is situated, and shall

- (a) State the place in this Colony at which the chief colonial office or agency of the bank is to be established;
- (b) Expressly authorise the agent so appointed to accept service of process in all suits and proceedings against the bank in this Colony, and to accept service of all legal notices which the Treasurer or any officer of the Government may desire to serve upon such bank;
- (c) Declare that service of such process or such notices upon the agent so appointed shall be legal and binding and be good service upon such bank in all respects;

Provided that:

- (1) Any bank such as in this section referred to which is carrying on business in this Colony at the date of the passing of this Act shall lodge the power of attorney aforesaid within sixty days after the taking effect of this Act;
- (2) The terms of this and of the two following sections shall apply to any firm or individual desirous of carrying on banking business in this Colony but whose head office is outside this Colony.

Proviso with
regard to existing
Banks.

To what firms or
individuals the
terms of this section
and of section 8 to
apply.

Fresh power to
be filed on change
of Agent or chief
Agency.

8. Whenever any such bank, as aforesaid, shall change its chief agent or chief agency in the Colony, it shall file a fresh power of attorney as hereinbefore mentioned, containing any such change or changes and containing a similar declaration as to service or process and notices to that in the last section mentioned, and every such bank shall, at the time of making the yearly return required by the tenth section of this Act, declare that no change has been made in its chief agent or chief agency without such change having been duly notified.

Penalty for not
complying with
preceding sections.

9. Any bank which shall make default in complying with the terms of the preceding sections shall incur a penalty of not exceeding one hundred pounds for each day during which such default shall continue, and any agent who shall act in contravention thereof shall be liable, in addition, to a penalty of not exceeding ten pounds for each day during which he may have so acted.

Returns of Share-
holders, Chairman,
and Directors to be
made annually to
Registrar of deeds.

10. Every bank having its head office within this Colony shall, within thirty days after the 31st December in each year, and every bank having its head office outside the Colony shall, within sixty days after the said date in each year, file at the office of the Registrar of Deeds, a list of shareholders and of its chairman and directors on the 31st December preceding.

Particulars re-
quired to be fur-
nished in such
annual returns.

Such list shall also state the names, addresses, and occupations of all the members appearing therein and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

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- (1) The amount or the capital of the bank, and the number of shares into which it is divided.
- (2) The number of shares issued.
- (3) The total amount paid on each share.
- (4) The names, and last known addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares formerly held by each of them. The above list shall be signed by two directors if the chief office be within the Colony, and by the chief agent if the head office be without the Colony, and any bank making default in complying with provisions of this section, by not forwarding such list and summary, shall incur a penalty not exceeding ten pounds for each day during which such default continues.

Penalty for non-compliance with this section.

11. Every bank shall keep at its head office or chief agency in the Colony, a copy of the register of the shareholders in such bank, containing the following particulars:—

Copy of Register of Shareholders to be kept by every bank.

- (1) The name, address, and occupation of every shareholder, together with the shares held by him.
 - (2) The date at which the name of any person was entered in the register as a shareholder.
 - (3) The date at which any person ceased to be a shareholder;
- and any bank acting in contravention of this section shall incur a penalty of not exceeding five pounds for every day during which such default continues, and every director or manager who shall knowingly and willingly permit such contravention, shall incur a like penalty.

Penalty if register not kept.

12. The register of shareholders shall be open to the inspection of any shareholder of the bank, gratis, and to the inspection of any other person on the payment of one shilling during business hours on every day on which such bank shall be open for the transaction of business, and every shareholder or other person may require a copy of such register or any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied, and if such inspection or copy be refused, the bank shall incur for each refusal a penalty not exceeding two pounds for every day during which such refusal continues, and, in addition to the above penalty, any Judge sitting in Chambers may, by order, compel the bank to allow an immediate inspection of the register.

Inspection of Register of Shareholders by Shareholders and other persons.

Penalty for refusing inspection.

13. Every bank shall publish in manner hereinafter provided a quarterly statement of the assets and liabilities of its colonial head office (if any) and its branches within the Colony at the close of business on the 31st March, 30th June, the 30th September, and 31st of December in each year; or if either of these days should fall on a Sunday or a public holiday, then on the day next preceding, and a like statement of the assets and liabilities of its

Quarterly statement of assets and liabilities to be published.

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branches outside the Colony and of its head office if such head office is at any place outside this Colony. Every such statement shall be in the form set forth in the schedule B to this Act.

Mode of Publication of statement.

14. Every such statement shall be published in the *Gazette* of this Colony within thirty days after the day to which such statement relates, and shall be transmitted to the Treasurer within the said period; and it shall also be posted in some conspicuous place in the office of every branch of the bank within the Colony.

Statement by whom to be signed.

15. Every such statement shall be signed as follows:—

In case of a bank having its head office within the Colony:

- (a) If the statement relates to the colonial head office and branches, it shall be signed by the chairman and at least one other director, and by the accountant.
- (b) If it relates to the branches of the bank in Africa outside the Colony, it shall be signed by the chairman and at least one other director, and by the manager or accountant.

In the case of a bank having its head office outside the Colony, the statement shall in every case be signed by the chief agent appointed in terms of section seven of this Act.

Additional statements required by Treasurer of assets and liabilities.

16. In addition to the aforesaid quarterly returns, every bank shall furnish to the Treasurer at least twice in every year, on such dates as may be fixed by him by notice duly given, a statement in the form set forth in the said schedule, showing the assets and liabilities of the bank within the Colony and of the head office (if any) and branches of the said bank in Africa outside the Colony at the close of business on any past Saturday by him specified in the notice calling for such return, and such statement shall be transmitted to the Treasurer within fourteen days after the receipt of a requisition from him therefor, and shall be published in the *Gazette* in the form in which it is made to him.

Bank having head office outside Colony to publish in *Gazette* and transmit to Treasurer copy of statement submitted to shareholders.

17. Every bank not having its head office in the Colony shall publish in the *Gazette*, and transmit to the Treasurer within thirty days after the presentation thereof, a copy of the annual or half-yearly statement of its affairs submitted to the shareholders of such bank, and such statement shall specify the dividend declared and the amount carried forward (if any). Every copy of such statement shall be certified by the chief agent of the bank in this Colony, who shall be responsible for its correctness as a copy.

Penalties for not publishing and transmitting statements required by preceding sections.

18. Every bank which shall fail to publish or to transmit the statements required in the preceding sections shall be liable to a penalty of not exceeding fifty pounds for every day during which it may be in default after the day fixed for the publication or transmission of the same, and any director, agent, manager, or other officer of any bank or branch bank who shall sign any statement as aforesaid, containing any item which such director, agent, manager, or other officer knows to be false and erroneous, shall, upon conviction, be liable to the penalties of the crime of fraud, and any director, agent, manager or other officer of any bank or

Penalty for false statement.

branch bank who shall sign any statement as aforesaid containing any item which is false and erroneous, and which he ought to know to be false and erroneous, shall be liable to imprisonment, with or without hard labour, for any period not exceeding two years, or to a fine not exceeding five hundred pounds, with the alternative, in default of payment, of imprisonment, with or without hard labour, for any period not exceeding twelve months unless such fine be sooner paid, or to both such imprisonment and fine.

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19. (1) The Treasurer shall have power to appoint one or more competent inspectors to examine into the affairs of any bank, on the application of shareholders holding not less than one-fourth of the total number of shares in such bank for the time being issued, or on the application of depositors holding deposits of the value of not less than one-half of the gross value of the total deposits, within the Colony, shown in the last quarterly statement of any such bank.

Treasurer may appoint inspectors on application by shareholders or depositors.

20. (1) The application shall be supported by such evidence as the Treasurer may require for the purpose of showing that the applicants have good reason for requiring such investigation, and that they are not actuated by malicious motives in instituting the same. The Treasurer may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Good grounds to be shown for application.

Security for costs may be required.

21. (1) It shall be the duty of all officers and agents of the bank to produce, for the examination of the inspectors, all books or documents in their custody or power. Any inspector may examine the officers and agents of the bank in relation to its business, and if any officer or agent refuses to produce any book or document hereby directed to be produced or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding fifty pounds in respect of each offence.

Duties and powers of such inspectors.

22. (1) Upon the conclusion of the examination the inspectors shall report their opinion to the Treasurer, who shall forward a copy thereof to the chief office of the bank, and shall, at the request of the members upon whose application the inspection was made, deliver to them, or to any one of them, a copy of the report. All expenses of and incidental to any examination as aforesaid shall be defrayed by the persons upon whose application the inspectors were appointed, unless the Treasurer shall direct the same to be paid out of the assets of the bank, which he is hereby authorised to do.

Inspectors shall report to Treasurer.

Expenses of inspection how to be borne.

23. In the event of any bank suspending payment, or in the event of any bank being by the judgment of any competent court sentenced to pay the penalty prescribed by section eighteen of the Act, then it shall be lawful for the Treasurer-General to appoint one or more competent inspectors to examine into the affairs of

Treasurer may appoint inspectors should bank suspend payment or forfeit penalty prescribed by section 18.

¹ This section extended and applied to the Cape of Good Hope Savings Bank Society by Act 24, 1894, § 31.

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Powers and duties
of inspectors.

such bank; and every inspector so appointed shall have all the powers conferred upon inspectors under section twenty-one of this Act; and all officers and agents of the bank shall be liable to the duties and subject to the penalties prescribed in the said section.

Bank notes not
to be issued except
under this Act.

24. (1) From and after the taking effect of this Act no bank, save as hereinafter in the thirtieth section provided, shall issue or cause to be issued bank notes within this Colony except under the provisions of this Act. And no bank which shall at the said date have an issue of notes outstanding shall re-issue the same after a date to be fixed by notice in the *Gazette*, signed by the Treasurer, calling in the existing note circulation.

Bank notes out-
standing not to be
re-issued after
called in by
Treasurer.

25. Any bank which shall after such notice as aforesaid issue within this Colony any bank note or other instrument intended to circulate as money, except under the provisions of this Act, shall be liable to a penalty of ten pounds for each offence, to be recoverable in any court of competent jurisdiction, at the suit of any person. One-half of such penalty shall go to the person so suing, and such action shall be against the chief manager or the manager of the bank or branch bank where such issue shall have been made.

Penalty for non-
compliance with
preceding section.Appointment and
duties of auditors.

26. Every bank registered in the Colony shall appoint annually by nomination or election two persons, subject to the approval of the Treasurer in respect to their competency, who shall act as auditors, whose duty it shall be to make a report twice a year to the shareholders of such bank upon the balance sheet and accounts, and in every such report they shall state, after careful examination of accounts, vouchers and securities, whether in their opinion the balance sheet is a full and fair balance sheet and properly drawn up, whether it exhibits a true and correct statement of the bank's affairs, and in case the auditors shall have called for explanation or information from directors or officers of the bank, whether they have been satisfactory, and such report shall be read, together with the reports of the directors at the ordinary meeting of shareholders, and a copy of such report shall be sent to the Treasurer of the Colony, and also be published in the *Gazette*, within eight days after the same has been submitted to the meeting of shareholders; provided, that in case such bank shall fail or neglect to appoint such auditors, or shall appoint only one such auditor, it shall be lawful for the Treasurer, and he is hereby required to appoint such auditor or auditors according as the bank has appointed one auditor or none; provided further that the remuneration to such auditors shall be paid by the bank, and, in the case of an auditor or auditors appointed by the Treasurer under the provisions of this section, shall be fixed by the Treasurer.

If no auditors ap-
pointed by bank.Remuneration of
auditors.Re-election of
auditors.

27. Every auditor shall be eligible for re-election, and in case any vacancy or vacancies occur in the office of auditor, whether by reason of the expiration of the period of service of any auditor or

¹ See § 43 *infra*.

auditors, or by any other reason, such vacancy or vacancies shall forthwith be filled by the appointment of another auditor or auditors by the bank; or, if the bank shall fail to do so, by the Treasurer.

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28. No person having an interest in any bank otherwise than as a shareholder, and no officer of any bank, shall be eligible for appointment as auditor by and for such bank, and any person appointed auditor to any bank, who shall after such appointment acquire such interest in or become an officer of such bank shall, *ipso facto*, cease to be such auditor.

Persons not eligible as auditors.

29. Every auditor shall have delivered to him, on his appointment as auditor, a list of all books kept by the bank to which he is appointed, and shall at all times have access to the books and accounts of such bank; and any bank which, or the manager, or any director, of which shall fail to deliver such list, or refuse to allow such access, shall be liable in a penalty not exceeding ten pounds for every day during which such failure or refusal shall continue.

Information to be supplied to auditors.

30. Every bank desirous of issuing bank notes within this Colony shall deposit with and transfer to the name of the Treasurer, Government securities to the amount of the intended issue; provided that it shall be optional for any such bank to deposit Treasury Bills of the Government of the Cape Colony in proportion of such securities to the amount of not more than one-fifth of the intended issue, and provided further that no bank registered and having its head office in this Colony on the 1st January, 1891, shall be subject to the provisions of this section except at the option of such bank.

Government securities to be deposited with treasurer by banks desirous of issuing bank notes.

Security to one-fifth of issue may be in Treasury Bills.

Banks excepted.

31. To facilitate a compliance with the preceding section, the Treasurer is authorised to deliver to any bank desirous of issuing bank notes, under section thirty of this Act, stock certificates in any loan already authorised, or that may hereafter be authorised by Parliament, at a price to be fixed by him, not being less than the average value realised by the last loan raised by the Colonial Government in London.

Stock certificates to be delivered to bank by treasurer.

32. All transfers of Government securities made by any bank as security for the issue of bank notes shall be made to the Treasurer in trust for the bank depositing the same, and a receipt shall be given by the Treasurer therefor, setting forth the number and nominal value of the Government securities deposited with him, and stating that such securities are held in trust for the said bank, and as security for the redemption and payment of any bank notes issued by such bank, and such securities shall be held exclusively for such purpose until such bank notes are redeemed, or until they shall be dealt with as hereinafter provided.

Such securities transferred to Treasurer in trust for the bank.

33. The interest on the securities so deposited shall be paid to the bank depositing the same, as and when it falls due, so long as the said bank shall continue to redeem the bank notes issued

Interest to be paid on securities.

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Exchange of securities may be effected.

Return of securities to banks upon surrender of proportionate amount of bank notes.

On deposit of securities bank to receive bank notes from Treasurer.

Amount of bank notes which can be issued.

Treasurer to have bank notes prepared.

Treasurer to secure safe-keeping of plates, etc.

What to be expressed on the bank notes.

When banks have signed bank notes they may issue and circulate them as money.

Proviso.

Expense of providing bank notes, how borne.

Half-penny stamp on each bank note.

by it, and the Treasurer may from time to time permit an exchange to be made of any of the securities deposited for other securities of a like value, and he may permit a return of any of the securities deposited in sums of not less than one thousand pounds upon the surrender to him and cancellation of a proportionate amount of bank notes issued against such securities.

34. Upon a deposit of Government securities as prescribed by section thirty the bank depositing the same shall be entitled to receive from the Treasurer bank notes of different denominations, in such proportions as the bank may require, registered and countersigned as hereinafter provided, equal in amount to the par value of the securities deposited with the Treasurer: Provided that no bank shall be entitled to issue bank notes to an amount greater in value than the paid-up capital and reserve of such bank.

35. In order to provide bank notes for issue, the Treasurer shall cause to be prepared a sufficient number of bank notes of the denominations of twenty pounds, ten pounds, five pounds, and one pound, for delivery to any bank entitled to receive the same.

36. The plates, dies and bed plates required and used for the printing of bank notes shall be and remain under the direction of the Treasurer, who shall take such steps as shall be necessary to secure the proper inspection, custody and safe-keeping of the same

37. Such bank notes shall express upon their face that they are secured by Government securities deposited with the Treasurer by the written, engraved or lithographed signature of the Assistant Treasurer, and shall also express upon their face the promise of the bank issuing the same, to pay the full value thereof in gold at its chief place of business in the Colony, and at such other place or places as it may elect, attested by the signature of the officers of the bank authorised to sign such bank notes, and shall bear such devices and be in such form as the Treasurer may from time to time direct.

38. After any bank receiving bank notes as above provided, has caused its promise to pay such bank notes on demand in gold to be duly signed in such manner as to make them obligatory promissory notes, payable on demand at its chief place of business and such other place or places within the Colony as may be specified on the face of such bank notes, such bank may issue and circulate the same as money, and the same shall be received at par in all parts of the Colony, in discharge of all debts and obligations whatsoever, except at the chief place of business, or other place or places which shall be specified for the payment in gold of the said bank notes.

39. The expense of providing such bank notes shall be borne by the revenues of the Colony, and every bank shall pay to the Treasurer one half-penny in respect of every note delivered to it for the purpose of issue.

40. Whenever any bank which has issued bank notes under section thirty of this Act shall fail to redeem in gold any of the said notes upon legal demand of payment, the holder may cause the same to be protested in one package by a notary public, unless the manager or chief agent of the bank at the place or places where they are redeemable offers to waive demand and notice of the protest, and in pursuance of such offer signs and delivers to the party making such demand and admission, in writing, stating the time of the demand, the amount demanded and the fact of the non-payment thereof. The notary public on making such protest or on receiving such admission shall forthwith forward such admission or notice of protest to the Treasurer, retaining a copy thereof. If however satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction he shall not protest the same.

41. On receiving notice that any bank has failed to redeem any of its bank notes as specified in the preceding section, the Treasurer may appoint a special agent, of whose appointment immediate notice shall be given to such bank, who shall thereon proceed to ascertain whether the bank has refused to pay its bank notes in gold when demanded, and shall report to the Treasurer the fact so ascertained. If from such protest, and the report so made, the Treasurer is satisfied that any bank has refused to pay its bank notes and is in default, he shall give notice by publication in the *Gazette*, and in such other manner as may to him seem fit, to the holders of the bank notes of such bank, to present them for payment at such place as he may in the said notice direct, and the same shall be paid in gold as presented by and for the account of the Government.

42. Whenever any bank shall have made default as hereinbefore mentioned by refusing to redeem the bank notes issued by it, under section thirty of this Act, the Treasurer may, after due notice to such bank, cause so many of the Government securities deposited by it to be sold by public tender in the Colony or in England as may suffice to redeem its bank notes, and to pay the interest and other expenses attending such redemption, and for any deficiency in the proceeds of the Government securities deposited with the Treasurer when thus sold to reimburse the Government the amount expended in paying the bank notes of any bank, which may have made default, and the expenses incident to such repayment, the Government shall have a first lien upon all assets of the said bank, and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same.

43. The provisions of sections twenty-four to forty-two inclusive shall apply in all respects to any individual or firm carrying on banking business in this Colony and desirous of issuing notes herein; provided that in the case of every such individual or firm,

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Bank failing to redeem notes, holder may cause same to be protested by notary unless protest waived.

Notaries' duties.

Treasurer on receiving notice of such non-payment by bank to appoint special agent to make inquiries.

Duty of Treasurer where bank has refused to pay notes and is in default.

Powers of Treasurer upon non-payment of notes by bank.

Government to have first lien on assets of bank.

Provisions of sections 24 to 42 inclusive shall apply to individuals and firms carrying on banking.

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the Treasurer shall satisfy himself of the amount of capital employed in such business by such individual or firm before delivering bank notes to him or them for the purpose of issue.

Worn out or mutilated notes to be replaced.

44. It shall be the duty of the Treasurer to receive worn out or mutilated notes issued by any bank under the provisions of this Act, and also on due proof of the destruction of any such notes to deliver in place thereof to the individual firm or bank issuing such bank notes, other bank notes to an equal amount, and such worn out or mutilated notes, after a memorandum has been entered in the proper books in accordance with such regulations as may be framed by the said Treasurer, as well as all notes which shall have been surrendered to be cancelled, shall be destroyed in such manner as the Treasurer may direct, in the presence of three persons, two of whom shall be appointed by him and the third by the bank which issued the said notes, and a certificate of such destruction signed by the persons so appointed shall be made in the books of the Treasurer and a duplicate thereof forwarded to the individual firm or bank whose notes are thus cancelled.

Old notes and cancelled notes to be destroyed.

No advertisement, notice, &c., to be executed or issued in the likeness of a bank note issued under this Act.

45. It shall not be lawful to design, engrave, print or in any way make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill or advertisement in the likeness or similitude of any bank note which shall have been issued under the provisions of this Act, or to write, print or otherwise impress upon any such bank note any business or professional card, notice or advertisement, or any notice or advertisement of any matter or thing whatever, and every person who violates this clause shall be liable to a penalty not exceeding five pounds.

Penalty.

Penalty for mutilating, &c., bank notes.

46. Every person who mutilates, cuts, defaces, disfigures or perforates with holes, or does any other thing to any bank note issued under the provisions of this Act, or who causes or procures the same to be done with intent to render such bank note unfit to be re-issued, shall be liable to a penalty not exceeding five pounds recoverable by the bank issuing such bank note.

How holder may recover value of half or mutilated notes.

47. Every bank shall pay to the legal holder of any half-note or mutilated note on presentation thereof, the full value of such note, provided satisfactory proof be given that such holder was the lawful holder of the entire note and that it was so mutilated, or that the other half was lost after the entire note came into his possession; provided further that such holder before being paid the full value of such note shall give satisfactory security to refund the amount should it be subsequently found that he was not entitled to receive it.

Proviso.

Monthly returns of bank notes to be made.

48. Every individual firm or bank issuing bank notes under the provisions of this Act shall be bound and obliged to transmit to the Treasurer monthly returns of all bank notes issued by it in circulation on the last day of the month, and such return shall be in the form and shall contain such particulars as the Treasurer

may prescribe, and shall be signed by the individual or firm making the same, or by two directors or the chief agent of any bank and by the accountant in each case respectively. In the case of banks having an issue of bank notes outstanding at the date of the taking effect of the Act, the return shall include all such notes in circulation on the last day of the month to which it relates. And any person signing such return knowing the same to be false or incorrect shall be liable to a penalty not exceeding one hundred pounds sterling.

No. 6—1891.

Penalty for false returns.

49. If any individual firm or bank shall fail to lodge with the Treasurer the return mentioned in the last preceding section within one month next after the expiration of the month to which such return relates, then and in that case for the purpose of calculating the duty to be paid the circulation of such individual firm or bank for the period in default shall be taken to be the whole amount of notes delivered by the Treasurer to such individual firm or bank for the purpose of issue.

How duty to be calculated if no return be made.

50. In the months of January and July in each year every individual firm or bank issuing bank notes shall pay to the Treasurer on a demand from him, in writing, a duty of ten shillings per centum upon the average amount of bank notes in circulation for the half year next preceding, and such average shall be calculated by adding together the monthly returns during the half-year for which duty is levied, and by dividing the gross sum by the number of months for which such returns are made, and in the event of such duty remaining unpaid it shall be lawful for the Treasurer to deduct the amount thereof from the interest accruing to the individual firm or bank who shall be in default, or the securities deposited by them under this Act.

What duty to be paid on bank notes in circulation.

51. Every bank issuing notes under the provisions of this Act, shall publish monthly in the *Gazette*, on or before the tenth day of each month, a certified statement of the notes in circulation on the last day of the preceding month, and the account of coin in the Colony held by such bank on the same date. The statement shall be certified by the chairman or manager of such bank.

Statement of notes in circulation and gold held to be published monthly

52. Every bank, or company, firm, or individual, trading as bankers within the meaning of this Act, holding deposits, or trust moneys from the public, shall, in the month of January in each year publish in the *Gazette* a detailed statement of all moneys in their hands, or in the hands of any of the branches, or agents within the Colony, as at the 31st December last past; whether dividends on shares, or debentures, of such bank or company, amounts to credit of depositors in trust or otherwise, or any other moneys not the property of such bank, or company, and on which no valid lien exists, and which moneys shall at date of publication have remained unclaimed by the respective owners thereof for a period of five years or more; and such statement shall, so far as practicable, set forth the full names, and last known addresses of

Statement of unclaimed trust moneys to be published.

NN

- No. 6 - 1891.
Proviso.
- What constitutes legal acceptance by bank.
- Penalties. how recovered.
- Banking licence to be taken out.
- Short title.
- such owners: Provided, however, that nothing in this section contained shall be held to apply to any such dividends, deposits or other moneys of an amount not exceeding ten pounds.
53. Any collateral writing promising to pay, or any promise to that effect made by telegraph, or any mark such as initials placed on a cheque by any one authorised in that behalf, the well understood meaning of which is a promise to pay, shall be held to be a legal acceptance by any bank upon which such cheque may be drawn.
54. All penalties mentioned in this Act except where otherwise provided, may be recovered at the suit of the Treasurer in any court of competent jurisdiction.
55. Every individual or firm carrying on the business of bankers within this Colony, shall annually take out a licence for which there shall be payable one shilling for every one hundred pounds of capital employed by such individual or firm in such banking business, such amount to be declared by him or them when applying for the said licence.
56. This Act may be cited as the "Bank Act, 1891."

Schedule A.

SCHEDULE A.

ENACTMENTS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Act 6 of 1864	The Bank Notes Duty Act, 1864	The whole.
Act 6 of 1875	Bank Notes Act, 1875	The whole.
Act 11 of 1879	Joint Stock Banking Companies Limited Liability Act, 1879.	Sections 3 and 4.
Act 19 of 1865	Joint Stock Banks Statements Act, 1865	The whole.

Schedule B.

SCHEDULE B.

Statement of Assets and Liabilities of the
the day of

Bank, on

- Liabilities.*
1. { Subscribed Capital.
Paid-up Capital.
Reserve Fund.
 2. { Legal Tender. Notes in Circulation.
Other Notes in Circulation.
 3. Post Bills.
 4. Deposits payable after notice or on a fixed day.
 5. Deposits on Current Account.

6. Balances due on current account to other Banks.
7. Balances due to Head Office or to Branches of Bank in Africa.
8. Balances due to head Office not in Africa.
9. Special advances by other Banks.
10. Bills payable.
11. Bills received for Collection.
12. Liabilities other than foregoing.

Assets.

1. Coin in Bank Coffers.
2. Coin in Transit.
3. Bullion in hand or in transit.
4. { Drafts on Colonial Treasury.
Cape Government Securities.
Other Government Securities.
5. Notes in hand of other Banks.
6. Cheques in hand on other Banks.
7. Balances due from other Banks.
8. Do. Branches and Agencies of Bank.
9. Bills under Discount covered by Bonds, Shares and other Securities.
10. Bills under Discount covered by Bonds, Shares and other Securities
overdue and unpaid.
11. Bills under discount unsecured.
12. Do. do. do. overdue and unpaid.
13. { Loans and advances other than bills.
Do. secured.
Do. unsecured.
14. Overdrawn Accounts Unsecured.
15. { Loans to Government.
Do. to Public Bodies.
Do. to Public Companies other than Banks.
16. Advances to other Banks.
17. Landed Property other than Bank Premises.
18. Bank Premises.
19. Other Assets not included in foregoing.

Aggregate Amount of Loans to and Liabilities direct and indirect of directors, or Officers of Bank, and of any firms or partnerships in which they or any of them have any interest.

We declare that the foregoing return is made up from the books of the Bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the Bank.

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

or A. B., Manager or Chief Agent.
C. D., Accountant.

No. 7—1891.]

[July 30, 1891.]

Act to Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1892.

[Spent.]

No. 8—1891.]

[August 11, 1891.

ACT

To enable the Graham's Town Municipal Council to obtain Advances from Banks by Overdraft of its Current Account, or from any person, Institution or Company.
[Repealed by Act 18, 1902.]

No. 9—1891.]

[August 11, 1891.

ACT

To Repeal the Ordinance No. 6 of 1833, and to make other provision in lieu thereof.

Preamble.

WHEREAS some of the provisions imposed by the Ordinance No. 6 of 1833 are now unnecessary and need to be repealed, and others are not in unison with the usages and requirements of the Church of England as by law established, and consequently require amendment.

Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Ordinance 6 of 1833 repealed.

1. The Ordinance No. 6 of 1833, commonly known as the Wynberg English Church Ordinance, shall be and the same is hereby repealed.

Providing for continuation of Divine Service and other customs according to rites of Church of England.

2. The celebration of Divine Service according to the rites and ceremonies of the Church of England as by law established, now in force at the said Church at Wynberg, shall be continued and maintained, and the customs and usages of the said Church of England, so far as the same may be applicable to this Colony, in regard to the Vestry and appointment of Churchwardens, and the regulation of their duties, shall in like manner be exercised in the said Church at Wynberg.

3. All such rites and ceremonies and the customs and usages in the previous section mentioned shall be regulated under and in accordance with the provisions of Her Majesty's Letters Patent of the 25th June, 1847, and the 8th of December, 1853 [or either of them], establishing and erecting the See or Diocese of Cape Town; and the exercise of any episcopal jurisdiction or canonical function recognisable by the Church of England shall and may be lawfully exercised in the said Church at Wynberg by the Bishop of Cape Town for the time being.

No. 9—1891.

Regulating rites and ceremonies in accordance with letters patent establishing See of Cape Town and providing for exercise of episcopal jurisdiction or canonical functions by Bishop of Cape Town.

4. All contracts already entered into under the said Ordinance No. 6 of 1833, and existing at the time of the passing of this Act, shall continue and remain in force until the termination thereof, precisely as if the said Ordinance had not been repealed.

Continuation of existing contracts.

5. The Vestry of Wynberg Church constituted as hereinafter set forth and the Churchwardens thereof to be appointed in accordance with the practice of the Church of England, shall from time to time, with the Officiating Minister, who shall preside at and be *ex officio* a member of said Vestry, regulate and direct the arrangements connected with the Church, burial grounds and parsonage; and they may from time to time frame rules (and repeal and amend such rules whenever necessary) for the proper control and preservation of such Church and burial grounds, provided such rules be not opposed to or inconsistent with the customs and usages of the Church of England, as far as applicable to this Colony.

Powers of Vestry and Churchwardens to frame rules and regulations for control of Church and grounds.

6. In case of the absence, death or resignation of the Officiating Minister, any Vestry meeting shall elect its own chairman.

Election of chairman in absence of officiating minister.

7. The Churchwardens may enter into contracts and agreements, and may sue or recover, in any competent court of law, any claim, demand, rent or debt owing to the said Church at Wynberg or the Churchwardens of the said Church, and also defend any claim, demand or suit brought against them, or arbitrate on any claim due to or owing by them, as they may deem best: provided, however, that the authority and sanction of the Vestry be obtained thereto.

Churchwardens may enter into contracts, sue, arbitrate and defend any action with consent of Vestry.

8. All suits or actions by or against the Churchwardens in regard to any debt, rents, damage, contract or other matter or thing shall be prosecuted or defended by them in their official capacity, and they shall be known and styled the "Churchwardens of St. John's Church, Wynberg."

Name under which suits are to be instituted or defended.

9. The Vestry named in this Act shall for all purposes hereinbefore set forth be taken to mean a meeting of such communicants and other habitual worshippers in St. John's Church, Wynberg, as are not prevented by reason of age or sex according to the laws of the Church of England from being members of the said Vestry, and such Vestry meeting of the congregation shall in all respects be governed by the rules and practices of the Church of England in that behalf provided.

Constitution of Vestry and how governed.

No. 10—1891.]

[August 11, 1891.]

ACT

To authorise the Repeal of Certain Ordinances hereinafter mentioned.

Preamble.

WHEREAS the certain Ordinances in the Schedule set forth were enacted before the creation of the Sees of Cape Town and Graham's Town: Whereas the said Ordinances differ from one another and do not prescribe uniform methods for conducting Parochial business: Whereas the said Ordinances are not altogether in agreement with the laws of the Church of England as by law established, and as administered in England in the conduct and management of Vestry meetings and other Parochial business: And whereas it is desirable that the Parishes named in the Schedule hereto annexed may, when they so desire it, claim the permissive rights hereinafter set forth:

Now therefore be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Parishes may ask for repeal of Ordinances.

1. In case any parishes, at present affected by any of the said Ordinances, hereinafter named in the Schedule, should desire to repeal their respective Ordinances, they shall be entitled to do so upon the provisions hereinafter mentioned, and thereupon it shall be lawful for the Governor, by proclamation, ⁽¹⁾ to repeal any such Ordinance: Provided, however, that the repeal of the aforesaid Ordinances or any of them shall not impair or invalidate any rights of property or the privileges connected with membership of the Church of England expressed or implied in one or more of the such Ordinances.

Proviso.

Meeting to repeal Ordinances.

2. The Minister and Churchwardens, or Minister and Vestry for the time being of any Parish wishing to avail themselves of the preceding clause shall convene a meeting of all persons entitled to vote under the provisions of any such Ordinance, and of seat holders or habitual worshippers in the Church, of which meeting thirty days' previous notice shall be given in the *Gazette*, also in the Church in the usual manner, and by posting a notice on the Church doors.

Two-thirds may resolve upon repeal.

3. At any such meeting, at which the Minister, or in his absence the acting Minister, shall preside, it shall be competent and lawful for a majority of two-thirds of those present and entitled to vote to decide and resolve that the said Ordinance by which they are affected shall be repealed: Provided, however, that no contract existing at the time of such repeal shall be affected thereby.

Decision of the meeting to be conveyed to Governor.

4. The decision of such meeting shall be notified by the Minister of the Parish, within twenty days thereafter, to the Colonial

¹ See notes to Schedule.

Secretary, who shall thereupon lay the same before the Governor for his proclamation as aforesaid.

No. 11—1891.

5. This Act may be cited as the “English Church Ordinance Repeal Act, 1891.”

Short title.

SCHEDULE.

Schedule.

- No. 4 of 1829, known as the Cape Town English Church Ordinance.
- No. 5 of 1832, known as the Bathurst English Church Ordinance.
- No. 2 of 1839, (1) known as the Graham’s Town English Church Ordinance.
- No. 1 of 1842, (2) known as the Port Elizabeth English Church Ordinance.
- No. 2 of 1842, (3) known as the Sidbury English Church Ordinance.
- No. 5 of 1845, known as the Rondebosch English Church Ordinance.
- No. 7 of 1845, known as the Fort Beaufort English Church Ordinance.
- No. 8 of 1846, (3) known as the Graaff-Reinet English Church Ordinance.

No. 11—1891.]

[August 11, 1891.]

ACT

To Incorporate the Diocesan College Council, Rondebosch, and for other purposes.

WHEREAS certain educational establishments styled the Diocesan College, and the Diocesan College School, being a preparatory school for the said College, have been established and exist at Rondebosch and at Claremont respectively, in the neighbourhood of Cape Town: And whereas the control, direction and general management of the said institutions are now vested in a Council consisting of the Lord Bishop of Cape Town and twelve members: and whereas certain of the property held for the use and purposes of the said institutions is now vested in trustees who are not members of the said Council, whereby difficulties have arisen impeding the efficient control, management, and direction of the said institutions: and whereas it is expedient to provide for the incorporation of the said Council by Act of Parliament, and to enable the said Council to hold all such property as aforesaid, and to control, direct and manage any institution that may hereafter be established in connection with the said College or School, and to represent the said College in all legal proceedings: and whereas a certain Deed set forth in the Schedule hereunto annexed has been duly entered into between the Lord Bishop of Cape Town, the members of the said Council and the said trustees, providing for the future constitution of the said Council and the conditions upon which the said property is vested in the said Council:

Preamble.

¹ Repealed by Proclamation No. 295, 1891, dated 27th October, 1891.

² Repealed by Proclamation No. 360, 1891, dated 23rd December, 1891.

³ Repealed by Proclamations No. 21 and 22, 1892, dated 25th January, 1892.

No. 11—1891.

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:—

College to include Diocesan College and Diocesan College School as well as future Colleges or Schools.

1. The word "College" in any section of this Act shall be taken to include as well the Diocesan College at Woodlands, Rondebosch, and the Diocesan College School at the Grove, Claremont, referred to in the Trust Deed in the Schedule to this Act set forth, as any other College or School that may hereafter be established in connection therewith, in accordance with the provisions of this Act.

Management of College vested in Council.

2. The general direction and management of the College shall, subject to the limitations in section six of this Act set forth, be vested in a Council consisting of the Lord Bishop of Cape Town for the time being, and twelve members who shall be from time to time appointed or elected as in the third section of this Act is prescribed; provided every member of the present Council shall be a member of the Council incorporated by this Act until he ceases so to be from one of the causes in the said section specified.

How vacancies in Council are to be filled up and providing for a Trust Deed.

3. In case any member of the Council shall die, or resign, or be absent from the Council for upwards of three months without the leave of the Council, or shall be called upon to resign by a resolution adopted by at least two-thirds of the members of the Council, he shall cease to be a member of the Council, and every vacancy so caused shall, within three months after such vacancy has arisen, be filled up and supplied in accordance with the provisions of a certain trust deed entered into between the Lord Bishop of Cape Town, the members of the present Council and the trustees aforementioned, and dated 11th June, 1891; the said trust deed is set forth as a schedule to this Act.

Making Council corporate body with perpetual succession.

4. The Council for the time being shall, for the purposes of this Act, be a corporation under the name or style of the "Council of the Diocesan College," and shall have perpetual succession, and shall be capable of doing and performing all matters or things incidental or appertaining to a person or body corporate.

Vesting funds and property in Council.

5. The several funds already existing, and all moneys, assets, and other property, movable and immovable, of whatsoever nature and description, now belonging and which shall hereafter accrue to, or become due and payable to, or be devised and vested in the said College, shall be vested in and administered by the said Council for the purposes of the said College.

Vesting management of College in Council with power to frame regulations.

6. The said Council shall, subject to the provisions of the said trust deed, have full power and authority in respect of the management and direction of the affairs of the said College, and the disposition of the property and moneys now or hereafter appertaining to the same, and shall, subject to the provisions of the said trust deed, make rules and regulations for the management and direction of the said College, and for the meetings and transaction of business by the said Council, and may from time to time alter

and amend the said regulations, and shall have power to appoint and remove the principal, warden, professors, teachers, and any other officers for the said College or for the said Council, as may be from time to time necessary, and may define and regulate the duties of the said officers.

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7. The said Council shall have full power and authority to establish any other colleges or schools in connection with the Diocesan College, and shall have the same powers with regard to such colleges and schools as have been provided by this Act, and the said trust deed, with regard to the Diocesan College and Diocesan College School.

Giving Council authority to establish other Colleges and Schools.

8. Any alterations in or additions to the said trust deed, which may from time to time be made in conformity with the provisions therein contained, shall be embodied in a further deed or deeds duly drawn up between the Lord Bishop of Cape Town, the aforesaid trustees, and the members of the Council for the time being, and a copy of every such deed shall, within three months of the date of execution of the same, be filed in the office of the Registrar of Deeds of this Colony.

Alterations or additions in trust deed to be filed with Registrar of Deeds.

9. All property, movable or immovable, in the said trust deed referred to, and now standing registered otherwise than in the name of the said Council, and all property that may in any manner be subsequently acquired by or on behalf of the said College, shall be transferred into the name of the said Council, and the said Council for the time being shall have the power of purchasing and holding property, movable and immovable, and of selling, mortgaging, leasing or otherwise disposing of the same as if they were the owners thereof, but subject to the provisions of the said trust deed and any amendments thereto made in accordance with the provisions of this Act.

All property to be transferred to Council with power to mortgage, sell or lease

All transfers of property in the said trust deed referred to, effected as aforesaid by persons in whose names the said property is at present registered, shall be free of any transfer dues which, but for this provision, might be payable thereon and be legally claimable by the Government of this Colony.

All such transfers free of duty.

10. The Council shall sue and be sued by the name or style of the "Council of the Diocesan College," and may in all legal proceedings be referred to by that name or style.

Council may be sued in corporate name.

11. The warrant to sue or to defend any legal proceedings shall be signed by the Secretary, and no proof need be given in any Court that the Secretary in so doing acted under the authority of the Council; provided that no such legal proceeding, whether criminal or civil, shall be brought or defended in the name of the Council unless the consent of the said Council shall first have been obtained thereto.

Warrant to sue or defend to be signed by Secretary

Proviso.

12. All powers of attorney necessary for the transfer of property or performance by the Council of any legal act or proceeding in accordance with the provisions of this Act, shall be signed by two

Other powers to be signed by two members of Council and Secretary.

No. 11--1891.
Proviso.

members of the Council and the Secretary; provided no such power of attorney shall be signed or legal act performed unless the consent of the said Council shall first have been obtained thereto.

Short title.

13. This Act may be cited for all purposes as the "Diocesan College Council, Rondebosch, Incorporation Act, 1891."

Schedule.

SCHEDULE.

KNOW ALL MEN BY THESE PRESENTS :

That whereas in or about the year 1849 the Right Reverend Robert Gray, then Bishop of Cape Town, founded and established a certain college at Rondebosch, in the Colony of the Cape of Good Hope, called the Diocesan College, and thereafter, in or about the year 1885, the trustees of the Diocese of Cape Town purchased certain property at Claremont, and established a school there, called the Diocesan College School, with the object of supplying a liberal education with religious instruction in accordance with the principles of the Church of England.

And whereas the management of the said college was originally vested in the Principal thereof, subject to the supervision of the Bishop of Cape Town, for the time being, and that of the said school, in a Committee of persons nominated by the Bishop, who thereafter undertook the management of both institutions, and the succession of such committee was continued by appointment made from time to time.

And whereas the administration of the funds of the said College, amounting to a sum of £4,800 or thereabouts, and known as the Diocesan College Endowment Fund, is vested in the Trustees of the Diocese and the immovable property belonging to the said College and School is registered in the names of certain persons in trust, to wit,

The Diocesan College at Rondebosch, in the name as aforesaid, of the Right Reverend Robert Gray, then Bishop of Cape Town, and his successors in the see of Cape Town.

And the Diocesan College School at Claremont, in the names of the Trustees, or Trustees for the time being, of the Diocese of Cape Town in trust for Educational Purposes in connection with the Church of the Province of South Africa.

And whereas it is deemed advisable that the said scheme of management should be incorporated in a trust deed; that the funds and landed property belonging to the said College and School should be transferred to certain persons constituting the Council of the Diocesan College, who should hold the property and funds in trust, subject to the conditions hereinafter contained. And, further, that the Council should do all other matters and things necessary for the administration of the funds and conduct of the said school and college.

NOW, THEREFORE, THESE PRESENTS WITNESS :

That the Right Reverend William West Jones, Lord Bishop of Cape Town, as Successor in the See of Cape Town to the Right Reverend Robert Gray, in whom the Diocesan property at Rondebosch is registered by Deed of Transfer bearing date the 1st day of September, 1849.

Charles William Barnett-Clarke, Dean of Cape Town, as the duly appointed agent of the Trustees of the Diocese of Cape Town, in whose names the Diocesan College School property at Claremont is regis-

tered by Deed of Transfer bearing date the 31st day of August, 1885; the said Charles William Barnett-Clarke, being duly appointed such special agent by resolution of the said Trustees bearing date the 8th day of June 1891.

And Charles Abercrombie Smith, in his capacity as the duly authorised agent for the members of the present Diocesan College Council, appointed thereto by resolution of the said council, bearing date the 29th of May, 1891, have contracted and agreed, as they do by these presents contract and agree as follows to wit:—

- (1) That the Bishop of the Diocese for the time being (or in the case of his decease, or absence from the Diocese, the Vicar-General,) shall appoint to every alternate vacancy that may occur in the College Council, and that the other members be elected as the College Council shall from time to time determine.
- (2) That the Bishop of the Diocese for the time being (or in the case of his decease or absence from the Diocese, the Vicar-General, remain as heretofore visitor of both college and school, and as such have control over the religious teaching of both institutions.
- (3) That the principal of the College be always as heretofore a clergyman in priest's orders, and hold the licence of the Bishop of the Diocese.
- (4) That the terms of the Trust under which the property, whether in land or in endowment, is at present held be binding for all time on the College Council.
- (5) That in the event of any one of the above conditions being violated, the property and funds shall *ipso facto* revert to the Trustees of the Diocese, or to the Bishop thereof respectively.
- (6) Notwithstanding anything contained in the fifth or any other condition of this Deed, the first condition of this Deed may be from time to time amended, provided that no such amendment be made except with the mutual consent and agreement of the Diocesan Trustees and members of the College Council for the time being.
- (7) That this Deed of Agreement be duly registered and annexed to the Deed of Transfer of the landed property, which Transfer shall specially refer to the above conditions as forming the Trust under which the College Council shall hereafter hold the property now to be transferred to them by the Trustees and the Bishop.

Thus done, contracted and agreed at Cape Town this eleventh day of the month of June in the Year of our Lord One thousand Eight hundred and Ninety one.

As Witnesses to the Signature of Bishop JONES:

EMILY F. JONES.
M. BRAMLEY.

W. W. CAPE TOWN.

As Witnesses to the Signature of CHARLES WILLIAM BARNETT CLARKE:

1. F. BOLUS.
2. M. C. SONNENBERG.

C. W. BARNETT CLARKE.

As Witnesses to the Signature of CHARLES ABERCROMBIE SMITH:

1. C. C. LONG.
2. M. C. SONNENBERG.

C. ABERCROMBIE SMITH.

No. 12—1891.]

[August 11, 1891.

ACT

To Amend the Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870." ⁽¹⁾

Preamble.

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:—

Section 13 of Act 14 of 1870 amended by striking out words "stock under saddle or pack saddle."

Definition of "driving" for purposes of Act 14 of 1870, and Act 20 of 1889.

Short title and effect of Act.

1. The words "stock under saddle or pack saddle," in the proviso to section thirteen of the Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870," are hereby expunged.

2. For the purpose of the "Cattle Removal Act, 1870," and of the "Cattle Removal Amendment Act, 1889," any person who is riding or leading any stock, whether under saddle or pack-saddle, or not, shall be deemed to be driving and to be in custody and possession of such stock.

3. This Act may be cited for all purposes as "The Cattle Removal Amendment Act, 1891," and shall be read as one with "The Cattle Removal Act, 1870," and "The Cattle Removal Amendment Act, 1889," which with the Act may be cited collectively as "The Cattle Removal Acts, 1870 to 1891."

No. 13—1891.]

[August 21, 1891.

ACT

To Amend the Law relating to Life Assurance Companies, with a view to encouraging persons to Insure, and to protecting persons Assured. ⁽²⁾

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:—

Short title.

1. This Act may be cited as "The Life Assurance Act, 1891."

Interpretation of terms.

2. In the interpretation of this Act, unless inconsistent with the context, the term "Company" means any person or persons or association, who issue or are liable under policies of assurance, upon human life within this Colony, or who grant annuities upon human life within this Colony, whether the head office or principal place of business of such person or persons or association is in this Colony or elsewhere, and includes associations on the mutual principle.

The term "Foreign Company" means a company established or having its head office or place of business out of this Colony.

The term "Policy" includes a contract for securing a life assurance, endowment, or annuity.

¹ Extended by Proclamation No. 262 of 1891 to Transkei, Tembuland and Griqualand East. See also Act 7, 1896, and note to Act 14, 1870 (p. 1172).

² Extended by Proclamation No. 425 of 1893 to all the Native Territories.

The provisions of the Companies' Act, 1892, do not apply to Life Assurance Companies in cases where they would be inconsistent with this Act. See § 222, Act 25, 1892 (p. 3086)

The term "The Court" means the Supreme Court of the Cape of Good Hope.

3. Every company transacting Life Assurance business only, or such business concurrently with any other kind of Assurance or other business, shall at the expiration of each financial year of such company prepare in the forms prescribed a Revenue Account for such year and of its Balance Sheet at the close of such year.

4. Every company shall at the expiration of each financial year of such company, in addition to any other statements required by this Act, prepare in the form prescribed in the schedule to this Act a statement of all its Policies in force at the close of such year.

5. Every company shall once in five years or at such interval as may be prescribed by the deed constituting the company or by its articles of association, regulations or bye-laws, cause an investigation to be made into its financial condition by a duly qualified actuary, and shall cause an abstract of the report of such actuary (in the prescribed form) to be deposited as by this Act is provided.

6. The Governor may from time to time prescribe or vary the forms of statements, abstracts, accounts, or returns to be made by any company, and may direct with whom or at which office all statements, abstracts, accounts, or returns to be prepared under the provisions of this Act shall be deposited.

The Governor may also make rules prescribing the duties of such person as may be charged with the custody of such documents as aforesaid, and for the better administration of this Act.

7. Every statement, abstract, account, or other document by this Act required to be made by any company shall be in such form as the Governor shall prescribe, shall be signed by the principal officer thereof managing the Life Assurance business in this Colony, and shall be printed; and the original so signed as aforesaid, together with three printed copies, shall be deposited with such officer, or at such office as the Governor may direct, within six months of the dates respectively prescribed as the dates at which the same are to be prepared.

8. Every company which shall not be incorporated by an Act of the Colonial Legislature, or registered in this Colony under the Joint Stock Companies Limited Liability Act, (1) 1861, shall lodge at such office as the Governor may in terms of this Act appoint, a copy of its Charter of Incorporation, Articles of Association, or other Deed under which it is constituted, and of any amendment thereof, as follows:—

- (1) If a company already carrying on business in this Colony, within three months after the passing of this Act.
- (2) If a company hereafter established before such company shall commence business.

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Company to prepare revenue account and balance sheet annually.

Company to prepare annual statement of policies in force at close of year.

Investigation into financial condition of company to be made every five years.

Forms of statements, etc., can be prescribed and altered by Governor.

Certain rules to be made by Governor for custody of documents.

Statements, abstracts, etc., of company how to be dealt with.

Company not incorporated in Colony or registered under Joint Stock Act, 1861, to lodge copy of deed under which constituted.

¹ Repealed by Act 25, 1892 (p. 3032).

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(3) In case of an amendment of any such charter, articles or other deed as aforesaid within six months after such amending instrument shall come into operation.

Foreign company to notify in *Gazette* name of principal officer or agent and address of office in the Colony.

9. Every foreign company transacting life assurance business in this Colony shall within three months after the coming into operation of this Act, or after commencing business, as the case may be, notify in the *Gazette* the name of its principal officer, manager, secretary, or agent, and the address of the principal office of the company in this Colony.

The person whose name is so notified can sue and be sued.

10. Every such principal officer, manager, secretary, or agent, of whose appointment notice shall be given in the *Gazette* as aforesaid, may sue, and be sued on behalf of the company he represents, and service of all notices, summonses, or other legal process, shall be effectual against such company if served upon such principal officer, manager, secretary, or agent or left at such principal office with any officer or servant of the company.

Penalty for false statement, abstract, account, etc.

11. If any statement, abstract, account, or other document required by or under the provisions of this Act is false in any material particular, the person who signed or deposited the same shall be liable on conviction to a penalty not exceeding one hundred pounds for each offence, or to imprisonment with hard labour, for a term not exceeding twelve months.

Penalty for default in furnishing returns.

12. Every company which makes default in the furnishing of its statements or returns, or otherwise complying with any of the provisions of this Act for a period of three months or upwards may, upon the application of the Attorney-General, be interdicted by the Court from transacting business within this Colony either absolutely or for a time as the Court may see fit to order.

Statements, etc., open to inspection on payment of fees.

13. Any person may, upon payment of such fees as the Governor may direct, inspect any statement or other document deposited as required by this Act, and procure copies thereof.

Statements and certified copies of statements, etc., receivable in evidence.

14. Every statement, abstract, account or other document, deposited in terms of this Act, shall be receivable in evidence, and every document purporting to be certified by the officer or person having the custody thereof to be a true copy of such deposited document shall be deemed to be such copy, and receivable in evidence as such, unless some variation between it and the original shall be proved.

Minister to lay statements, etc., before Parliament.

15. It shall be the duty of the Minister to whom the Governor shall assign the management of this Act, to secure the due observance by every company of its provisions, and such Minister shall lay annually before Parliament the statements and abstracts of reports deposited in accordance with the provisions thereof during the preceding year.

Under certain conditions the interest under policy of assurance which shall have endured

16. The property and interest of every person under any policy of assurance upon his own life, and which shall have endured for not less than three years from the date of the payment of the first premium thereon, or in any moneys payable thereunder, shall not be

seized or taken in execution under any process of court, or in the event of the sequestration of the estate of such person as insolvent shall not vest in the trustee, or otherwise, for the benefit of the creditors of his estate, subject, however, to the conditions or limitations following:—

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for not less than
three years, not
liable to execution.

- (1) If such assurance shall have endured for three years or upwards, it shall be protected as aforesaid to the extent of three hundred pounds; and in addition thereto one hundred pounds for each additional year or part of a year not exceeding in any case the sum of two thousand pounds.
- (2) The sums of money aforesaid shall mean sums assured by one policy or several policies, irrespective of any bonus or other additions thereto;
- (3) If the assured can by the terms of his policy, surrender the same to the company, and agrees with the company to surrender the policy, then the money which shall be payable upon such surrender shall not be protected as hereinbefore provided; but nothing herein contained shall be construed to prevent the assured from agreeing with the company, for the surrender or exchange of his existing policy, for a fully paid up policy, equivalent to its value, which latter policy shall have the protection afforded by this section.

Conditions.

17. A woman married in community of property may effect a policy of assurance upon her own life, or upon the life of her husband, and every such policy, and every policy effected by any woman upon her own life before marriage in community, and the moneys payable in respect of every such policy, shall be deemed to be her sole and separate property, excluded from community, and shall not be subject to the control of her husband, nor after three years from the date of the payment of the first premium thereon, be liable for his debts, subject however to the provisions, and the conditions and the limitations contained in the last preceding section.

Woman married
in community may
insure her own or
her husband's life.

18. Notwithstanding any law to the contrary, a husband being the holder of a policy of insurance upon his own life, or upon the life of his wife, may lawfully cede such policy to his wife, whether married in community of property or not, or to some person in trust for her, for her benefit, or for the benefit of herself and her children, or some or one of them, subject to the following conditions or limitations:

Husband may
cede policy on own
or wife's life to
wife.

- (1) Such policy shall have the protection provided by the sixteenth section of this Act, to the extent therein mentioned, but not further or otherwise.
- (2) Any such policy ceded as aforesaid to a woman married in community of property, or in trust for her benefit, shall be deemed to be her sole and separate property excluded from community.

Proviso.

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Policy ceded to intended wife, to whom he is afterwards married in community of property, not to fall in community.

When policy so protected exceeds amount for which protected, substituted policies may be issued.

Moneys payable in respect of protected policies not available for debts before certain claims are met.

If policy effected with intent to defraud Court may order sum equal to amount of premiums paid, to be a charge on policy.

Provision in case a policy lawfully ceded to wife cannot be kept up.

Agreement may be made with company.

19. A policy of assurance effected or ceded by an intended husband for the benefit of an intended wife, to whom he shall afterwards be married in community of property, shall be deemed to be the sole and separate property of such wife excluded from community.

20. When any policy so protected as aforesaid exceeds the amount for which protection is provided, the person who, but for such protection, would be entitled to the policy, or to the disposal thereof, may require the company by whom such policy was issued to cancel the same, and to issue substituted policies of equal standing with the former policy; and such company shall thereupon issue such substituted policies, at the expense of the persons applying for the same, one for the amount protected for the benefit of the assured, or whoever shall be thereto entitled, and the other for the unprotected residue.

21. The moneys payable in respect of any policy by this Act protected or exempted from execution or sequestration to the extent to which such protection or exemption is granted, during the life of the assured, shall not upon his death be available for the payment of his debts as against the claims of

- (1) The widow of the deceased in respect of any interest acquired by her by virtue of a marriage in community of property, or devolving upon her by testamentary or other lawful disposition.
- (2) Any child of the deceased claiming by succession *ab intestato* or under any testamentary disposition.

22. Notwithstanding anything contained in this Act, if in any case it shall be proved that any policy was effected, or the premiums upon any policy were paid, with intent to defraud the creditors of the assured, or in the case of a policy effected by a husband upon the life of his wife or by a wife upon the life of her husband with intent to defraud the creditors of either of them, the Court (or the Court of the Eastern Districts, the High Court of Griqualand, or any Circuit Court within the jurisdiction of such Courts respectively) may order a sum equal to the premiums so paid, with interest thereon, to be a charge upon the policy, and to be payable out of the sum assured.

23. If any person who has effected, or who, by marriage settlement or otherwise, has lawfully ceded a policy of assurance for the benefit of his wife, or of his wife and his or her children or some of them, or if any trustee holding any policy under any such settlement or otherwise is unable to continue to provide for the payment of the premiums, such person or trustee may either:

- (1) Agree with the company which granted the policy to surrender the same, and to accept in lieu thereof a paid-up policy for such sum as, according to the rules of the company, may be its equivalent in value, payable at the time and in the manner, and for the benefit of the persons entitled to the sum assured by the original policy; or

- (2) Borrow such sum as may be necessary to keep the policy in force, and any sum so borrowed and applied for keeping up the policy shall be a first charge upon such policy and be repaid with interest out of the sum assured; or
- (3) Agree with the company to apply any accumulated profits in reduction of future premiums.

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Or money may be borrowed to be first charge on policy.

Profits may be applied to reduction of premiums.

Court may order winding-up of company.

24. The Court may order the winding-up of any company, in accordance with the "Winding-up Act, (1) 1868," upon the petition of twenty or more policy-holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent: and in determining whether or not the company is insolvent, the Court shall take into account its contingent or prospective liability under policies or annuity, or other existing contracts.

25. The Court may in the case of the company which has been proved to be insolvent, reduce the amount of the contracts of such company upon such terms and subject to such conditions as to the Court may seem fit, instead of granting a winding-up order.

Proceedings in lieu of winding up may be ordered by court.

26. Where application is made to the Court to wind up a company, or in the case of a company ordered by the Court to be wound up, the rules for estimating the value of a policy or life annuity, and generally the law as administered by the High Court of Justice in England, and the practice of the said High Court, shall respectively be the rules to be adopted, the law to be administered and the practice to be observed by the Court, so far as the same shall not be repugnant to or inconsistent with any law in force in this Colony; provided that the rate of mortality shall be computed on the basis of the tables known as the Institute of Actuaries Experience HM Tables.

Law and rules to prevail when company ordered to be wound up.

Proviso.

27. No assignment of a policy shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue the company for the amount of such policy, or the moneys assured or secured thereby until a written notice of the date and purport of such assignment shall have been given to the company, at its principal place of business, and the date on which such notice shall be received shall regulate the priority of all claims under any assignment, and any advance or payment *bonâ fide* made upon or in respect of any policy by the company before the date upon which such notice shall have been received shall be valid and effectual against the assignee giving such notice.

Notice of assignment of policy to be given before company can be sued by assignee.

28. The receipt of the executor, testamentary or dative, or of the administrator duly authorised or appointed to administer the estate and effects of a deceased policy holder, by any Court or lawful authority exercising jurisdiction in the country where such deceased policy holder was domiciled at the time of his death, shall be a valid discharge for any moneys payable under any policy held by him.

Receipt of executor or administrator of estate, sufficient discharge.

¹ Repealed by Act 25, 1892.

No. 13—1891.

Saving clause with regard to claim existing at date of coming into effect of Act.

29. Nothing in this Act contained shall be deemed to affect or prejudice the rights of any creditor whose claim or demand shall exist at the date of the coming into operation thereof, which rights shall be judged and determined as if this Act had not been passed.

Schedule I.

SCHEDULE.

I. New Policies issued by the
during the year ending

189

	No. of Policies.	Sum Assured.	Single Premium.	Annual Premiums.
Assurance		per annum		
Endowment				
Annuity				
Total				

II. Policies discontinued in the
during the year ending the

189

How Discontinued.	Assurance Policies.			Endowment Policies.			Annuity Policies.		
	No.	Sum Assured	Annual Premiums.	No.	Sum Assured	Annual Premiums.	No.	Annuity per an.	Annual Premiums.
By death or Maturity									
By Surrender									
By Forfeiture									
Total									

III. Policies of the
existing on the

189

No. 15—1891.

	In the Cape Colony.		Elsewhere.	
	No. of Policies.	Sum Assured.	No. of Policies.	Sum Assured.
Assurance				
Endowment				
Annuity				
Total				

No. 14—1891.]

[August 18, 1891.

ACT

To Extend the Provisions of the Eighteenth, Nineteenth, Twentieth, and Twenty-first Sections of "The Crown Lands Disposal Act, 1887," to Lessees of Land under and by virtue of the Ordinance No. 3 of 1874, of Griqualand West.

BE it enacted by 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. After the words "Act No. 19 of 1864" in the eighteenth and twenty-first sections of the Act No. 15 of 1887, commonly called "The Crown Lands Disposal Act, 1887," shall be inserted the words "or the Ordinance No. 3 of 1874 of Griqualand West."

2. This Act may be cited for all purposes as "The Crown Lands Disposal Extension Act, 1891."

Preamble.

Sections 18 and 21 of Act 15 of 1887, amended by insertion of words "or the Ordinance No. 3 of 1874, of Griqualand West." Short title.

No. 15—1891.]

[August 18, 1891.

ACT

To Amend the Law with regard to the Erection and Maintenance of Dividing Fences. (1)

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 See Act 11, 1893. Extended by Proclamation No. 115 of 1892 to Griqualand East, and by Proclamations No. 169 of 1894 to Tembuland. See also Proclamations 117, 1892, 169, 1892, and 179, 1894, respecting the districts of Mount Currie, Matatiele and Elliot. Amended by Act 42, 1905 (p. 4963).

No. 15—1891.

Effect and short
title of Act.Meaning of
"occupier" under
Fencing Acts.Liability of divi-
sional council as to
fencing of public
outspans, &c., in its
occupation.Advances for fenc-
ing to divisional
councils or munici-
palities, or village
management
boards.

1. This Act shall be read as one with the Act No. 30 of 1883, commonly called "The Fencing Act, 1883," and hereinafter referred to in this Act as "the said Act," and may be cited for all purposes as "The Fencing Law Amendment Act, 1891."

2. The term "occupier" shall, for the purposes of the said Act, and of this Act, and notwithstanding anything in the second section of the said Act contained, include

- (a) Any person, company, co-partnership, or public body in actual occupation of or entitled as owner to occupy any land alienated from the Crown.
- (b) The Colonial Government in respect of Native Locations situated on Crown land ⁽¹⁾;
- (c) The council, board of commissioners, or other governing body of any municipality or corporate town, and the board of management of any place wherein "The Villages Management Act, 1881," is in force, in respect of all lands to which, or to the use of which, the inhabitants of such municipality, corporate town, or place, have acquired or may hereafter acquire a common right.
- (d) The divisional council of every division, in respect of every public outspan or baiting place, duly surveyed or marked off by beacons, and situated upon or near any public road within such division.

3. Every divisional council shall, in respect of any public outspan or baiting place whereof it shall be an occupier in accordance with the last preceding section of this Act, be liable to join in ⁽²⁾ or contribute to the construction of fences dividing such outspan or baiting place from other land; provided that

- (a) the amount which such divisional council shall contribute shall in all cases, notwithstanding anything to the contrary contained in the said Act, be one half of the cost of construction of any such fences, to be paid in manner provided by the said Act and this Act;
- and (b) such divisional council shall be liable to all the obligations of an occupier in respect of the maintenance and repair of any such fence when constructed.

4. It shall be lawful for the Governor, on the application of the council, board of commissioners, or other governing body of any municipality or corporate town, the board of management of any place wherein "The Villages Management Act, ⁽³⁾ 1881," is in force, or the divisional council of any division, to grant, subject to the provisions of "The Local Works Loan Act, ⁽⁴⁾ 1882," and out of such funds as Parliament shall have provided or may hereafter

¹ And in respect of all Crown lands. See § 1. Act 42, 1905 (p. 4963).

² Divisional Council not entitled to require any occupier to join in or submit to the fencing of land in respect of which a servitude of outspan is registered—§ 5. Act 11, 1893, p. 3151.

³ No. 29.

⁴ No. 11.

provide for the purposes of that Act, loans to such council, board or other body as above, for the purposes of fencing required to be done by such body under the provisions of the said Act and this Act, and every loan so granted shall be taken to be a loan granted under "The Local Works Loan Act, (1) 1882," and as though it were a loan granted for all or any of the purposes specified in the second section of that Act; provided that no such application as aforesaid shall be made unless in pursuance of the vote or decision of a majority of voters registered within the limits of such municipality, place, or division, for the election respectively of members of such council, board of management, or divisional council as the case may be, present at a meeting to be called for the purpose of considering such application, and of which meeting and of its object not less than three weeks notice shall have been given by advertisement in any newspaper circulating in the division.

5. If the occupier of any land situated within any division or field-cornetcy wherein the provisions of Part I of the said Act are, or shall hereafter be, in force, shall erect a fence on the boundary of his land, the occupier of any land not within any such division or field-cornetcy, but adjoining the first mentioned land and separated therefrom by such fence, shall, anything to the contrary in the eighteenth and nineteenth sections of "the said Act" notwithstanding, be liable to pay to the occupier of such first-mentioned land a reasonable portion, not exceeding one-half of the cost of erection of so much of the said fence as shall separate such adjoining land from such first mentioned land: and if any difference shall arise as to the amount to be paid, such difference shall be settled by arbitration.

Occupier of land not in area to contribute to cost of fence.

6. If any (2) occupier shall, under the provisions of the said Act or of this Act, be liable to contribute to the construction of any dividing fence any amount fixed after the passing of this Act, the equal yearly instalments of such amount, together with the interest thereon at the rate of six per cent. per annum, which shall be payable by such occupier as provided by the ninth section of the said Act in case he be unable or unwilling sooner or otherwise to pay the whole or any part of such amount, shall, notwithstanding anything to the contrary contained in the said last-mentioned section of the said Act, be so calculated and fixed that the capital amount and interest shall be wholly paid off in a period of five years, if such capital amount do not exceed one hundred pounds sterling, and of ten years if it do not exceed the sum of one hundred pounds sterling, which period shall be calculated from the date of the notice given as provided in the aforesaid section; and the said instalments shall be payable in manner more particularly set forth in the first and second schedules to this Act: Provided that notwithstanding such notice, and the payment of any instalment as

When and how contributions fixed after the passing of this Act, may be paid by instalments.

¹ No. 11 (n. 1835).

² Sections 6-9 apply to contributions towards cost of vermin-proof fence, Act 42, 1905 (p. 4964).

No. 15—1891.

Occupier of land
fenced to pass
mortgage bond.

If mortgage not
passed, amount due
to be entered on
Register of Debts.

Notification to
secure such entry.

aforesaid, it shall be lawful for such occupier at any time during the said period of five or ten years, as the case may be, to pay the value at that time of the unpaid instalments in one sum, as shown in the second schedule to "The Fencing Act, (1) 1883."

7. It shall be lawful for any occupier to whom any amount shall be owing by way of contribution by any person to the construction of any dividing fence, under the provisions of the said Act or of this Act, to call upon such person to pass a mortgage bond upon the land owned by such person, and separated from the land of the said occupier by the dividing fence in respect of which the said amount is owing, such bond being conditioned to secure payment of the amount so owing or such portion of it as may from time to time be due, whether the amount be payable by instalments or otherwise.

8. If the said person shall refuse or fail to pass such mortgage bond, it shall be lawful for the said occupier to notify to the Registrar of Deeds the fact that the amount referred to in the preceding section is owing by the person aforesaid, and that no mortgage bond has been passed to secure the same. The Registrar, upon receipt of the said notification, shall by letter notify to the person named therein the fact of the receipt of the said notification and the particulars contained in it, and shall inform the said person that unless the said amount is objected to within three weeks from the date of the said letter an entry thereof will be made in the Register of Debts in terms of this section. If no such objection is received within the said period, then the Registrar shall enter the said amount in the Register of Debts against the name of the said person, and shall deliver to the party to whom the said debt is owing a certificate thereof, setting forth the amount, the date, and the schedule under which payment thereof is regulated; but if any such objection is received within the said period, no such entry shall be made except with the consent of the said person, or upon the order of some competent court; and from and after the date of the said entry it shall not be lawful without the order of a competent court, to transfer or mortgage the land owned by the said person and separated from the land of the said occupier by the dividing fence referred to in the preceding section unless and until the bond in the said section referred to shall have been duly passed.

9. Every such notification to the Registrar of Deeds shall as far as possible set forth:

- (a) The full name of the person owing the money, and the amount owed;
- (b) The fact that the said amount has been agreed upon, or ascertained according to law;
- (c) The fact that the person owing the money has been called upon to pass a mortgage bond of the nature referred to in section six of this Act, and has failed to do so;

¹ No. 30.

- (d) The situation and name of the property in respect of which the said mortgage bond was demanded;
- (e) The date of the grant or transfer of the said property to the said person.

No. 15--1891.

10. Notwithstanding anything to the contrary in the sixteenth section of the said Act the word "fence" in the thirteenth and fourteenth sections thereof, shall apply to any fence, whether constructed under the provisions of the said Act or not, and the said thirteenth and fourteenth sections are hereby amended as follows:

Amendment of thirteenth and fourteenth Sections of Act of 1883.

- (a) In the thirteenth section all the words after "such fence" are struck out, and the words "in equal proportions" inserted in place thereof.
- (b) In the fourteenth section the words "as provided for construction" are struck out, and the words "in manner provided in the next succeeding section" inserted in place thereof.

11. As often as the Colonial Government shall have paid any sum or incurred any expense under this Act for and in respect of the fencing of any Native Location on Crown land, the occupiers of huts in such locations shall be jointly liable to contribute to the sum or expense so paid or incurred, and the Governor may by Proclamation direct whether such sum or expense shall be payable in one or more years, and if in more years than one then in what instalments in any year, and on such date as the Governor shall appoint for any year the amount by such Proclamation fixed and determined shall be payable by the occupier or occupiers, on that date, of every hut in such location, and may be recovered in case of default as though the said amount were a hut-tax due and payable under the provisions of "The Native Locations Act, (1) 1884," on such date for the said year.

Government to recover any sums paid under Act in respect of native locations on Crown lands.

THE FIRST SCHEDULE.

First Schedule.

Table of equal instalments payable at the end of each year for five years, corresponding to amounts payable under the Sixth Section of this Act.

Amount payable.				Equivalent amounts payable at the end of each year for 5 years.
£1	...	...	...	£0 4 9
2	...	...	...	0 9 6
3	...	...	...	0 14 3
4	...	...	...	0 19 0
5	...	...	...	1 3 9
6	...	...	...	1 8 6
7	...	...	...	1 13 3
8	...	...	...	1 18 0
9	...	...	...	2 2 9
10	...	...	...	2 7 6
20	...	...	...	4 15 0
30	...	...	...	7 2 5

¹ No. 37.

No. 15—1891.

Amount payable.				Equivalent amounts payable at the end of each year for 5 years.
£40	...	...	...	£9 9 11
50	...	...	...	11 17 5
60	...	...	...	14 4 11
70	...	...	...	16 12 4
80	...	...	...	18 19 10
90	...	...	...	21 7 4
100	...	...	...	23 14 10
Yearly instalments for any sum not mentioned in this table, such as £89 6s. 8d., may be obtained as follows :—				
£80 gives	...	...	...	£18 19 10
9 "	...	...	...	2 2 9
0 6s. 8d. or $\frac{1}{3}$ of £1	...	...	...	0 1 7
Therefore £89 6s. 8d.				gives <u>£21 4 2</u>

Second Schedule.

THE SECOND SCHEDULE.

Table of equal instalments payable at the end of each year for ten years, corresponding to amounts payable under the Sixth Section of this Act.

Amount payable.				Equivalent amounts payable at the end of each year for ten years.
£1	...	...	...	£0 2 9
2	...	...	...	0 5 6
3	...	...	...	0 8 2
4	...	...	...	0 10 11
5	...	...	...	0 13 7
6	...	...	...	0 16 4
7	...	...	...	0 19 0
8	...	...	...	1 1 9
9	...	...	...	1 4 6
10	...	...	...	1 7 2
20	...	...	...	2 14 4
30	...	...	...	4 1 6
40	...	...	...	5 8 8
50	...	...	...	6 15 11
60	...	...	...	8 3 1
70	...	...	...	9 10 3
80	...	...	...	10 17 5
90	...	...	...	12 4 7
100	...	...	...	13 11 9
200	...	...	...	27 3 6
300	...	...	...	40 15 3
400	...	...	...	54 7 0
500	...	...	...	67 18 8
600	...	...	...	81 10 5
700	...	...	...	95 2 2
800	...	...	...	108 13 11
900	...	...	...	122 5 8
1,000	...	...	...	135 17 4
2,000	...	...	...	271 14 9
3,000	...	...	...	407 12 1
4,000	...	...	...	543 9 5
5,000	...	...	...	679 6 10

Yearly instalments for any sum not mentioned in this table, such as					No. 16—1891.
1,274 5s., may be obtained as follows :—					
£1,000 gives	...	...	...	£135 17 4	
200 " "	...	...	...	27 3 6	
70 " "	...	...	...	9 10 3	
4 " "	...	...	...	0 10 11	
And 5s. or ¼ of £1 "	...	...	...	0 0 8	
				£173 2 8	
			Therefore £1,274 5s. gives		

No. 16—1891.]

[August 18, 1891.

(¹) ACT

To prohibit the Native Dances known as the "Abakweta" and "Intonjane" Dances.

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 coming into operation of this Act, the native dances known as and commonly called "Abakweta Dances," and the native dances known as and commonly called "Intonjane Dances," shall be prohibited upon any land within any district wherein this Act shall be proclaimed in force.

Abakweta and Intonjane dances prohibited in districts proclaimed under Act.

2. Every owner, occupier or lessee of any land who shall give his consent to, permit, or knowingly tolerate the holding or celebration of any such dance on any such land shall be liable, on conviction, to a fine not exceeding ten pounds sterling, or three months' imprisonment; provided that no such owner, occupier or lessee shall be convicted of a contravention of this section if he shall prove to the satisfaction of the court before which he is tried

Penalty for consenting to, permitting or tolerating the holding of prohibited dances.

Proviso.

- (a) That he was in truth ignorant of the fact that such prohibited dance was held or celebrated on his land or ground, or
- (b) That so soon as he became aware of the fact that such dance was in contemplation, he took immediate steps to communicate the fact to the nearest police constable, field-cornet, justice of the peace, or resident magistrate.

3. Every police constable, field-cornet, justice of the peace, and resident magistrate shall and may, upon receiving notice that it is contemplated to hold or celebrate any dance prohibited under this Act, take such lawful steps as may be expedient to prevent the holding or celebration of any such dance.

Power and duty of police, field-cornets, justices of the Peace and resident magistrates to prevent prohibited dances.

4. If any person shall take part in the holding or celebration of any dance prohibited by this Act, after such person shall have been warned by or on behalf of any owner, occupier, or lessee, or by or on behalf of any police constable, field-cornet, justice of the peace, or resident magistrate that such dance is prohibited, and will not be permitted, such person shall on conviction be

Penalty on person taking part in prohibited dances after warning.

¹ Extended to the district of Elliot by Proclamation 396, 1896.

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liable to a fine not exceeding forty shillings or to imprisonment with or without hard labour for any term not exceeding one month.

Date of coming into operation, and short title of Act.

5. This Act shall come into operation in such districts of the Colony and upon such day as the Governor shall by proclamation in the *Gazette* declare and appoint, and may be cited as "The Abakweta and Intonjane Dances Prohibition Act, 1891."

No. 17—1891.]

[August 18, 1891.

ACT

To Provide for Constructing, Equipping and Working certain Lines of Railway, including a Bridge over the Orange River.

Preamble.

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:—

Government authorised to construct certain lines of Railway set forth in Schedules A and B.

1. The Governor shall, as soon as may seem to him expedient after the passing of this Act, cause to be constructed and equipped the lines of railway set forth in Schedules A and B to this Act, and shall cause the same to be maintained and worked respectively, 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 respectively in accordance with a certain Convention entered into between the Governor of the Cape of Good Hope and the President of the Orange Free State, with a view to the construction and equipment of the line of railway set forth in Schedule A, and so much of the line of railway set forth in Schedule B as is situated in the Orange Free State, copies of which Convention were presented to both Houses of Parliament by command of the Governor on the 26th day of May, 1891.

Authority to expend for above purposes the sums of £1,375,000 and £580,000 respectively or £1,955,000 in all.

2. For the purposes of constructing and equipping the line of railway set forth in Schedule A, the Governor may expend a sum not exceeding one million three hundred and seventy-five thousand pounds sterling (£1,375,000), and for the purpose of constructing and equipping the line of railway and bridge set forth in Schedule B, the Governor may expend a sum not exceeding five hundred and eighty thousand pounds sterling (£580,000).

Authority to raise a sum of £1,955,000 in debentures or stock.

3. For the several purposes aforesaid, the Governor may from time to time as he may deem expedient raise a sum of one million nine hundred and fifty-five thousand pounds sterling (£1,955,000), 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.

Sections 2, 3, 4 and 5 of Act No. 19 of 1874, to apply *mutatis mutandis*.

4. For the purposes of this Act the provisions of the second to the fifth sections inclusive of the Railway Act, 1874," in so far

as the same may be applicable thereto, shall be deemed *mutatis mutandis* to be in this Act re-enacted.

No. 18—1891.

5. So much of section three of Act No. 28 of 1889 as deals with the amount of two hundred and twenty-five thousand pounds (£225,000), authorised under section two of the said Act, is hereby repealed, and the said sum of two hundred and twenty-five thousand pounds (£225,000) is made a charge against the general revenue of the Colony.

£225,000 authorised under Act No. 29 of 1889, Section 2, to be a charge against general revenue.

6. This Act may be cited as the "Railways Extension Act, 1891."

Short title.

SCHEDULE A.

Schedule A.

Description.	Amount.	
	£	s. d.
A Line of Railway from Bloemfontein to Viljoen's Drift, on the Vaal River, in the Orange Free State	1,375,000	0 0

SCHEDULE B.

Schedule B.

Description.	Amount.	
	£	s. d.
A Line of Railway from a point near Burghersdorp, in the Cape Colony, to Springfontein, in the Orange Free State, including a Bridge over the Orange River	580,000	0 0

No. 18—1891.]

[August 18, 1891.]

ACT (1)

To Consolidate and Amend the Law relating to Oaths, Affidavits, Affirmations, and Solemn Declarations.

BE it enacted by 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. 6, 1845, the seventh section of Ordinance No. 72 of 1830, the seventh section of Ordinance No. 14 of 1846, the tenth section of Act No. 4 of 1861, so much of the sixty-first section of the Constitution Ordinance and so much of any other

Repeal of laws.

¹ Extended to the Transkei, Tembuland, East Griqualand and Port St. John's by Proclamation 367, 1891.

No. 18—1891.

law as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

OF OATHS.

Extra-judicial oaths not to be administered by magistrate, justice of peace, or other person authorised to administer oaths

2. It shall not be lawful for any Magistrate, Justice of the Peace, or other person authorised to administer an oath to administer or cause or allow to be administered any oath, affidavit, or affirmation touching any matter or thing whereof such Magistrate, Justice of the Peace, or other person has not or does not, believe himself to have jurisdiction, cognizance, or authority under or by virtue of some law in force at the time being.

Justice of the peace may within his jurisdiction administer oaths, or swear any deponent to the truth of an affidavit in the following cases.

3. Any Justice of the Peace may within the district in which jurisdiction is conferred on him, administer an oath or swear any deponent to the truth of an affidavit in any of the cases or proceedings following:—

- (1) In any action or proceeding pending or about to be brought in any Court of Law within this Colony or elsewhere.
- (2) In any proceeding before Arbitrators.
- (3) In any proceeding in the nature of a judicial proceeding under the Insolvent Ordinance No. 6, 1843.
- (4) For the proof of the due execution of any will, or other document, required by the law, usage, or practice of any other country to be proved or authenticated by affidavit.
- (5) In any enquiry or proceeding in which by this Act or any other law the taking of an oath or affidavit is directed, authorised, or permitted.

OF THE OATH OF ALLEGIANCE.

Omission of certain words in the oath prescribed to be taken by members of Parliament.

4. From the oath prescribed by the sixty-first section of the Constitution Ordinance to be taken by Members of the Legislative Council and House of Assembly respectively there shall be omitted all the words commencing “and that I will defend her,” to the end of the form of oath.

Form of oath of allegiance.

5. Wherever by any law or usage it shall be required of any person to take the Oath of Allegiance, such Oath shall be taken as nearly as is material in the form following:—“I do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law.”

OF AFFIRMATIONS IN LIEU OF OATHS.

Affirmation substituted for oath, in case any person objects to taking oath.

6. In all cases where any person who is or may be required to take an oath, shall object to do so, it shall be lawful for such person to make an affirmation in the words following:—“I do truly affirm and declare that” (*here insert the matter to be affirmed or declared*), which affirmation or declaration shall be of the same force and effect as if such person had taken such oath. And every person

Effect of affirmation.

authorised, required, or qualified by law to take or administer an oath shall accept in lieu thereof an affirmation or declaration as aforesaid.

7. The same penalties, punishment, and disability which are respectively in force, and are attached to any neglect, refusal, and false or corrupt taking or subscribing of any such oath as aforesaid shall apply and attach in like manner in respect of the neglect, refusal, and false or corrupt making or subscribing respectively of any such affirmation or declaration as is in the last preceding section mentioned.

OF SOLEMN DECLARATIONS.

8. The third section of "The Interpretation Act, 1883," is hereby amended by the omission of the words, "Ordinance No. 6, 1845," and the definition therein of "Solemn Declaration" shall read "Solemn Declaration,—A declaration made under and by virtue of the provisions of the Oaths and Declarations Act, 1891."

9. Whenever by any law now in force a solemn declaration is directed, permitted, or authorised to be made, it shall be sufficient, in case such declaration be made and subscribed in the form (as nearly as material) to this Act annexed.

10. Any Justice of the Peace may take and receive the declaration of any person voluntarily making the same before him in the form mentioned in the last preceding section, and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false or untrue declaration shall be guilty of the offence of making a false declaration, and shall upon conviction be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding six months, but nothing herein contained shall prevent the prosecution of such person for fraud or any other crime or offence of which he may be chargeable, provided that he shall not be liable to prosecution for making a false declaration, and also for fraud or such other crime or offence.

11. Nothing in this Act contained shall extend or apply to any declaration referred to in, or made under the provisions of, the "Transfer Duty Act, (1) 1884.

12. This Act may be cited as "The Oaths and Declarations Act, 1891."

SCHEDULE.

SOLEMN DECLARATION.

I, A.B., of _____, do solemnly and sincerely declare (*here insert the matter to be declared*). And I make this solemn declaration, conscientiously believing the same to be true.

Declared at _____ this _____ day of _____ 18____

Before me,

¹ No. 5.

No. 18—1891.

Penalties for refusal, &c., to take oath or for taking false oath to apply to refusal, &c., to make affirmation and to false affirmation.

Amendment in Interpretation Act, 1883, substituting Oaths and Declarations Act, 1891, for "Ordinance No. 6 of 1845," in definition of "Solemn Declaration."

Form of declaration.

Penalty for making false declaration before Justice of the Peace.

Act not to apply to declarations under Transfer Duty Act, 1884.

Short title of Act

Schedule.

No. 19—1891.]

[August 21, 1891.

ACT

To regulate the Deeds Office, and to amend the Law relating to the Registration of Deeds. (1)

Preamble.

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:—

Short title: repeal of repugnant laws.

1. This Act may be cited for all purposes as “The Deeds Registry Act, 1891,” and so much of any law as may be inconsistent with its provisions is hereby repealed.

This Act to apply only to Deeds Registry at Cape Town: the term Registrar to mean Registrar of Deeds for Colony.

2. Unless otherwise expressed, the provisions of this Act shall apply only to the Deeds Registry at Cape Town, and the term “Registrar,” wherever it occurs herein, shall mean the Registrar of Deeds for the Colony; provided however that it shall be lawful for the Governor by proclamation to extend the whole or any part of this Act, to the Deeds Registries at King William’s Town (2) and Kimberley, and thereupon the term “Registrar,” in the part or parts of the Act so extended, shall include the Registrars of Deeds at King William’s Town and Kimberley, and the term Master of the Supreme Court shall include the Master of the High Court at Kimberley.

Governor may extend Act to Deeds Registries at King William’s Town and Kimberley.

Appointment of Assistant Registrar.

3. It shall be lawful for the Governor to appoint an Assistant Registrar, who shall, subject to such directions as the Attorney-General may from time to time issue, have power and authority to do any act or thing which may lawfully be done by the Registrar; provided that nothing herein contained shall be taken to prevent the Governor from appointing an Acting Registrar, whenever he shall think fit, in terms of section two of Ordinance No. 2 of 1836.

Provision for appointing an Acting Registrar.

Rules and Regulations for Land and Debt Registries, and working of Registrar’s Office.

4. It shall be lawful for the judges of the Supreme Court from time to time to frame rules and regulations for the good order and management of the Land and Debt Registries, and for better carrying into effect the object with which those Registries were established, and generally for the working of the Registrar’s Office and the preservation of the records therein, and more especially to prescribe:—

Fees.

(1) The fees if any to be taken in respect of any act, matter, or thing required to be done in the said office.

Preparation of Deeds.

(2) The manner and form in which Deeds of Transfer, Mortgage Bonds and other deeds or documents required to be registered, acted upon or preserved of record in the said office shall be prepared and executed.

Recording information.

(3) The manner and form in which any information required by law to be furnished to the Registrar shall be recorded or noted in his office.

¹ See Act 43, 1895 (Companies Debentures) (p. 3582), and Act 39, 1905 (p. 4958). Issue of certificates of registered title. Extended to Vryburg by Act 38, 1899. The whole of this Act, *Section 15 excepted*, applies to Deeds Registry at Vryburg. Extended to the Transkei, Tembuland, East Griqualand, and Port St. John’s by Proclamation 367, 1891.

² Extended to King William’s Town by Proclamation 250, 1891.

- (4) The conditions under which copies of lost deeds may be issued.
- (5) The manner and form in which consent to the cancellation of bonds shall be signified, and the conditions under which lost bonds may be cancelled.
- (6) The manner and form in which powers of attorney executed outside the Colony are to be authenticated.

No. 19—1891.

Copies of lost deeds.
Cancellation of bonds.

Authentication of powers of attorney.

But no rules framed under this section shall be of any force or effect unless and until approved by the Governor and published in the *Gazette*.⁽¹⁾

Rules framed to be published in *Gazette*.

5. The Registrar may require and any person may tender, proof by solemn declaration of any fact which he may consider necessary to be established in connection with any act, matter, or thing sought to be done in the Deeds Registry Office.

Solemn declaration in support of acts to be performed in Deeds Registry.

Every such declaration shall set forth that it is made under the provisions of this section, and it shall be executed before such persons respectively as are or shall be by law authorised to administer oaths; and any person who shall make any such declaration knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of perjury, and shall upon conviction thereof suffer such punishment as shall be by law provided for the said crime.

Form of declaration.

Penalty for false declaration.

6. When and as often as it shall appear from the liquidation account of any insolvent estate and from the vouchers annexed thereto, that a payment has been made to any creditor on account of a registered obligation of debt, the Master of the Supreme Court shall notify such payment to the Registrar who shall thereupon write off the same in the Public Debt Register, and also, if possible, on such obligation of debt.

Master to notify payments on account of registered debts to Registrar who shall write off same.

7. The Master of the Supreme Court shall furnish the Registrar with returns of all insolvents who may from time to time obtain their discharge or rehabilitation, and such returns shall specify the landed property and registered obligations of debt appearing in the insolvent's schedules or in the liquidation account of his estate; and the Registrar shall on receipt of such returns write off in the Debt Register all debts registered against any such insolvent prior to his insolvency.

Master to notify rehabilitations to Registrar, who may thereupon write off debts registered against insolvent.

8. For the purposes of the first section of the Ordinance No. 27 of 1846, entitled "Ordinance for Amending the Law relative to Conventional Hypothecations," the territories mentioned in the first section of "The Native Territories Penal⁽²⁾ Code" shall be deemed to be part of the Eastern Districts of this Colony.

Certain Native Territories to form part of Eastern Districts for purposes of Ordinance 27 of 1846.

9. Every general or notarial bond and every deed of kinderbewys which shall hereafter be tendered for registration at the

Duplicate general or notarial bonds and Kinderbewyzen to be filed.

¹ Rules framed, published in *Gazette* December, 1891 [Government Notice No. 1032, 1891], to come into force on 1st January, 1892. *Gazette* 18th August, 1893 [Government Notice No. 806, 1893], to come into force 1st September, 1893.

² Act 24, 1886.

No. 19—1891.

Deeds Registry shall be accompanied by a duplicate or notarial copy to be filed of record.

Two or more persons cannot hold by one transfer unless they are partners.

10. It shall not henceforth be lawful to convey land to two or more persons by one and the same deed of transfer, unless such persons be partners carrying on business under some particular name, firm or style. In all other cases where land is acquired jointly by two or more persons in undivided shares, the following provisions shall apply—

Provisions if land acquired jointly in undivided shares.

Separate transfer deed for each owner.

Stamps to be affixed to one only of such deeds.

(a) A separate deed of transfer shall be necessary in order to convey the share of each owner.

(b) The Registrar shall require to be affixed to one of such separate deeds stamps of the value which would in law be necessary if the land had been transferred by one and the same deed.

Those deeds remaining unstamped to bear Registrar's endorsement in lieu of stamps.

(c) No further or other stamps or fees shall be payable; but the Registrar shall endorse upon each of the other separate deeds a note that the said deed has been passed in terms of this section. And thereupon each such deed so endorsed shall be regarded as fully and completely stamped according to law.

Transfer of fractional parts or shares of land.

11. The Registrar may refuse to pass transfer of any fractional part or share of land until solemn declarations made under the provisions of the fifth section of this Act by the seller and purchaser shall be produced, to the effect that no understanding or arrangement exists that the purchaser is to acquire any particular or defined portion of such land, represented in extent by such fractional part, but that he is actually and *bonâ fide* to acquire an undivided or undefined part or share therein.

If any undivided share of property is hypothecated, transfer of divided share can on partition be passed under certain conditions.

12. If it shall happen in any case of the partition of immovable property held in undivided shares, that the share of any owner in such property is hypothecated under any mortgage bond, it shall be lawful for the Registrar, upon production of the consent in writing of the legal holder of such bond, to allow transfer to be passed to such owner of the divided share awarded to him on partition, notwithstanding that such bond remains uncanceled; but in every such case the Register shall, at the time of allowing such transfer to pass,

(a) Endorse on such bond that such divided share is in terms of this section substituted for the undivided share previously held by such owner.

(b) Make an entry of such substitution in the Debt Register.

(c) Endorse on the transfer of such divided share that in terms of this section it is mortgaged by such bond.

The consent of the bondholder shall set forth that it is given under the provisions of this section.

When conditions fulfilled divided share taken to have been originally hypothecated.

13. From and after the completion of the entry and endorsements aforesaid the divided share of such immovable property so transferred shall be deemed to be hypothecated as fully and effectually as if it had been originally hypothecated by such bond instead of such undivided share as aforesaid.

14. Nothing in this Act contained shall be deemed to relieve any such owner as aforesaid from any liability in respect of any duty, stamp, or fee which would have been payable upon such partition transfer; and in respect of the making of such entry and endorsements as aforesaid, there shall be payable to the Registrar a fee of one pound sterling, which shall be paid by means of stamps to be affixed to such bond before endorsement.

15. (1) The examiners referred to in the eighth section of the Act No. 12 of 1858, entitled "An Act for Regulating the Admission of Barristers, Attorneys, Notaries, and Conveyancers," shall henceforth be the Registrar and two other persons, who shall be appointed by the Supreme Court from time to time, and who must be either advocates of the said Court or duly admitted conveyancers.

16. Any person being the registered owner of two or more pieces of land contiguous to each other represented by separate diagrams (hereinafter styled the applicant) may apply in writing to the Registrar of Deeds respectively in Cape Town, King William's Town, or Kimberley, as the case may be, for a "Certificate (2) of Registered Title" stating that such person is the registered owner of the land to be therein described according to a diagram to be annexed, framed by a surveyor, which diagram shall include, and indicate the aggregate extent of, the several pieces of land so held by such person.

17. The applicant shall with his application submit the several deeds of grant or of transfer, under which he holds, with the diagrams belonging thereto (or in the event of their loss or destruction shall satisfy the Registrar of Deeds of the fact) and a diagram in duplicate framed by a qualified Government surveyor showing the position and extent of the land held by the applicant under separate diagrams which he desires to have consolidated and registered under one title.

18. The Registrar of Deeds receiving such application shall cause the diagram accompanying it proposed to be registered to be examined by any surveyor attached to the department of the Registrar of Deeds, and if it shall appear to him that such diagram correctly represents the land held by the applicant under two or more separate diagrams, he may grant and issue to the applicant a Certificate of Registered Title, which shall be as nearly as is material in the form contained in the Schedule.

19. In case the Registrar of Deeds shall refuse or decline to issue such Certificate of Registered Title, as aforesaid, the applicant may apply to the Supreme Court, or to the Court of the Eastern Districts, or the High Court of Griqualand respectively, within the jurisdiction of such last-mentioned Courts, for an order to authorise or direct the Registrar to issue such Certificate. And the

No. 19—1891.

Liability for duties, stamps, &c., not removed.
Fee to Registrar.

Appointment of examiners under Section 8 Act 12 of 1858.

Registered owner of contiguous pieces of land represented by different diagrams, may apply to Registrar of Deeds for "Certificate of Registered Title."

Deeds of grant, diagrams, &c., to be submitted in support of application.

Registrar on being satisfied as to correctness of diagram, may grant certificate according to form in Schedule.

If Registrar refuses Certificate, application may be made to Court.

¹ This section does not apply to Deeds Registry at Vryburg (Act 38, 1899).

² Sections 3 and 7 of Act 39, 1905 (p. 4949) made applicable to these certificates by § 8, Act 39, 1905.

No. 19—1891.

Upon order of Court Registrar to issue Certificate.

When Certificate granted, Registrar to make necessary endorsements on deeds and in Registers.

If land mortgaged the consent of bondholder necessary. Fact of issue of Certificate to be endorsed on bond.

Certificate to stand in place of grants, deeds of transfer and diagrams previously held by applicant.

said Courts respectively shall, upon the hearing of any such application, make such an order thereon as may be deemed fitting.

20. (1) The Registrar of Deeds upon receiving any such order of Court as aforesaid shall issue a Certificate of Registered Title to the applicant in obedience thereto.

21. At the time of granting any such Certificate as aforesaid the Registrar of Deeds issuing the same shall cause all necessary endorsements (2) or entries to be made upon the existing Deeds of Transfer, and in the Registers in his office showing the consolidation of the applicant's title, and shall retain the deeds previously in the possession of the applicant.

22. In case the land of the applicant shall be mortgaged, the consent in writing of the holder of the Bond shall be necessary before such Certificate as aforesaid shall be granted. The Registrar of Deeds, upon production of such consent, and the Bond or Deed hypothecating the land, shall endorse upon such Bond or Deed the fact of the issue of the Certificate aforesaid, in the place of the Deeds of Transfer previously held by the applicant, and shall cause all usual and proper entries necessary to record the hypothecation of the land mentioned in such certificate to be made in the Deeds Registry before the delivery thereof.

23. The Certificate (1) of Registered Title when issued by the Registrar of Deeds under the provisions of this Act, and the diagram attached thereto, shall stand in the place of the grants, deeds of transfer and diagrams previously held by the applicant in respect of the land therein mentioned or described, but no such certificate or diagram shall be deemed to confer upon the applicant any greater or other right than such as he had or possessed under such grants, deeds, or diagrams.

SCHEDULE.

CERTIFICATE OF REGISTERED TITLE.

Granted pursuant to the provisions of "The Deeds Registry Act, 1891."

Know all men whom it may concern :—

That _____ having applied for the issue to him of a Certificate of Registered Title under the provisions of the "Deeds Registry Act, 1891," and it appearing that he is the registered owner of the land hereinafter described held under certain (*here describe the grants, deeds of transfer, under which the applicant holds the land.*)

Now, therefore, in pursuance of the provisions of the said recited Act, I, the Registrar of Deeds, do hereby certify that the said

_____ is registered as the owner of (*describe the property*) extending (*describe the boundaries indicated by the diagram*) as will more fully appear by the annexed diagram framed by the Surveyor, Mr.

_____, subject to such conditions as are mentioned or referred to in the said (*describe the grants or deeds of transfer.*)

And that by virtue of these presents the said

his heirs, executors, administrators, and assigns, now is, and henceforth shall

¹ Provisions of §§ 19, 20 and 23 of this Act applied to applications made and certificates granted under Act 39, 1905.

² So much of this section as provides for the retention of deeds and diagrams previously in possession of person to whom certificate issued, repealed by § 7, Act 39, 1905 (p. 4949).

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 caused the seal of the office to be affixed hereto.

Thus done and executed at the office of the Registrar of Deeds in Cape Town, Cape of Good Hope, on the _____ day of the _____ month of _____ in the year of our Lord One Thousand Eight Hundred and _____

Registrar of Deeds.

NOTE.—When the certificate is issued under an order of Court the necessary recital of the order is to be made.

No. 20—1891.]

[August 18, 1891.

ACT

To Amend the Act No. 27 of 1889, commonly known as the
“Vagrancy Law Amendment 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:—

1. It shall be lawful for the governing body of any corporate town, municipality, or area under the operation of the “Village Management Act, (1) 1881,” to appoint some person to be inspector of any native location situated within the jurisdiction of such governing body, and not under the inspection and control of any lawfully appointed Government officer.

2. The person so appointed shall have the sole right, subject to the lawful directions of the said governing body, to grant permission to any person to settle in such locations.

3. In regard to any such location as aforesaid, the inspector appointed by the governing body shall have all the rights and powers conferred by the Vagrancy Act, (2) 1879, or the Vagrancy Law Amendment Act, (3) 1889, upon the owner of a farm in respect of the farm owned by him, and of any hut or building thereon.

4. This (4) Act may be cited as “The Vagrancy Act Amendment Act, 1891,” and shall be read as one with “The Vagrancy Act, 1879,” and the “Vagrancy Law Amendment Act, 1889.”

No. 21—1891.]

[August 18, 1891.

ACT

To Incorporate the Cape Town Chamber of Commerce.

WHEREAS there exists an association of merchants and others at Cape Town, called and known as the “Cape Town 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

No. 21—1891.

Preamble.

Governing body to appoint inspector of locations.

Person appointed to have right to grant permission to settle in location.

Inspector to have rights and powers conferred by Vagrancy Acts on owner of farm.

Short title and effect of Act.

Preamble.

¹ No. 29.

² No. 23.

³ No. 27.

⁴ Extended by Proc. No. 347 of 1894 to Griqualand East, and to other Native territories by Proclamations Nos. 212 and 229 of 1896, and 33, 1897.

No. 22—1891.

What persons to form the body corporate.

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:—

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 "Cape Town Chamber of Commerce," for the purpose of promoting, encouraging, and protecting the trade of that port.

The Association incorporated to have perpetual succession and a common seal.

2. The association hereby incorporated by the name of the "Cape Town 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.

Its name, power to hold landed property, &c.

Liability of members.

3. Every member of the said Chamber shall be liable in respect of debts incurred during his membership, for a sum of ten pounds sterling, and no more; and such sum shall be additional to the subscription payable by him in respect to the current year.

Power to make, rescind or alter regulations.

4. The said corporation hereby created shall have power from 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.

Till when existing regulations to continue in force, and office holders in office.

5. 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.

6. This Act may be cited as the "Cape Town Chamber of Commerce Act, 1891."

No. 22—1891.]

[December 1, 1891.]

ACT

To Consolidate and Amend the Law relating to Juries. (1)

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:—

Laws repealed.

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

¹ Act No. 2, 1894, p. 3315, provides for the payment of Jurors in criminal cases. See also Act 35, 1904, § 4 (p. 4763). Extended by Proclamation 367, 1891, to the Transkei, Tembuland, East Griqualand and Port St. John's.

QUALIFICATION OF JURORS.

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2. Every man residing within the Colony between the ages of twenty-one years and sixty years who shall possess the qualification in this Act provided, and not therein declared disqualified or exempted, shall be qualified and liable to serve as a juror.

Age limit for jurors.

3. Every man between the ages aforesaid who shall be the owner or occupier of any immovable property of the value of not less than three hundred pounds according to the valuation roll of any Divisional Council or Municipality, or shall be in the receipt of salary or wages amounting to not less than one hundred and fifty pounds per annum, and who shall not be disqualified or exempted by the terms of this Act, shall be qualified and liable to serve as a juror on any jury empanelled for any trial or enquiry within the jury district in which such person shall reside.

Qualification of jurors.

4. When any such property shall be jointly occupied by more persons than one, each of such joint occupiers, if otherwise qualified or liable, shall be qualified and liable to serve as a juror as aforesaid in case the value of such property when divided by the number of such joint occupiers, shall give a sum not less than three hundred pounds for each such occupier.

Joint owners of property when qualified.

5. If in any jury district there shall not be any valuation roll of a Divisional Council or Municipality, the field-cornet or other person making the lists of men qualified and liable to serve as jurors shall estimate the value of the properties owned or occupied in such jury district to the best of his judgment.

When no Divisional Council valuation roll, valuation to be made by person making the jury lists.

SPECIAL JURORS.

6. Every man qualified and liable to serve as a juror shall also be qualified and liable to serve as a "special juror" in case he shall be

Qualifications of "special juror."

- (1) The owner of landed property of the assessed value of one thousand pounds; or
- (2) The occupier of such property as tenant of the assessed value of one thousand five hundred pounds; or
- (3) Although neither the owner nor occupier of landed property of such assessed values as aforesaid, if he shall be described in the jury lists as an architect, a civil engineer, a broker, manager of a bank, manager or secretary of a fire or life assurance company or society, or of any company for the administration of estates or be in the receipt of salary amounting to five hundred pounds per annum.

7. No person qualified as a "special juror" shall (unless otherwise exempted) be on that account exempted from serving on a petit jury.

Special juror not exempt from serving on petit jury.

DISQUALIFICATION OF JURORS.

8. The following persons shall not be qualified to serve as jurors in any court or on any occasion:—

Disqualifications of jurors.

No. 22—1891.

- (1) Anyone who is not a natural-born or naturalized subject of Her Majesty ;
- (2) Anyone who has been convicted of and sentenced for treason, murder, rape, theft, fraud, perjury, forgery, fraudulent insolvency or contravention of the diamond-trade laws, unless he shall have received a free pardon.
- (3) Anyone who cannot read and write.

EXEMPTIONS.

-Exemptions from serving on juries.

9. The following persons shall be exempt from serving as jurors, and their names shall not be inserted in any jury list:—

- (1) Judges of the supreme court ;
- (2) All ministers of the gospel or persons who shall preach or teach in any religious congregation, and who shall not follow any secular occupation ;
- (3) All advocates and attorneys duly admitted and actually practising, articled or managing clerks to attorneys, and enrolled agents in the magistrates' courts ;
- (4) All medical practitioners, dentists, and chemists and druggists legally qualified and actually practising ;
- (5) All persons in the military or naval or civil service, or holding any paid office under Her Majesty ;
- (6) All deputy sheriffs and sheriff's officers ;
- (7) All schoolmasters and school inspectors ;
- (8) All masters of vessels and pilots ;
- (9) All persons continuously employed in the working of any railway or tramway ;
- (10) All persons actually engaged as editors of, or reporters for, newspapers.

JURY DISTRICTS.

"Jury districts" defined.

10. Every area within a radius of thirty-six miles from the court-house of the Resident Magistrates respectively of Graham's Town, Kimberley, and every other town where a circuit court is to be held, and within the judicial district in which such town is situated, shall be deemed to be a "jury district." And in regard to Cape Town, an area within a radius of twenty miles from the court-house of the Resident Magistrate of Cape Town, shall be deemed to be a "jury district" although such area shall include portions of more judicial districts than one.

Jury districts to be extended in case not 54 qualified persons.

11. If within a radius of thirty-six miles mentioned in the last preceding section there shall not be found in any such jury district fifty-four men qualified and liable to serve as jurors, such radius shall be extended to forty-eight miles, and such extended area shall be a jury district until the said number shall at any subsequent taking of a jury list be found within thirty-six miles.

JURY LISTS.

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12. The jury lists in use at the taking effect of this Act shall continue in force and be used until new jury lists are made and revised as in this Act is provided.

Present jury lists to remain in force until new ones under Act made.

13. On or before the 1st day of January in the next and every succeeding year, the Resident Magistrates respectively of every district which includes any such "jury district" as aforesaid, shall, by written order, require the field-cornets or any members of the police force who may be assigned for such duty, to prepare in alphabetical order a true list or return of all men residing within the limits mentioned in such order, qualified and liable to serve as jurors or special jurors.

Magistrates shall annually require lists to be framed of persons qualified to serve as jurors.

14. Each such field-cornet or member of the police shall, after the receipt of such order, without delay, make out such list or return as aforesaid, giving the names and surnames written at full length, and with the place of abode, title, calling, or business of the persons residing within the limits mentioned in such order, qualified and liable to serve as jurors, in such form as may be prescribed or required, and shall deliver such list or return to the Resident Magistrate not later than the 20th January.

Field-cornet or member of police to frame list.

15. In every year after the first ensuing year, the field-cornets or other persons required to make out the lists of persons qualified and liable to serve as jurors shall respectively be supplied with copies of the lists made up for the previous year, from which they shall strike out the names of persons who have since died, removed, or become disqualified or exempted by reason of age or other cause, and shall add the names of persons not on such lists who are qualified or liable to serve.

Copies of previous year's list to be supplied each year.

16. For the purpose of preparing such lists the field-cornets or other persons engaged in their preparation may put such questions as they think proper, relating to the said lists, and to the name and surname, place of abode, calling, business, occupation, qualification, or age of any man residing in any jury district.

Powers of field-cornets and others making lists.

17. Every such field-cornet or member of the police shall for the purposes of framing his return have free access to the valuation and voters' rolls respectively of any Divisional Council or Municipality, and may make copies or extracts from such rolls.

Access to valuation roll of Divisional Council or Municipality.

18. The Resident Magistrate receiving such lists or returns as aforesaid shall cause to be prepared and make out a true list of the persons qualified and liable to serve as jurors within the "jury district" of which his court-house is the centre; and shall in such list mark the word "special" against the names of such persons as are qualified and liable to serve as special jurors.

Duty of Magistrate on receiving lists.

19. A copy of such list shall be affixed on or near the principal door of the court-house, with a notice in the English and Dutch languages, stating that a court will be held on a day to be stated, not being less than fourteen days after the day on which such

Copy of list and notice to be affixed on door of court-house.

No. 22—1891.

notice is posted, to revise such list. Such notice shall also be published once at least in the newspaper, if any, circulating in the town where the court is to be held, wherein Government Notices are usually inserted.

If no jury list for the year jury list of previous year to be used.

20. If at any time it shall happen that no jury list shall have been made for the current year for any jury district, the jury list for the preceding year shall be deemed to be the proper jury list, and used as such.

COURT OF REVISION OF JURY LISTS.

Constitution and composition of court of revision of jury list.

21. On the day and at the place appointed in the notice aforesaid, the Resident Magistrate shall hold a court, consisting of himself as president, and such members of the Divisional Council (if any) as may attend, for revising the jurors lists, but if after fifteen minutes of the time appointed no member of the Divisional Council is in attendance the Resident Magistrate may act alone.

Decision by majority of votes.

22. The decisions of the said court shall be by majority of the votes of those attending, and if there be an equality of votes, the Resident Magistrate presiding shall have a casting vote in addition to his vote as a member of the court. When no member of the Divisional Council attends, the decision of the Resident Magistrate shall be the decision of the said court.

Lists to be produced at court.

23. The said court may be adjourned from time to time, and all field-cornets or policemen as aforesaid shall produce the lists prepared or made out by them as in this Act directed, and shall answer on oath such questions as may be put to them by any member of the said court.

Court may strike out names on list.

24. If the name of any man not qualified and liable to serve as aforesaid is inserted in any such list, the said court, if satisfied upon the oath of any person objecting or by other proof, or upon the knowledge of any member of the said court that he is not qualified and liable to serve as a juror, shall strike his name out of such list, and shall also strike out the names of men disabled by deafness, blindness, or other permanent infirmity of mind or body, for service on juries.

Court may correct errors in lists.

25. The said court may reform any errors or omissions which shall appear to have been committed in respect of the name, place of abode, calling, or otherwise, of any one included in such list.

After lists revised transmitted to Sheriff.

26. When any such list shall be revised and completed, the Resident Magistrate presiding shall certify the allowance thereof by the said court and transmit the same to the Sheriff of the Colony.

JURORS BOOKS.

Sheriff to record lists in "Jurors Book."

27. The Sheriff receiving such lists from the Resident Magistrates shall cause the same respectively to be fairly and truly copied in a book to be called "The Jurors Book of the district

of " [inserting the district], and shall prefix to every name its proper number, beginning the numbers from the first name and continuing them in regular arithmetical series down to the last name, and insert in a proper column the word "special" opposite to the name of every person qualified and liable to serve as a special juror.

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SPECIAL JURY IN CRIMINAL CASES.

28. The Supreme Court, Court of the Eastern Districts, or High Court of Griqualand, within the jurisdiction of such courts respectively, may on application made on behalf of Her Majesty, or by any private prosecutor entitled to prosecute, or by or on behalf of any defendant or person committed for trial for any indictable offence (whether the indictment or information shall have been served upon the accused or not), order that the trial of the accused named in such order shall be by a special jury in such courts, respectively, or in any Circuit Court.

Court may order criminal case to be tried by special jury.

29. Whenever a criminal case has been ordered to be tried before a special jury, the Registrar of the court granting such order shall forward a notice to the Sheriff, or his deputy in the district in which the trial is to be held, informing him thereof.

Registrars to give notice to Sheriff of special jury ordered.

30. The Sheriff, or his deputy, receiving such notice of a special jury trial, shall without delay draw the names of twenty-seven special jurors as by this Act directed, and make a list thereof. If in any case it shall happen that the whole number of special jurors cannot be obtained from the jurors book, such number shall be drawn from the remaining or petit jurors on the jurors list.

Sheriff to make list of 27 special jurors.

31. When the list in the last preceding section shall be prepared the Sheriff or his deputy shall by notice in writing appoint a time for settling such list. At the time appointed the names contained in such list shall be reduced to nineteen by the prosecutor or his agent, and the defendant or his attorney, each striking out alternately four names in the presence of the said Sheriff or his deputy.

List to be settled and reduced to 19 on day appointed by Sheriff.

32. In the absence of the prosecutor or the defendant, or the representative or attorney of either, and upon proof that due notice of the appointment was given, or in case the parties attending decline to strike out four names each, the Sheriff or his deputy shall strike out so many names as shall reduce the list to nineteen.

Sheriff to reduce list to 19 himself, if no appearance for parties.

33. The persons whose names are not struck out shall be summoned to attend for the trial.

Persons not struck out summoned for the trial.

SUMMONING JURORS.

34. Ten days at the least before the holding of a session for the trial of criminal cases in the Supreme Court, Court of the Eastern Districts, High Court of Griqualand, or in any Circuit Court, and seven days at the least before the trial of any civil

Sheriff to summon juries for criminal sessions.

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suit or action in any court in which civil suits or actions may be tried by a jury, the Sheriff or his lawful deputy shall summon such number of qualified jurors, taken from the jurors book of the jury district wherein such courts shall respectively be held, not exceeding ⁽¹⁾ twenty-seven, as shall be required by this or any other Act, or prescribed by any rule of court in that behalf, to serve on juries in the said courts.

Mode of summoning juries.

35. The Sheriff or his deputy shall summon or cause to be summoned, each of such jurors, by leaving with the man to be summoned, or in case he shall be absent from his usual place of abode, by leaving with some person there inhabiting, a notice under the hand of the Sheriff or his deputy, requiring such juror's attendance in such court, and at a place and on a day and hour to be therein stated.

Return of services made to Registrar.

36. The officer summoning such jurors shall make a return under his hand to the Registrars of the said courts respectively of the manner of serving every such summons; or shall attend before the court and verify the same by oath.

DRAWING NAMES OF JURORS FOR SERVICE.

37. In drawing names of jurors to be summoned for service, the Sheriff or his deputy shall observe the following directions:

Mode of drawing names of jurors to be summoned and directions to be observed.

- (1) He shall place in a box cards of equal size, having written or printed thereon the numbers corresponding to the numbers opposite to the names of jurors on the jurors list.
- (2) He shall after shaking the box to distribute the cards therein, draw out of the box, singly, as many cards as are equal to the number of jurors required to be summoned.
- (3) After the cards are drawn he shall refer to the corresponding numbers in the jurors book, and if it be found that the names of two or more persons nearly related or connected or residing upon the same property, or engaged or employed in the same house of business, are both or all drawn, or if the name of any person be drawn whom he shall know to be absent or who shall be labouring under any sickness or infirmity, or who shall have served as a juror within the period of twelve months before the date of such drawing, he shall lay aside the cards corresponding to the names of each of such persons, and draw out others, and shall so proceed until the requisite number of jurors be obtained.
- (4) If, after the issue or service of notices requiring the persons drawn to attend as jurors, he shall discover that any person whose name has been so drawn is dead, absent or unable from sickness or any infirmity or other sufficient cause to attend, he shall draw other cards to make up the deficiency, and summon the jurors whose numbers have been drawn; provided such lastmentioned jurors shall have the requisite number of days notice.

¹ See § 4, Act 36, 1904 (p. 4763). In criminal cases Sheriff to summon 27 additional jurors when directed by Attorney-General.

- (5) He shall make out and return a list of the names of the persons so drawn and summoned, to the Registrar of the court in which the jurors are to serve.
 - (6) The cards bearing the numbers corresponding to the names of the persons who have served as jurors at successive criminal sessions shall be kept separate, until all the cards bearing the numbers corresponding to the names of persons who have not been drawn for service, or being drawn have not served, are drawn out of the jurors box.
 - (7) When all the cards have been drawn out of the jurors box, the cards bearing the numbers corresponding to the names of persons who have performed their rota of service as jurors shall be returned to the jurors box, to be again drawn from and returned in like manner.
 - (8) When any special jury is required in any case, civil or criminal, he shall on each occasion place in the jury box, all the numbers corresponding to the names of special jurors (whether such jurors have had respectively their rota of service or not) and draw therefrom, and otherwise proceed, as in this or any other Act or by any rule of court is or may be directed.
38. When such drawing of names of jurors as aforesaid shall be made by a Deputy Sheriff, the following provisions shall apply :
- (1) The Deputy Sheriff shall, by notice posted on or near the principal door of the court-room of the Resident Magistrate, appoint a day, not less than four days after the date of posting thereof, on which he will attend in the court-room aforesaid, at some hour to be stated, between the hours of nine a.m. and noon, for drawing the names of jurors for service.
 - (2) Such drawing shall take place publicly in the presence of the Resident Magistrate, Assistant Magistrate, or any clerk to the Resident Magistrate, or any Justice of the Peace.
 - (3) As each card is drawn the Deputy Sheriff shall refer to the corresponding number in the jurors book, and read aloud the name designated by such number, and shall make a list of the names so drawn.
 - (4) Such list shall be signed by the Deputy Sheriff, and by the Resident Magistrate, Assistant Magistrate, Magistrate's Clerk, or Justice of the Peace, in whose presence such list is made.
 - (5) Such list shall be preserved by the Deputy Sheriff until one month after the sitting of the court to which it has relation, and if the Sheriff of the Colony shall not during such month require it to be forwarded to him, the said list may then be destroyed.

Sheriff to give notice of drawing, which is to be done publicly under certain conditions.

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MISCELLANEOUS PROVISIONS.

Verdict not invalid by reason of disqualification of juror, or error in jury lists.

39. No verdict in any case criminal or civil shall be capable of being objected to, or shall be in any way affected, by reason of want of qualification or disqualification of any juror, nor by reason of any juror being summoned from beyond the limits of the jury district, nor by reason of any error, informality, or omission with respect to the jury lists or jury books.

Jurors to be sworn.

40. After the Registrar or other officer of the court shall have called the names of the jurors, such of the jurors as shall then or thereafter have answered to their names may be sworn in open court, in due form, for the trial of all persons or all cases brought before them or any of them.

Need not be sworn for each trial.

41. Being once sworn for the trial of cases at any session or sitting of a court for the trial of cases by jury, the jurors need not be re-sworn in each trial unless the prosecutor or the accused, or any party in a civil suit, shall so require.

Court may allow affirmation to be made.

42. If any person called as a juror shall refuse or be unwilling to be sworn, the court may permit such person to make his solemn affirmation, which affirmation shall be of the same force and effect as if such person had taken an oath in the customary form.

A *Tales* may be ordered by court, if insufficient number of jurors.

43. When it shall happen at any session of any court for the trial of criminal cases that nine men qualified and liable to serve as jurors in such court shall not have been summoned, or shall not appear, or shall not remain fair and indifferent after all just cause of challenge, then, in every such case the Sheriff or his deputy, when commanded so to do by any verbal order made or writ issued by such court shall summon and return so many men qualified and liable to serve as jurors from those present within the precincts of such court, or being at the time in the town or place in which it is held as shall be necessary to make up the lawful number of jurors.

Jury to be kept apart by themselves till judge has summed up, and if they then wish they can retire in charge of an officer of court.

44. After the jury in any case, civil or criminal, shall have been sworn they shall (unless the court shall otherwise order or permit) be kept in some convenient place, apart by themselves, until the judge who tries the case shall have summed up the evidence and left the case with the said jury; and if the jury shall desire to withdraw for the purpose of considering their verdict, then they shall be kept by an officer of the court in some convenient place, apart by themselves, until they are agreed upon their verdict, or be discharged therefrom by the court; and the said officer shall be sworn that he will suffer none to have access to them, or to speak to them, and that he will not speak to them himself, except to ask if they are agreed upon their verdict, or to communicate between them and the court.

Cases when a jury may be discharged and another empanelled.

45. Whenever it shall sufficiently appear to the court in any case, civil or criminal, that the jury, by reason of the death or mental or bodily infirmity of any of them, shall be unable to

return a verdict, then the said court may discharge such jury, and shall cause another jury to be empanelled for the trial of the case; and the trial shall be had as if such first jury had not been empanelled.

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PENALTIES.

46. Any person who shall corruptly influence, or attempt to corruptly influence, a juror, and any juror who shall consent to such influence, shall be liable on conviction to a penalty not exceeding five hundred pounds, or to imprisonment with or without hard labour for a period not exceeding three years.

Penalty for corruptly influencing or attempting to influence jurors.

47. If any man, having been duly summoned to attend before any court to serve as a juror for the trial of cases, civil or criminal, shall not attend pursuant to such summons, or being thrice called shall not answer to his name, or after being called shall be present but not appear, or after his appearance shall wilfully absent himself during the sittings of the court, or after any adjournment thereof, before the court shall discharge the jury from attendance, the court shall set such fine upon every man so making default as it shall think meet. Any man who shall be called or peremptorily summoned to attend in obedience to an order made or writ issued to supply a deficiency of jurors, shall for any default or refusal as aforesaid be liable to such fine as the court shall think meet.

Penalty for not obeying summons to serve as juror.

48. If any person shall claim exemption from serving as a juror by means of any certificate or affidavit which he shall know to be false or which shall contain any false statement of fact, he shall be liable to a penalty not exceeding fifty pounds.

Penalty for false claim of exemption

49. If any deputy sheriff or sheriff's officer shall directly or indirectly take or receive any money, or reward, or promise of money or other reward to excuse any man from serving or being summoned to serve as a juror, he shall be liable to such penalty not exceeding one hundred pounds as the court enquiring into the offence in a summary way shall see fit to impose.

Penalty for illegally excusing of juror by sheriff.

50. If any field-cornet or member of the police force assigned to the performance of any duty under this Act shall be guilty of any of the acts or omissions in this section mentioned, he shall be liable to a penalty not exceeding ten pounds:—

Penalty on field-cornets and others for various acts.

- (1) Refusing or neglecting (unless prevented by sickness, the proof of which shall lie on the accused), to make out any list required to be made by him under this Act.
- (2) Wilfully omitting from such list the name of any man whose name ought to be inserted therein.
- (3) Wilfully inserting in such list the name of any man who ought to be omitted.
- (4) Taking any money or reward for omitting or inserting any name in such list.
- (5) Neglecting or refusing to answer upon oath such questions as may be put to him by the revising court touching his list, or the making thereof, or refusing to be sworn.

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Penalty for removing or defacing jury list posted on door of court.

Penalty for refusing to answer questions allowed by 16th section.

Judge may remit fines.

If fine or penalty not paid registrar shall issue writ.

Short title.

51. Any person who shall remove or deface any list of jurors or notice posted at or near the door of the court-house referred to in the nineteenth section of this Act shall be liable to a penalty not exceeding five pounds.

52. Any person who shall refuse to answer or falsely answer any questions lawfully put by any field-cornet or other person for the purposes mentioned in the sixteenth section of this Act shall be liable on conviction to a penalty not exceeding two pounds.

53. The judge presiding at any trial before a jury may at any time during the sessions, at which any such trial shall take place, remit any fine or penalty imposed upon a juror for any default.

54. If any fine or penalty imposed by the court and not remitted shall not be paid forthwith, then a writ shall be issued by the Registrar of the court for the recovery of such fine or penalty, as if the order imposing the same were a judgment of the court.

55. This Act may be cited for all purposes as the "Jury Act, 1891."

Schedule.

SCHEDULE.

LAWS REPEALED.

No. and Year.	Title of Law.
Ordinance No. 84, 1831 ...	"For altering and amending the Law relative to the qualification of persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning lists of the same."
Ordinance No. 1, 1843 ...	"For amending the Law relative to the qualification of Jurors.",
Act No. 7, 1861	An Act to amend the Law relating to Grand and Petit Jurors.
Act No. 2, 1876	An Act to amend the Law relating to the making out of lists of Jurors.
Act No. 17, 1885	Act to amend the Law relating to Jurors.
Ordinance No. 14, 1876 ...	Ordinance to amend the Laws regulating the qualifications of Jurors in the Province of Griqualand West.
The Rules of Court numbered respectively 43, 44, 45, 46, 49, 51, 52, 275, 350, 360.	

No. 23—1891.]

[December 1, 1891.

ACT

To Amend the Law relating to Trial by Jury in Civil Cases.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble,

1. The Act No. 7, 1854, entitled “ An Act for extending Trial by Jury to Civil Cases ”; the Act No. 30, 1874, entitled “ Act to amend the Act No. 7, 1854, entitled ‘ An Act for extending Trial by Jury to Civil Cases, ’ ” the Rules of Court No. 215 and Nos. 227 to 234 inclusive, so much of the Charter of Justice, and so much of any other law as may be repugnant to or inconsistent with this Act, are hereby repealed.

Laws repealed.

2. In this Act, if not inconsistent with the context, the terms hereinafter set forth shall be read and taken to mean as follows:—

Interpretation of terms.

The “ Court ” means the court in which any civil suit or action is depending, and capable of being tried before a jury under this Act;

The “ Registrar ” means the Registrar of such Court as aforesaid;

The “ Sheriff ” means the Sheriff of the Colony and includes his lawful Deputy;

“ Verdict ” means the finding or findings of the jury upon any issue or issues tried by such jury, and includes any statement of facts as found by the jury to have been proved.

3. No question which shall be a pure and unmixed question of law shall in any case be referred or submitted to a jury, but every such question shall be reserved for the determination of the Court.

Purely questions of law not to be submitted to jury.

4. Nothing in this Act contained shall be construed so as to alter or affect the practice or proceedings in provisional cases, or upon motions (other than those in this Act mentioned), or upon interdicts or in civil cases set down by default.

Proceedings in certain cases not affected.

5. Whenever an issue of fact, or of mixed law and fact, except as aforesaid, shall have been joined in the Supreme Court, the Court of the Eastern Districts or the High Court of Griqualand, in any civil cause or action wherein the sum or matter in dispute or the amount of damages demanded, shall exceed the amount or value of one hundred pounds, such issue may, at the election of either or any party to the suit, be tried by a jury as in this Act is provided.

Questions of fact or of mixed law and fact to be tried by jury on election of either party to the suit.

6. Any party to a civil case depending in any such court as aforesaid may, by notice in writing to the other party or parties to the suit, or his or their attorneys, delivered within two days after issue joined, demand a trial by jury in such case.

Notice of such election to be given to other party.

7. Although no such demand for a trial by jury as aforesaid shall have been made, or although the matter in dispute, or the damages demanded, shall not exceed the amount or value of one hundred pounds, any party to the suit may apply to the court for leave to

Although no election and although value under £100 either party may apply to court for a jury.

No. 23—1891.

Written consent of both parties required to change trial by jury once demanded or obtained.

Court or judge can order parties to prepare issues to be settled by judge in chambers.

In cases of damages jury shall assess damages.

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

Jury cases to be set down not less than 14 days before day of trial.

Days for jury cases to be fixed.

Registrar to give notice to sheriff when jury required.

Sheriff to draw names of 27 special jurors.

If civil cases for trial, sheriff shall summon 27 jurors 7 days at least before first trial.

Parties to each case may each strike off nine jurors from the whole list.

If one case to be tried list shall be reduced to 19 by sheriff himself if parties do not appear.

try such case by jury, and the court shall order thereon as it may deem fit.

8. In case such demand be made, or leave be obtained, the trial shall not take place otherwise than before a jury, unless by written consent of the parties to the suit.

9. When in any suit to be tried before a jury it shall appear to the court or to a judge in chambers, on the application of any party thereto, that the pleadings do not sufficiently define the issues of fact in dispute between the parties, the court, or such judge, may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by a judge in chambers.

10. When in any action tried by a jury, either party shall claim that the other may be condemned in damages, then the jury in case they shall find for the party claiming damages shall assess such damages.

11. All trials by jury in the said court shall be had before one of the judges of the Supreme Court and a jury of nine men.

12. Cases to be tried by a jury shall be set down by notice to the Registrar not less than fourteen days before the day of trial.

13. Jury trials shall take place on such days as shall be appointed by any general rule, or on such day as the court shall in any case on application of any party, after notice to the other, see fit to order either in or out of term.

14. When any case shall be set down for trial by jury, the Registrar shall without delay give notice in writing to the Sheriff that a jury will be required for the dispatch of civil business on the day on which the trial is to be held.

15. The Sheriff receiving such notice as aforesaid from the Registrar shall without delay draw the names of twenty-seven "special jurors" in the manner provided and directed in the "Jury Act, (1) 1891," and make a list thereof.

16. If two or more civil cases shall be entered for trial before a jury on one day or on days in immediate succession, the Sheriff shall seven days at least before the day appointed for the trial of the first of such cases, summon the twenty-seven men whose names have been drawn as aforesaid.

17. The names of the men so summoned who shall appear shall be placed in a list, and from such list each of the parties to the first case standing for trial may in presence of the Registrar or Sheriff strike off, if so minded, the names of four men. The parties to the second or succeeding cases may, in each successive case, strike off in manner aforesaid the names of four men.

18. But if only one such case shall be entered for trial before a jury as aforesaid, the Sheriff shall by notice in writing to the parties or their attorneys appoint a time for settling the list of jurors. At the time appointed the twenty-seven names drawn as aforesaid shall be reduced to nineteen by the plaintiff and

¹ No. 22.

defendant, or their respective attorneys, each striking out alternately not more than four names, in the presence of the Sheriff. In the absence of any of the parties or their attorneys, upon proof that due notice of the appointment was given, or if the parties attending decline to strike out names as aforesaid, the Sheriff shall strike out so many names as shall reduce the number on the list to nineteen.

19. The nineteen men, whose names remain as aforesaid, shall be summoned to attend the trial.

20. The names of the men remaining after names shall have been struck off as aforesaid, shall be written upon pieces of paper (being all as nearly as may be of equal size), and put together in a box, and the Registrar shall draw out nine of the said pieces of paper in succession; and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then a further number of names shall be drawn out until the names of nine men be drawn who shall appear, and after all just challenge allowed, shall remain as fair and indifferent between the parties.

21. If while one jury shall be absent considering their verdict, the parties in any remaining case entered for trial shall consent to take the list of jurors then remaining unsworn, and from it to strike off so many names as shall leave not less than nine men free from challenge and objection who shall appear to serve, then the names so left shall be placed in a box and be thence drawn out as aforesaid, and the trial in such case shall proceed.

22. As soon as any jury shall have given their verdict, or shall have been discharged by the court without having given a verdict, the jurors who composed such jury shall be competent and liable (should they be left upon the reduced list remaining for the purpose of forming therefrom a jury, for the trial of any other case set down for trial on the same day) to have their names, as belonging to such reduced list, placed in the box aforesaid, thence to be drawn, in manner aforesaid, so as to form a jury for the trial of such other case, precisely as if such jurors had not served in any previous case.

23. No challenge to any juror shall be allowed, except a challenge for cause, and the causes for which such juror may be challenged may be any of the following:—

- (1) Want of qualification;
- (2) Consanguinity or affinity within the fourth degree to the plaintiff or defendant, or to any person who has an interest in the result of the case;
- (3) For having directly or indirectly an interest in the result of the case;
- (4) For having previously deliberately expressed an opinion as to the merits of the case;

And any other causes for which any juror may be challenged, and the manner and form of trying any cause of challenge alleged against a juror, shall be the same in all respects as would by law

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The 19 jurors retained shall be summoned.

Mode of drawing for jurors out of the 19 summoned.

Second jury may be drawn during absence of first.

Juror when one case finished, liable to serve on jury for next case.

Causes for which challenge of jurors allowed.

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be permitted in a civil case depending and about to be tried in the High Court of Justice in England.

Verdict must be unanimous, but after an hour's deliberation only necessary for 6 to concur.

24. Not fewer than six jurors of the nine jurors composing the jury must concur in every verdict of such jury, and every verdict in which not fewer than six jurors of the nine jurors composing the jury shall concur, shall be received and regarded as the verdict of such jury; provided that no verdict except one in which the whole of the jurors composing the jury shall concur, shall be capable of being delivered or received until after the jury shall have been in deliberation upon their verdict for not less than one hour.

Case may be adjourned by Court.

25. When any case set down for trial by jury shall not or cannot conveniently be disposed of on the day appointed, the judge may adjourn the court from time to time, and may proceed with any such trial after any such adjournment. And every juror bound to attend on the day of such adjournment shall also be bound to appear again in the said court upon the day and at the hour to which the court shall have been adjourned.

Jury may find general or special verdict.

26. The verdict of every jury in every civil case may be either a general verdict or a special verdict. The jury instead of finding a verdict for either party may state the facts as they find them to have been proved.

Manner of proceeding in receiving verdict of jury.

27. The verdict of every such jury shall be received by the Registrar of the court, who shall, before recording the same, ask the jury if they are all agreed upon their verdict; and in case they shall answer in the negative, shall then ask the jury how many of them are agreed upon their verdict, and the said Registrar shall record the verdict that shall have been given, and whether the same was a unanimous verdict or verdict by a majority; provided that it shall be competent for the jury, in case they shall not have quitted their places, to reconsider or amend any of their findings.

When jury may be discharged without giving verdict.

28. No jury empanelled to try any such issue as aforesaid shall be discharged until they shall have delivered their verdict, unless both the parties to the case shall consent to their discharge, or unless the court shall, upon being satisfied that the jurors in any case are unable to agree, see fit to discharge them.

If jury discharged without giving verdict case may be again set down for trial with or without jury.

29. In every case in which a jury shall be discharged without delivering a verdict, such case may be again set down for trial by jury on some future day appointed for trials by jury, or, should both parties so elect, the case may be set down for trial before the court adjudicating without a jury.

Pay of jurors.

30. Every juror serving on a jury shall be paid a sum of ten shillings for each day during which such trial shall continue.

Attorney of party demanding jury liable for pay of jurors.

31. The attorney for the party who shall have demanded a trial before a jury shall be personally liable for the payment of whatever sum the jury shall be entitled to receive.

Jury's pay to be included in costs.

32. As often as any party shall be awarded costs against the opposite party, he shall recover as part of such costs whatever sum shall have been lawfully paid to the jury.

33. After receiving the verdict of the jury, the judge may, at or after the trial, either:

- (1) Give judgment for any or either party, or
- (2) Adjourn the case for further consideration, or
- (3) Leave any party to move for judgment.

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Proceeding of judge after verdict of jury.

34. When at the trial the judge abstains from giving judgment either of the parties may set down the case on motion for judgment before the court, and the court taking and adopting as final and conclusive the facts as found by the jury shall give such judgment upon the entire case as shall be by law required.

Case may be set down for judgment.

35. When at or after the trial of an action by a jury, the judge has given any judgment, any party may without leave reserved apply to the Supreme Court, on motion, to set aside such judgment, and enter any other judgment on the ground that the judgment given is wrong, by reason of the judge having caused the finding of the jury upon the question or questions submitted to them to be wrongly entered, or upon the ground that upon the finding of the jury as entered the judgment given is wrong.

Party may apply to court to set aside judgment of judge for certain reasons.

36. Any party to a case tried by jury, who shall be dissatisfied with the finding or findings of the jury, may apply to the Supreme Court on motion for a new trial on any of the following grounds:—

Grounds on which motions for a new trial may be made.

- (1) That the judge has misdirected the jury on any material point of law;
 - (2) That the judge admitted improper evidence or rejected evidence which ought to have been admitted;
 - (3) When the damages are excessive or too small;
 - (4) That the verdict has been obtained by unfair or improper practice of the successful party to the prejudice of the opposing party;
 - (5) That material evidence has been discovered since the trial which could not have been foreseen or known at the trial;
 - (6) That the jury or any juror has been guilty of misconduct;
 - (7) That any witness has been guilty of such misconduct as to affect the result of the trial;
 - (8) That a special verdict or other finding of the jury is so defective that the judge cannot give judgment upon it;
 - (9) That the verdict is against the weight of evidence;
- or upon any other ground not herein set forth upon which a new trial may be granted or grantable according to the law and practice of the High Court of Justice in England.

37. A new trial will not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the court to which application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, the said court may give final judgment as to part thereof, and direct a new trial as to the other part only.

Grounds on which a new trial will be refused.

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New trial may be granted as against some of the parties to a suit.

Proceeding of court on motion for new trial.

Proceedings when new trial ordered.

If no new trial and no appeal jury's verdict final.

Saving appeal to Supreme Court.

And to Privy Council, from Supreme Court.

Rights, etc., of judge and jury and questions under Act to be determined according to practice of High Court of Justice, England.

Judges of Supreme Court may make rules.

38. A new trial may be granted on any question, or as to one or more of several parties in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question, or as against the other or others of the parties.

39. Upon a motion for judgment or for a new trial, the court to which such motion is made, if satisfied that it has before it all the material necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, may give judgment accordingly, or, if it should be of opinion that it has not sufficient materials before it to enable it to give judgment, may direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and enquiries to be taken and made as it may think fit.

40. When a new trial has been granted, or ordered, or when any issue or question of fact has been ordered to be tried, the case or such issue or question may be set down for trial in like manner as if such case had not previously been set down and tried; or should all parties so agree in writing such case or such question or issue may be set down for trial without a jury in the court in which the action was commenced, or in case the record shall have been ordered to be removed for trial or enquiry into any other court than in such lastmentioned court.

41. If a new trial shall not be applied for, or shall be refused, or if a motion to set aside a judgment shall be refused, and no appeal from any such refusal shall be prayed for, the finding of the jury shall be final and conclusive as to the facts so found, and shall not be liable to be brought into further question.

42. Nothing in this Act contained shall be construed so as to prevent any party to any civil suit tried before a jury in which the Court of the Eastern Districts or the High Court of Griqualand, respectively, shall have given judgment, under the provisions of the thirty-fourth section of this Act from appealing to the Supreme Court against such judgment as being erroneous in point of law.

43. Nothing in this Act contained shall be construed so as to prevent any party from appealing to Her Majesty in Her Privy Council, as in the Charter of Justice is provided, against any judgment of the Supreme Court as being erroneous in point of law.

44. As often as any question shall arise as to the respective rights, powers, functions and duties of the judge presiding at any trial before a jury, and of the jury, or in regard to any other question, matter or thing not in this Act or by any other law expressly provided or governed, such question or such other matter or thing shall be determined according to the practice and usage of the High Court of Justice in England.

45. The judges of the Supreme Court, acting in pursuance of any law regulating the making of general rules of court, may

from time to time make and alter rules and orders for all matters relating to trials by jury in civil cases.

No. 24—1891.

46. This Act may be cited for all purposes as the “Jury Trials Act (Civil Cases), 1891,” and shall come into operation on the first day of February, 1892.

Short title and date of taking effect of Act.

No. 24—1891.]

[August 21, 1891.]

ACT

For Constituting an additional Fiscal Division.

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 the Ordinance for constituting a Parliament in this Colony and commonly called the “Constitution Ordinance,” and so much of any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Repeal of repugnant laws.

2. The district of Van Rhyn’s Dorp shall, from and after date of any Proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes.

District of Van Rhyn’s Dorp may be proclaimed a fiscal division.

3. The Proclamation provided for in the last preceding section shall define the several boundaries of the division of Van Rhyn’s Dorp, and the boundaries so proclaimed shall be the boundaries of the said division.

Boundaries to be defined by the same Proclamation.

4. From and after the date of any Proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division, to which the whole or any part of the division of Van Rhyn’s Dorp, so constituted for fiscal purposes only and named in such Proclamation, belonged, shall stand dissolved, and the provisions of Act No. 40 of 1889, commonly called “The Divisional Councils Act, 1889,” and of every other law relating to Divisional Councils, shall apply to the division of Van Rhyn’s Dorp, constituted under this Act, and to the divisions to which the said division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for such divisions had ever been elected: Provided that the persons who shall be registered as voters for the Divisional Council of any such former division which down to the date of such Proclamation comprised the whole or any part of the new division of Van Rhyn’s Dorp, and who, in accordance with the Act No. 40 of 1889, are duly qualified to be registered as voters for the Divisional Council of the new division of Van Rhyn’s Dorp, shall be entitled to vote at the election of Councillors for the Divisional Council of such new division.

Effect of Act on divisions and Divisional Councils affected by Proclamation: new division to be a division for purposes of Act No. 40 of 1889 and other relative laws.

No. 25—1891.

Provisions of Act
No. 24 of 1858 to
apply to division of
Van Rhyn's Dorp.

5. The 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 so far as applicable, *mutatis mutandis*, as soon as any Proclamation under this Act shall have been issued, apply to the new division of Van Rhyn's Dorp, and to the divisions to which the said new division in whole or in part belonged before the issuing of such Proclamation, just as though such new division of Van Rhyn's Dorp were named in the Schedule to the Act No. 12 of 1857.

No change of
electoral divisions.

6. Notwithstanding the creation of the new division of Van Rhyn's Dorp by virtue of any Proclamation under this Act, such new division and every part thereof shall, for electoral purposes, continue to form part of whatever electoral division such new division or part thereof belonged to before the date of such Proclamation, precisely as if this Act had not been passed.

Short title.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1891."

No. 25—1891.]

[August 21, 1891.

ACT

To Amend the Law regulating the Sale of Intoxicating Liquors.

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:—

LICENCES.

Repeal of enact-
ments.

1. Sub-section three of section seven of the Liquor Licensing Act, (1) 1883, and section three of the Liquor Licensing Act Amendment Act, (2) 1885, are hereby repealed.

Definition of and
provisions as to
bottle licences.

A bottle licence shall authorise the sale on the premises therein specified but not elsewhere of liquor in bottles properly and securely corked, and not to be drunk in or upon the premises for which the licence is granted.

With regard to every bottle licence, the following provisions shall apply:

- (1) Not less than one reputed pint bottle of liquor shall be sold at one time to one person.
- (2) Upon Sunday, Christmas Day and Good Friday no sales shall take place.
- (3) Upon other days, sales may take place only during the hours fixed by the Licensing Court in respect of each licence, not being earlier than eight o'clock in the morning nor later than eight o'clock at night.

¹ No. 28.

² No. 44. See footnote to Act 28, 1883 (p. 2118).

The provisions of this section shall not apply to any bottle licence in existence at the date of the taking effect of this Act; the rights and liabilities of the holder of every such licence, during the currency thereof, shall be judged of as if this Act had not been passed.

No. 25—1891.

2. If any purchaser of liquor from the holder of a bottle licence drinks such liquor on the licensed premises, or in any road, street, or public place, adjoining or near such premises, then such holder shall, if it shall appear that the drinking aforesaid was with his privity and consent,

Penalty for consumption on the premises, of liquor bought from holder of bottle licence.

(a) For the first offence be liable to a penalty not exceeding five pounds.

(b) For any subsequent offence be liable to a penalty not exceeding ten pounds.

For the purposes of this section, the expression "licensed premises" shall include any premises or place adjoining or near the premises actually licensed if belonging to the said holder of the bottle licence, or under his control, or used by his permission.

Meaning of "licensed premises."

3. In any proceeding under the second section of this Act, the drinking of any liquor shall be taken to have been done with the privity and consent of any holder of a bottle licence who shall be proved to have uncorked or opened any bottle containing such liquor or to have directly or indirectly assisted any person to uncork or open it.

What considered privity and consent of holder of bottle licence.

4. Notwithstanding anything contained in sub-section two, section seven, of the Liquor Licensing Act, 1883, it shall be lawful for any Licensing Court to fix any hours between seven in the morning and nine at night for the sale of liquor under any retail licence.

What hours may be fixed by Licensing Court.

5. The following portions of the Liquor Licensing Act, 1883, are hereby repealed:—

Repeal of enactments.

(a) Section (1) forty-two, in the fifth paragraph, the words, "other than a licence in respect of which notice is not by this Act required to be given."

(b) Sections fifty and fifty-one, the whole.

INSPECTOR OF LICENCES.

6. The Governor may, from time to time, appoint in and for any district of the Colony, an inspector of licences and such sub-inspectors as he may think fit, and may remove any person so appointed.

Appointment of inspectors of licences.

7. Any inspector or sub-inspector of licences, or any person authorised in writing by an inspector, may enter upon any licensed premises during the hours for which such premises are licensed, and may examine every room or part of such premises.

Powers of inspectors.

8. It shall be the duty of every inspector of licences in whose district any premises are situated in respect of which previous notice of any application for any licence or for the renewal of any licence

Duties of Inspectors.

¹ Section 42 is repealed by Act 34, 1904, and other provisions substituted.

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under this Act is given, to furnish to the Resident Magistrate seven clear days before the application is to be heard a report, which shall at all reasonable times be open to public inspection, containing the following particulars:—

LICENCE FOR NEW PREMISES.

- (1) A description of the house, premises and furniture.
- (2) A statement whether the applicant is a fit and proper person to have the licence applied for, and is known to be of good character and repute.
- (3) A statement whether the bestowal of the licence sought for is or is not in the opinion of the inspector required for public convenience.
- (4) A statement whether the applicant appears to be or not to be the true owner of the business or the premises proposed to be licensed.

RENEWAL OF EXISTING LICENCE.

- (5) If the application be for a renewal by a person who has held a licence during the whole or any part of the preceding year, a statement as to the manner in which the house has been conducted during such year or part thereof. If any convictions have been recorded against the licensee the particulars of the convictions shall be stated. The report shall also contain a statement as to the character of the persons frequenting the house.

Facts upon which report is based to be set forth.

The statement or report referred to in this section shall set forth in detail the facts upon which any conclusion or expression of opinion is based, and if the inspector is unable to supply any of the foregoing particulars he shall specially state in his report the reason of his inability.

Report to be laid before Licensing Court.

And the Resident Magistrate shall lay the said report before the Licensing Court at every meeting called to consider the applications therein referred to.

Sections 70, 71 and 72 of Liquor Licensing Act, 1883, how affected by this Act.

9. The provisions of sections seventy, seventy-one and seventy-two of the Liquor Licensing Act, ⁽¹⁾ 1883, shall not apply to any district for which an inspector of licences may be appointed during the term of such appointment, but the said provisions shall remain and be in full force in every district where there is no such inspector.

Inspectors to attend meetings of Licensing Court.

10. It shall be the duty of an inspector to attend every meeting of the Licensing Court for his district in order to afford information and assistance to the court in matters connected with the working of this Act, and every inspector so attending may be cross-examined on oath as to the matters contained in his report by any person, or the agent of any person, who is interested in the grant or renewal of the licence dealt with in the said report.

¹ No. 28.

11 Every inspector or sub-inspector of licences shall have the same power and authority which are conferred upon a Justice of the Peace by sections thirteen and fourteen of "The Sale of Foods and Drugs and Seeds Act, (1) 1890," in regard to entering upon licensed premises and searching for and seizing and carrying away any liquor found therein, and also in regard to the purchase of liquor for purposes of analysis.

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Powers of Inspectors.

12. Any inspector or sub-inspector of licences who directly or indirectly receives or agrees to receive from any person any fee, advantage or reward, whether pecuniary or of any other kind, on account of anything done or to be done by him in connection with his office or employment, or on account of omitting to perform his duties under this Act, shall be dismissed from his office, and shall also be liable, on conviction by a competent court, to imprisonment with or without hard labour for a period not exceeding twelve months. And any person who directly or indirectly gives, offers or promises to give any such fee, advantage or reward, shall for every such offence be liable to a fine not exceeding one hundred pounds.

Illegal payments to inspectors.

But nothing in this section shall apply to any payment or salary received from Government by an inspector or sub-inspector for the performance of his duty.

Proviso.

LOCAL OPTION. (2)

13. The following provisions shall apply in regard to the granting and renewal of licences after the taking effect of this Act:

Local option.

(1) If the application is for a new licence, it shall not be lawful for the Licensing Court to grant the same unless there shall be lodged with the Resident Magistrate of the district at least four days before the meeting of the Licensing Court to consider the said application, a memorial or memorials signed by a majority of the voters registered for the election of members of the Divisional Council within the limits of the Divisional Council district, the municipality or (where a municipality is divided into wards) the ward or district of the municipality or the place where the Villages Management Act of (2) 1881 is in operation, in which district, municipality, ward, or place the premises proposed to be licensed are situated, approving of the issue of the said licence.

New licence.

(2) If the application is for the renewal of an existing licence, it shall not be lawful for the Licensing Court to grant the said renewal, in case there shall have been lodged with the said Resident Magistrate, within the period aforesaid,

Renewal of existing licence.

¹ No. 5.

² §§ 13-15 not to apply to district of Glen Grey. See § 62, Act 25, 1894. Section 13 does not apply to granting or renewal of wholesale or club licences. § 6, Act 34, 1904 (p. 4761).

³ No. 29.

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a memorial or memorials signed by two-thirds of the voters, registered as aforesaid within the said district, municipality, ward or place respectively, objecting to the said renewal, and in case it shall also be proved that written notice of intention to lodge such a memorial was given to the holder or person entitled to the benefit of the existing licence and to the owner of the licensed premises—if resident in this Colony—by some person signing the same at least one month before the day fixed by law as the day upon or before which any application for a renewal of the licence in question should be made to the Resident Magistrate.

Signature by same person of memorial objecting to and approving of licence.

(3) If upon any memorial approving of the issue or renewal of any licence, and upon any memorial objecting to the issue or renewal of the same licence the name of the same person shall appear, then the said name shall be of no effect, and shall be considered as if struck out of both memorials.

Cases in which memorial under first sub-section hereof not necessary.

(4) It shall not be necessary for any person to whom a licence has been transferred in terms of section fifty-six of Act 28 of 1883, or who has been authorised to remove his licence under the provisions of section fifty-seven of the said Act, or for any person who has been authorised to carry on business in any licensed premises for the unexpired term of any licence under section eight of Act 44 of 1885, to lodge before applying for a renewal of his licence, the memorial referred to in the first sub-section hereof; but every such application shall be dealt with by the Licensing Court as if the said sub-section had not existed.

Absence of memorial objecting to renewal of licence.

(5) The absence of a memorial objecting to the renewal of any licence, or the fact that such memorial is signed by less than two-thirds of the said voters, shall not render it imperative upon the Licensing Court to grant the renewal.

How voters who cannot write to sign memorial.

(6) Any memorial lodged for the consideration of any Licensing Court may, in the case of voters who are unable to write, be signed by such voters placing their cross or mark upon the same; but no such cross or mark shall be of any effect unless duly attested by the signature of at least one witness who is a registered elector for the Divisional Council.

Municipal districts of Cape Town to be treated as "wards."

(7) For the purposes of this and the two next succeeding sections, the several districts of the Cape Town Municipality defined in pursuance of the fifth section of the Cape Town Municipality Act, (1) 1882, shall be taken to be wards of the said municipality.

Secs. 24, 25 and 26 of Liquor Licensing Act, 1883, to apply to memorial under preceding section.

14. With respect to every memorial lodged under the last preceding section, the provisions of sections twenty-four, twenty-five and twenty-six of the Liquor Licensing Act, (2) 1883, shall *mutatis mutandis* apply as if the same were fully set out herein.

¹ Act 44, 1882, repealed by Act 26, 1893.

² No. 28.

15. From and after the taking effect of this Act, the Secretary of every Divisional Council shall, in making out the "Voters' Roll," as required by section nineteen of Act 40 of 1889, observe the following directions:—

- (1) He shall distinguish by grouping together upon the said roll the names of all voters who are registered within any area which falls within the limits of any municipality, or corporate town, or within any area in which the Villages Management Act of (2) 1881 is in operation.
- (2) In the case of any municipality or corporate town divided into wards or districts he shall similarly distinguish the names of all voters who are registered in each such separate ward or district.

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Duty of Secretary of Divisional Council in making out Voters' Roll.

MISCELLANEOUS.

16. No importer or general dealer who is not also the holder of a wholesale or a bottle licence shall give or supply any liquor to any customer or other person in the room or rooms in which he carries on his business, as such importer or general dealer.

Importer or general dealer.

17. No holder of [a retail liquor licence] (3) who is at the same time an importer or general dealer, shall sell, deal in, or dispose of any liquor in any room or place which is not entirely separated by substantial walls or partitions from the room or rooms in which such person carries on his importer's or general dealer's business, such walls or partitions to contain no door or other opening.

Provision where holder of retail licence is also an importer or general dealer.

18. Any contravention of the provisions of either of the two preceding sections of this Act shall subject the offender to the penalties provided by law, in the case of persons selling, dealing in, or disposing of intoxicating liquor without a licence.

Penalty.

19. In sub-section six of section seventy-three of the Liquor Licensing Act, (2) 1883, the word "spirits" wherever it occurs shall be expunged, and the word "liquor" substituted.

Amendment in "Liquor Licensing Act, 1883."

20. Any master or other person employing workmen, servants, or labourers, who pays or causes any payment to be made to any such workman, servant, or labourer in or at any premises licensed for the sale of liquor, or where liquor is sold, shall for every such offence be liable to a penalty not exceeding ten pounds. But nothing herein contained shall extend to any holder of any liquor licence who pays upon his own licensed premises the workmen, servants, or labourers employed in his licensed business.

Payment of wages to workmen, servants, or labourers.

21. If any person, other than the licence holder, his agent or servant, or a person lodging in the licensed house, be found in any bar on the premises of the holder of a retail licence during the hours in which the sale or disposal of liquor to the public is

What to be *prima facie* evidence of illegal sale.

¹ No. 28.

² No. 29.

³ But see § 9, Act 34, 1904. substituting for the words "a retail licence," the words "any liquor licence other than a wholesale licence."

No. 25—1891.

Penalty.

Proviso.

prohibited, it shall be taken to be *prima facie* evidence of a sale of liquor during such hours. The licence holder on whose premises any such person is found during such hours shall be liable to a penalty of not more than five pounds; but nothing in this section contained shall apply in the case of persons passing through any bar in any licensed premises for the sole purpose of obtaining access to any other part of such premises.

Repeal of Secs. 79 and 80 of Liquor Act, 1883, save as to existing licences.

22. Save in the case of licences already in existence at the taking effect of this Act, the seventy-ninth and eightieth sections of the Liquor Licensing Act, (1) 1883, are hereby repealed.

Lodgers.

23. Nothing in this Act contained shall preclude any person who is licensed to sell liquor to be consumed on the premises from selling such liquor at any time to any person lodging in his house.

Sale of liquor at railway station refreshment rooms.

24. The fifth sub-section of section seventeen of the Liquor Licensing Act, (1) 1883, is hereby repealed. With regard to retail licences for the sale of liquor at railway (2) station refreshment rooms, the following provisions shall apply:—

- (1) Upon week days, liquor shall be sold only within a reasonable time before and after the arrival or departure of any passenger or mixed train at a station, such time to be fixed by the Commissioner in the certificate authorising the grant of the licence.
- (2) Upon Sunday, Christmas Day, or Good Friday, liquor shall be sold at any station which is not a terminal station only during the time that a passenger or mixed train is drawn up at such station.
- (3) No liquor shall be sold on Sunday, Christmas Day, or Good Friday, at any terminal station.
- (4) It shall be lawful for the Commissioner to insert in any certificate authorising the grant of such licence such conditions with regard to the class (2) of persons to be supplied with liquor on Sundays, Christmas Day, or Good Friday, as to him may seem fit; and all such conditions may be incorporated in any licence granted by virtue of such certificate and shall be deemed to be conditions legally inserted therein.

Penalty for false representations.

25. Every person who, by falsely representing himself to be a lodger, buys or obtains or attempts to buy or obtain at any premises any liquor during the period for which such premises are to be closed under this Act or otherwise, shall upon conviction be liable to a penalty not exceeding five pounds.

Sunday dealing.

26. 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 authority to the holder of any retail

¹ No. 28.

² No liquor to be sold to natives. See § 1, Act 28, 1898 (p. 3957). See also Acts 44, 1902, and 8, 1903 (Railway Refreshments).

licence to supply on Sunday to any person who takes and pays for a *bonâ fide* lunch or dinner a reasonable quantity of liquor to be consumed at such meal.

No. 25—1891.

27. The thirteenth section of the Liquor Licensing Act Amendment Act, 1885, is hereby repealed. Sub-section three of section two of the Liquor Licensing Act, 1883, is hereby expressly re-enacted.

Repeal of Sec. 13, Act 44 of 1885, and re-enactment of Sub-sec. 3, sec. 2 of Act 28 of 1883.

28. If it shall be proved to the satisfaction of any Resident Magistrate that any person charged before him and found guilty of contravening section nine of the "Police Offences Act, (1) 1882," has been during the twelve months preceding the date of such finding, four times convicted of drunkenness by a competent court, then it shall be lawful for such magistrate to inflict a punishment of imprisonment with hard labour for any period not (1) exceeding twelve months.

Habitual drunkards.

29. It shall be lawful for the Governor by proclamation, when desired by any municipality or Village Management Board, to define areas in the neighbourhood of mines, manufactories, or other centres of labour, within which areas all bottle stores and canteens shall be closed at noon on Saturday or such other one day of the week as the Governor may determine; any holder of a retail or bottle licence within any such area who shall sell or dispose of liquor contrary to the terms of such proclamation after the hour of noon upon a day so determined shall, upon conviction, be liable to all the penalties provided for selling, dealing in, or disposing of intoxicating liquor without a licence.

Governor may define areas for closing purposes.

30. The costs incurred by the members of any Licensing Court in connection with legal proceedings instituted against them in their official capacity shall, unless the Court before which the proceedings are taken shall order the said costs to be borne by the opposite party or by the said members *de bonis propriis*, be paid to them out of the Colonial Treasury.

Costs incurred by Licensing Courts.

31. For the purposes of the Liquor Licensing Act, (2) 1883, the Liquor Licensing Act Amendment Act, (3) 1885, and for the purposes of this Act, the article known as Kaffir (4) beer shall in all cases be regarded as and taken to be an intoxicating liquor.

Kaffir beer.

32. This Act shall be read as one with the Liquor Licensing Act, 1883, and the Liquor Licensing Act Amendment Act, 1885, and may be cited as the Liquor Act, 1891.

Short title and effect of Act.

¹ No. 27 (p. 1902), or in lieu detention not exceeding 3 years in a State Inebriate Reformatory, § 8, Act 40, 1902 (p. 4511).

² No. 28.

³ No. 44.

⁴ As to making and being in possession of Kaffir beer which includes Prickly pear beer and Honey beer, see sec. 77, Act 23, 1898 (p. 3958).

No. 26—1891.]

[August 21, 1891.

ACT

To amend the Law with regard to the Leasing of Crown Lands, and the Disposal of Land, other than Crown Lands, the property of the Colonial Government. ⁽¹⁾

Preamble.

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:—

Short title.

1. This Act may be cited as the “Crown Lands Leasing Act, 1891,” and shall be read as one with the Crown Lands Disposal Act, ⁽²⁾ 1887.

Description of land to which this Act, and Crown Lands Disposal Act, 1887, shall not apply.

2. For the purposes of the Crown Lands Disposal Act, 1887, and of this Act, the term Crown land shall not include

- (a) Land which has been acquired by the Colonial Government from a private owner;
- (b) Land which has been reclaimed from the sea;
- (c) Land upon which the Colonial Government has erected buildings or constructed permanent works.

Repeal of certain words in Section 13 of Crown Lands Disposal Act, 1887.

3. In the thirteenth section of the “Crown Lands Disposal Act, 1887,” the following words are hereby repealed:

- (1) The words “as hereinafter mentioned” where they first occur.
- (2) The words of all the provisos to the said section.

Leasing of Crown Lands.

4. When any land has been put up for auction under the Crown Lands Disposal Act, 1887, and the minimum upset price has not been obtained, or when the Commissioner deems it inexpedient to dispose of any land by sale under the said Act, then such land may be let on ⁽³⁾ lease for any term not exceeding five years at the highest rent obtainable at public auction, on such terms and conditions as may be imposed.

Sale of land to lessee during currency of lease.

5. Any lessee of land previously offered for sale under the second section of the Crown Lands Disposal Act, 1887, may make written application during the currency of his lease for the purchase of the said land; and if he shall fulfil the conditions required by the said Act, the Commissioner shall accept the said lessee as a purchaser at the upset price at which the said land was offered for sale, in the same manner as if he had become a purchaser at public auction under the said Act.

¹ Extended by Proclamation No. 214 of 1892 to Port St. John's; by Proclamation No. 216 of 1892 to Transkei; by Proclamation No. 217 of 1892 to Tembuland; by Proclamation No. 218 of 1892 to Griqualand East; and by Proclamation 33, 1897 to Pondoland. See footnote to Act 15, 1887, and Act 18, 1896 (Bechuanaland). Secs. 4 and 5 of this Act were repealed by Act 40, 1895, but re-enacted by Act 18, 1897 (p. 3735).

² No. 15.

³ The occupation on lease under this section not held to be *bona fide* occupation for purposes of § 20, Act 40, 1895 (p. 3570).



6. All land, the property of the Colonial Government, which does not fall within the term Crown lands for the purposes of the Crown Lands Disposal Act, 1887, and whether situated within the Colony or not, may be disposed of on such terms and conditions as may be thought expedient by the Government with the concurrence of the Legislative Council and the House of Assembly.

No. 30—1891.

Government lands may be disposed of by Government with the concurrence of Legislative Council and House of Assembly.

No. 27—1891.]

[August 21, 1891.]

Act to Amend the "Trade Marks Registration Act, 1877."
[Repealed by Act 12, 1895.]

No. 28—1891.]

[August 21, 1891.]

Act to Amend "The Vineyards Protection Act Amendment Act, 1886," and to continue for another year the Fourth Section of the Act.

[Lapsed.]

No. 29—1891.] (1)

[August 21, 1891.]

ACT

To Authorise (in so far as Colonial Territory is concerned) certain Persons or a Company formed by them or acquiring their Rights to Construct, Maintain, and Work a Line of Railway from the Mouth of the St. John's River to the District of Maclear, in East Griqualand.

[Lapsed. Act 32, 1894, required this line to be commenced within one year and completed within three years from 21 August, 1894.]

[Pages 2904 to 2907.]

No. 30—1891.]

[August 21, 1891.]

Act to Apply a Sum of Money for the Service of the Year ending the 30th day of June, 1892.

[Spent.]

No. 31--1891.]

[August 21, 1891.

Act to Apply a Sum not exceeding Twenty-seven Thousand Two Hundred and Twenty-seven Pounds Five Shillings and Sixpence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 32--1891.]

[August 21, 1891.

ACT

To provide for the Construction of certain Public Works.

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:—

It shall be lawful to borrow under Temporary Loans Act for certain purposes.

1. For the purpose of constructing the works set forth in the Schedules A, (1) B, and C to this Act, it shall be lawful for the Governor to apply a sum of Two Hundred and Sixty-two Thousand Pounds out of moneys authorised to be raised under the provisions of the Temporary Loans Act, (1) being the Act No. 20 of 1883.

Short title.

2. This Act may be cited as the Public Works Act, 1891.

Schedules.

SCHEDULES.

A. Relaying existing Railway Lines	...	...	£182,000
B. Fencing Lines	...	...	20,000
C. (?) Erection of General Post Office	...	...	60,000
			<hr/> £262,000

No. 33--1891.]

[August 21, 1891.

Act to Provide for the better Repression of Theft of Stock and Produce.

[Repealed by Act 35, 1893.]

¹ £182,000 made a charge against the general revenue of the Colony by § 1, Act 36, 1894.

² Withdrawn and made a charge against the general revenue of the Colony by § 4, Act 35, 1895.

No. 34—1891.]

[August 21, 1891.

ACT

To Repeal Ordinance No. 82 of 1830, and to make provision for the Licensing and Registration of Medical Practitioners, Apothecaries, Dentists, Chemists and Druggists, Midwives and Nurses. (1)

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.

PART I.

PRELIMINARY.

1. This Act may be cited as the “Medical and Pharmacy Act, 1891.”

Short Title.

2. This Act shall take effect on such day as the Governor shall appoint by Proclamation in the *Gazette*, but the eighth section hereof shall take effect forthwith after the passing of this Act.

Act to take effect when proclaimed by Governor. Section 8 to take effect at once after passing of Act. Interpretation of terms.

3. In this Act the following terms shall bear the following meanings:—

“Medical Practitioner” means every person duly admitted and lawfully entitled to practise in this Colony as a physician, surgeon, or accoucheur, on the day before the taking effect of this Act, and also every person duly qualified by licence and registration under this Act to practise as a physician and surgeon within this Colony;

“Chemist and Druggist” means every person duly licensed in this Colony on the day before the taking effect of this Act as an apothecary or chemist and druggist, and also every person duly licensed under this Act as a chemist and druggist and holding an annual licence as a chemist and druggist under Tariff 15 of the Act No. 20 of 1884;

“Dentist” means every person duly licensed and *bonâ fide* engaged on or before the 1st June, 1891, in the practice of dentistry or dental surgery in this Colony, either separately or in addition to his practice as a physician, surgeon, accoucheur, apothecary, or chemist and druggist, and also every person duly qualified by licence and registration under this Act to practise as a dentist within this Colony;

“Council” means the Colonial Medical Council established under this Act;

“Board” means the Colonial Pharmacy Board established under this Act.

¹ Extended by proclamation No. 28 of 1892, to all the Native Territories and by 99, 1900, to Pondoland. Amended by Act 7, 1899 (p. 4044).

The Colonial Medical Council constituted under this Act is constituted an Advising Board of Health for the purposes of the Public Health Act. See § 5, Act 23, 1897 (p. 3743).

No. 34—1891.
Repeal of enact-
ments.

Construction of
Act 15 of 1877.

4. The Ordinance No. 82 of 1830 shall be repealed from and after the day appointed in terms of the second section of this Act, and the Act No. 15 of 1877, and any other law shall be read and construed as though this Act or the Colonial Medical Council were referred to in place and stead of the said Ordinance or the Colonial Medical Committee respectively, wherever the said Ordinance or Committee is referred to in the said Act or such other law.

PART II.

CONSTITUTION AND GENERAL POWERS OF COLONIAL MEDICAL COUNCIL AND COLONIAL PHARMACY BOARD.

Establishment of
a Colonial Medical
Council and a Colo-
nial Pharmacy
Board.

5. On the day of the taking effect of this Act the Colonial Medical Committee now established shall cease to exist, and on and after the said day there shall be established in this Colony

(a) a body to be styled the Colonial Medical Council, and

(b) a body to be styled the Colonial Pharmacy Board.

The Council to
consist of seven
medical practition-
ers and one dentist.

6. The Council ⁽¹⁾ shall consist of seven medical practitioners and one dentist, of whom three medical practitioners and the dentist shall be nominated by the Governor; and four medical practitioners shall be elected by the medical practitioners of the Colony, in manner hereafter provided.

The Board to con-
sist of one member
of Council and five
chemists and drug-
gists.

7. The Board shall consist of a member of the Council who may from time to time be deputed by the Council to act upon the Board, and six ⁽²⁾ chemists and druggists, of whom ⁽²⁾ three chemists and druggists shall be nominated by the Governor and three chemists and druggist shall be elected by the chemists and druggists of the Colony in manner hereafter provided.

Mode of election
of members of first
C o u n c i l or first
Board.

8. Members of the first Council or first Board, as the case may be, shall be elected in manner following:

[Repealed by Act 7, 1899. See Section 5 making other provisions for elections.]

¹ The Medical Officer of Health in addition *ex officio* member of the Council. Act 7, 1899, § 4.

² Printed as amended by § 6, Act 7, 1889.

9. The members of the Council or Board shall be nominated or elected as the case may be for such term not exceeding five years as the Governor shall think fit and shall specify in such notice as is provided in the last preceding section, and the Governor may at will, by notice in the *Gazette*, remove any nominated member and, at the request of the Council or Board, as the case may be, may, if satisfied that due cause exists for such removal, by like notice remove any elected member, and any member may resign by letter addressed to the President of the Council, or Board, as the case may be, and upon the removal, death or resignation of any member, some other qualified person shall be nominated or elected in manner hereinbefore provided for the residue of the said term, but it shall be lawful for the Council, or Board, as the case may be, during such vacancy, to exercise the powers herein-after mentioned.

10. The first meeting of the first Council and the first meeting of the first Board shall take place upon a day or days to be fixed by the Governor in the notice appointing the elected members as aforesaid, and at such meetings or any adjournment thereof, the members of the Council and of the Board respectively then present shall elect from among themselves a President of the Colonial Medical Council and a President of the Colonial Pharmacy Board, and the person elected to either of the said offices shall hold the same during the continuance of his membership of the Council or Board, as the case may be.

11. The dentist appointed as a member of the Council as aforesaid shall be entitled to be present at all meetings of the Council, but unless such dentist be also a qualified medical practitioner shall not be entitled to take part in the discussion of or to vote upon any question or matter brought before the Council unless it be by resolution of the majority determined to be a question or matter relating to dentistry or dental surgery; provided that such dentist shall, however, be qualified to vote for the election of some other member as President of the Council.

12. The Council and Board respectively may, from time to time, make such rules and regulations, to be approved of and published as in this Act is provided, as to the times and places of the meetings of the Council or Board, the mode of summoning the same, and the general regulation of business as shall seem expedient, and in the absence of any rule or regulation as to the summoning

No. 34—1891.

Term of office of members of the Council or Board to be fixed by Governor.

Governor may remove any member or any member may resign.

Mode of procedure in case of removal, death or resignation of any member.

Governor to fix day of first meeting of first Council and first Board.

At such meeting members present shall elect a president of the Council and a president of the board who shall hold office during membership.

Rights and powers of dentist member at meetings of Council.

Council and Board to make rules and regulations for the conduct of the business of its meetings.

No. 34—1891.

Proceedings of
meetings of Council
or Board.

Council or Board
may appoint execu-
tive committee.

Council or Board
may appoint a
Secretary; and may
by resolution
remove him.

All future elec-
tions (after the first)
shall be regulated
by section 8, but
medical practition-
ers, etc., entitled to
vote shall be those
defined by this Act.

Secretary to attest
elector's signature.

Act to apply also
to Council or Board
appointed after
first election.

of meetings, the President may summon a meeting of the Council or Board, as the case may be, at such time and place as to him shall seem expedient by letter addressed to each member.

13. At every meeting in the absence of the President some other member present shall be chosen to act as President, and all acts of the Council or Board shall be decided by the votes of the majority of the members present at any meeting, the whole number present being not less than four in the case of the Council, and three in the case of the Board, and at all meetings the President for the time being shall, in addition to his vote as a member, have a casting vote in case of an equality of votes.

14. The Council or Board shall have power to appoint an executive committee out of their own body of which the quorum shall not be less than three, and to delegate to such committee such powers and duties vested in the Council or Board as the Council or Board shall think fit.

15. The Council or Board may respectively from time to time appoint a Secretary at a reasonable salary, and may by resolution remove such Secretary from his office.

16. After the first election of members of the Council or Board respectively, the provisions of the eighth section of this Act shall *mutatis mutandis*, regulate all future elections of a member or members of the Council or Board, as the case may be, but the persons entitled to vote at any such future election shall be medical practitioners or chemists and druggists, as the case may be, as defined by this Act, the Secretary of the Council or Board, as the case may be, may attest as genuine the signature of any elector, and the provisions of this Act shall apply to the Council or Board and the members thereof respectively who may hereafter be appointed or elected after such election.

PART III.

LICENCES FOR MEDICAL PRACTITIONERS, DENTISTS, AND CHEMISTS AND DRUGGISTS, CERTIFICATES FOR MIDWIVES.

17. Every person who, on the day before the taking effect of this Act, shall be in this Colony

- (a) duly admitted and lawfully qualified to practice as physician, surgeon, or accoucheur, or
- (b) duly licensed as an apothecary, or chemist and druggist, and
- (c) every person whosoever on or before the 1st June, 1891, shall have been in this Colony duly licensed as a dentist and *bonâ fide* engaged in the practice of dentistry or dental surgery, either separately or in addition to his practice as a physician, surgeon, accoucheur, apothecary, or chemist and druggist,

Subject to the proviso hereinafter mentioned practitioners admitted qualified and licensed on the day before this Act takes effect shall be entitled to continue to practise without taking out licence required by this Act.

shall notwithstanding the passing of this Act, be entitled to continue to practise or carry on his calling as aforesaid without obtaining the licence referred to in the eighteenth and twenty-third sections, as the case may be, provided that

No. 34—1891.

Provided.

- (1) The names, addresses, and qualifications of all such persons shall as soon as may be after the day appointed as aforesaid be entered in the register referred to in this Act.
- (2) Every such person shall on and after the said day be amenable to all the provisions of this Act or of any law relating to physicians, doctors, surgeons, dentists, apothecaries, or chemists and druggists, as the case may be ;
- (3) Every such dentist as aforesaid shall be placed upon the aforesaid register, upon production to the Secretary of the Council within two months after the aforesaid day of a declaration in the form in Schedule A to this Act, signed by him and setting forth his name and address, and his qualification, if any, for the practice of dentistry or dental surgery ;
- (4) No omission of or mistake in any entry which should be made in the aforesaid register in accordance with paragraph (1) of this section shall be deemed to prejudice the right of the person, in respect of whose name, address, or qualifications such omission or mistake has occurred, to practise as aforesaid if duly licensed and lawfully entitled.

That their name addresses and qualifications shall be registered as here provided.

That they shall become amenable to the provisions of this Act.

That dentists shall be placed on the register upon production of a declaration setting forth his name, address and qualification.

That no omission or mistake in register shall prejudice any person's right to practise if duly licensed and lawfully entitled.

18. On and after the day on which this Act takes effect, no person shall be admitted to practise or be registered as a medical practitioner, or dentist, unless he has obtained a licence signed by the Colonial Secretary on the recommendation of the Council ; and previously to obtaining such licence, such person shall submit his diploma or other certificate of his being duly qualified to practise as a physician and surgeon, or as a dentist, as the case may be, for the examination and approval of the Council, who may require by sworn declaration before a justice of the peace or by other evidence such proof of identity and good character of such person, of the authenticity of such diploma or certificate, and of the right of the holder to practise elsewhere under such diploma or certificate, as they shall deem fit, and any person wilfully making a false statement in such declaration shall be liable to the penalties by law provided for the crime of perjury : Provided that the Governor may at any time within three months from the date of the taking effect of this Act, anything in this Act or any other law to the contrary notwithstanding, grant a licence to be admitted as a medical or dental practitioner to any person with whose qualification and experience he is satisfied, and who in the case of a medical practitioner before the said date, shall for a period of twenty years, and in the case of a dentist for a period of three years and upwards have been continuously practising as a physi-

After this Act takes effect no person shall be admitted or registered as medical practitioner or dentist, unless he obtains the Colonial Secretary's licence on Council's recommendation, to whom the necessary diplomas and proof have been submitted.

Penalty for false declaration.

Governor may within three months of taking effect of Act, grant a medical practitioner's licence to person who has for 20 years continuously practised and with those qualification he is satisfied.

No. 34—1891.

Supreme Court
may order issue of
licence refused by
Council.

Council shall
make regulations
prescribing what
diplomas or certi-
ficates will be
entertained in any
application for a
licence as a medical
practitioner or
dentist.

Military or naval
medical officer may
exercise his profes-
sion in such service
without licence
under this Act.

Who may obtain
a licence to practise
as chemist and
druggist: the quali-
fications required,
and the examina-
tion to be passed.

cian, surgeon, accoucheur or dentist in this Colony, and the names of such persons shall thereupon be entered in the register referred to in this Act.

19. Where the Council have refused to approve of the diploma or certificate submitted in terms of the last preceding section by any persons desirous of being registered as a medical practitioner or dentist, the Supreme Court, on application made to them by such person, may, after communicating with the Council, order that a licence be issued to the applicant, in case the Supreme Court shall be of opinion that the Council have not adhered to the regulations in the next section mentioned, and the name of such applicant shall thereupon be entered in the register referred to in this Act.

20. The Council shall by regulations approved of by the Governor and published as in this Act is provided, from time to time prescribe and define what diplomas or certificates will be entertained by the Council in any application by any person to obtain a licence as a medical practitioner or dentist under this Act, and no diploma or certificate shall be included by the Council in such regulations which does not furnish in the opinion of the Council a sufficient guarantee of the possession by the holder of the requisite knowledge and skill for efficient practice as a medical practitioner or dentist, as the case may be.

21. Notwithstanding anything to the contrary contained in this Act, any medical officer of Her Majesty's land or sea service, may exercise his profession in such service, but not otherwise, without taking out such licence as aforesaid.

22. [Repealed by Act 7, 1899. See Section 7 of latter Act.]

23. Any person who has attained the age of twenty-one years, and has been duly indentured and served as an apprentice for a period of not less than four years to any regularly licensed apothecary, or chemist and druggist, in this Colony, or elsewhere, or who can produce satisfactory proof that he has been practically engaged in the compounding and dispensing of medicines on medical prescriptions under a duly licensed chemist and druggist for a period of not less than four years then last past, may obtain a licence to practise as a chemist and druggist, on passing an examination to the satisfaction of the Board, in any subjects fixed by the Board with the approval of the Governor, and such examination may be held before the Board or any members thereof appointed for the purpose by the Board, or before one or more members of the Board, or such other persons as the Board may appoint as examiners in accordance with regulations relative to such examinations to be made by the Board, and to be approved of and published as in this Act is provided; provided that the Board may, in accordance with such regulations, accept as sufficient proof of proficiency in any subject a certificate from the Secretary of the University Council that the person referred to in such certificate has satisfactorily passed a University examination in such subject.

24. No person shall be admitted as a candidate at such examination unless he shall have satisfied the Board that he is entitled to be examined, and unless he shall have paid such fee for such examination, not exceeding five pounds, as may be prescribed by such rules and regulations as aforesaid.

No. 34—1891.

Candidate to satisfy Board he is entitled to be examined, and to pay a fee not exceeding £5.

25. Any person who holds a certificate or diploma of competency as a pharmaceutical chemist or as a chemist and a druggist from the Pharmaceutical Society of Great Britain, or from any college, society, or board recognised by the Board under such regulations, made, approved, and published as aforesaid, may, if otherwise complying with the provisions of this Act and of such regulations, without further examination, obtain a licence of admission to practise as a chemist and druggist in this Colony.

Certain duly qualified pharmaceutical chemists, chemists and druggists, may on complying with provisions of this Act, without further examination, obtain a chemist's and druggist's licence.

26. All licences aforesaid issued to chemists and druggists shall be signed by the Colonial Secretary upon the recommendation of the Board.

Colonial Secretary to sign all chemists' and druggists' licences upon recommendation of Board.

27. The Council may in accordance with regulations, approved of by the Governor, grant certificates of competence in midwifery

Council may grant certificates of competence in midwifery to females holding certificate or diploma, or if satisfied of her competence, skill and fitness.

(a) To any female who is the holder of a certificate or diploma as a midwife granted by any one of such examining bodies as the Council may from time to time prescribe and define.

(b) To any ⁽¹⁾ female who shall satisfy the examiners thereto appointed by the Council of her competence, skill and fitness in and for the practice of a midwife's calling.

Every such certificate shall entitle the holder to practice midwifery according to regulations to be framed by the Council from time to time, and shall be signed by the President and Secretary of the Council, and shall be entered in a register to be kept for that purpose, in connection with and as part of the register provided for in this Act.

Midwifery certificates to be signed by President and Secretary and registered.

28. The Council may from time to time frame rules and directions regulating the steps to be taken by medical practitioners and certificated midwives, for preventing the spread of puerperal fever, or any other similar disease. A copy of such rules shall from time to time be supplied by the Council, to all medical practitioners, certificated midwives, and to all persons applying for the same. And if it be proved that the holder of any certificate issued in terms of the last section, has wilfully disobeyed or disregarded the said rules and directions, or is grossly incompetent, or has been guilty of such improper conduct as, in the opinion of the Council, renders it inadvisable that she should continue to practise as a certificated midwife, then it shall be lawful for the Council to withdraw and cancel such certificate. Any medical practitioner or certificated midwife, who shall contravene any of such rules and directions as aforesaid, shall be liable on conviction to pay a fine not exceeding thirty pounds, or failing payment of such fine to

Council may frame rules for preventing spread of puerperal fever or similar disease. Midwives to have copy of rules.

Under what circumstances Council may withdraw and cancel midwives' certificates.

¹ Council may prescribe fee up to £2, Act 7, 1899, § 12, and cancel certificate, § 10.

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Penalty for falsely pretending to be a certificated midwife.

Council may grant certificates of competence as trained nurses.

To holder of certificate as a trained nurse.

To any person who shall otherwise satisfy the Council as to her competence, skill and fitness.

Certificates to be granted and signed and registered in same way as midwifery certificates.

Council may withdraw or cancel trained nurse's certificate if holder grossly incompetent or guilty of improper conduct.

Penalty for falsely pretending to be a trained nurse.

Council shall publish in January in each year list of certified midwives and trained nurses, with addresses.

Females not disqualified from admission as medical practitioner, &c., &c.

imprisonment with or without hard labour for a period not exceeding three months.

29. Any female who shall falsely pretend to be a certificated midwife, or who shall falsely use or adopt any name, title, or description implying that she is a certificated midwife, under this Act, shall be liable to a fine not exceeding twenty-five pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months.

30. The Council may, in accordance with regulations approved of by the Governor, grant certificates of competence as trained nurses

- (a) To any person who is the holder of a certificate as a trained nurse, granted by any one of such examining or other bodies as the Council may from time to time prescribe and define.
- (b) To any person who shall satisfy the examiners thereto appointed by the Council of his or her competence, skill and fitness in and for the occupation of (1) nursing, and who shall in addition produce proof by certificate or otherwise of having had sufficient training in nursing work, under competent supervision.

Every such certificate shall be granted and signed in manner hereinbefore provided in the case of midwifery certificates, and shall be entered in a register to be kept for that purpose, in connection with and as part of the register provided for in this Act.

31. The Council may at any time withdraw or cancel a certificate granted to a trained nurse, if it shall be proved that the holder is grossly incompetent, or has been guilty of such improper conduct as, in the opinion of the Council, renders it inadvisable that he or she should continue to practise as a trained nurse.

And any person who shall falsely pretend to be a trained nurse, registered under this Act, or who shall falsely use or adopt any name, title, or description, implying that he or she is such a registered trained nurse, shall be liable to all the penalties set forth in section twenty-nine of this Act.

32. The Council shall, in the month of January in each year, publish in the *Gazette*, a list showing:—

- (a) The names of all holders of certificates as certificated midwives on the 31st December last preceding.
- (b) The names of all holders of certificates as trained nurses on the said date. And such list shall, wherever possible, state the addresses of such holders.

33. No person shall be deemed to be disqualified to be duly admitted, licensed, and registered to practise as a medical practitioner, dentist, or chemist and druggist, merely by reason that such person is a female.

¹ Council may prescribe fee up to £2, Act 7, 1899, § 12.

34. Any person who shall wilfully procure or attempt to procure himself or any other person to be licensed and registered under this Act, by making or producing or causing to be made or produced any false or fraudulent representation, either verbally or in writing, not amounting to the crime of perjury, and every person aiding and assisting him therein, shall on conviction thereof, be liable to be imprisoned with or without hard labour for any term not exceeding twelve months.

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—
Person licensed or registered under false or fraudulent representation, and person aiding him, liable to imprisonment.

35. Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician, doctor of medicine, licentiate in medicine or surgery, bachelor of medicine, surgeon, general practitioner, or apothecary, or dentist, or chemist and druggist, or any name, title, addition, or description implying that he is licensed or registered under this Act or that he is duly qualified to practice as a physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary, or a dentist, or a chemist and druggist, and any person who shall practise as a medical practitioner, dentist, or chemist and druggist, without such licence as aforesaid, shall be liable to a fine of not exceeding one hundred pounds for each offence, and in default of payment, he shall be liable to be imprisoned with or without hard labour for a period not exceeding six months, unless such fine be sooner paid.

Any person falsely using professional titles, or implying that he is licensed or registered, or qualified; and any person practising without a licence as medical practitioner, dentist or chemist and druggist shall be liable to certain penalties.

And no person who is charged with a contravention of this section for practising as a ⁽¹⁾ dentist or a chemist and druggist without a licence shall be acquitted, by reason of the fact that he is in the employ of, or is agent for, a person duly licensed to practise as aforesaid, unless he is under the actual personal supervision and control of some duly licensed ⁽¹⁾ dentist, or chemist and druggist, as the case may be.

PART IV.

REGISTER OF MEDICAL PRACTITIONERS, DENTISTS, CHEMISTS AND DRUGGISTS, AND CERTIFICATED MIDWIVES.

36. There shall be kept in the Office of the Colonial Secretary a correct register of the names, addresses, date of admission, licence, or certificate, and qualifications of all

Register to be kept in the Colonial Secretary's Office.

- (1) Medical Practitioners,
- (2) Dentists,
- (3) Chemists and Druggists,
- (4) Certificated Midwives, and
- (5) Trained Nurses in this Colony; which register shall be kept in five corresponding parts,

and the person appointed by the Colonial Secretary to keep such register shall make entries therein in accordance with information

¹ But see § 11, Act 7, 1899. The exception as to dentist repealed.

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Manner in which register is to be kept, and duty of person keeping it.

to be from time to time supplied by the Secretary of the Council in respect of medical practitioners, dentists, certificated midwives and trained nurses, and by the Secretary of the Board in respect of chemists and druggists, and shall from time to time erase the names of all registered persons reported to him by the Secretary to the Council or Board, known to him to have died, and shall from time to time make necessary alterations in the addresses or statements of qualification of the persons registered under this Act: and to enable the register to be properly kept, it shall be lawful for the Secretary to the Council or Board to write and forward a duly registered letter to any registered person addressed to him according to his address on the register, to inquire whether he has ceased to practise or has changed his residence, and if no answer shall be returned to such letter within the period of six months from the sending of the letter, it shall be lawful to erase the name of such person from the register: provided, always, that the same may be restored at the request of the Council or Board, as the case may be, and that the erasure of his name under this section shall not be deemed to disqualify any person duly licensed or certified from practising the profession or carrying on the calling in respect of which such person is duly licensed or certified.

In case of six months' delay in replying to a letter from the Secretary name to be erased.

Registered person who may have obtained any other degree or qualification may have the same inserted in the register on paying a fee.

37. Every person registered under this Act, who may have obtained any degree or qualification other than the degree or qualification in respect of which he may be registered, may have such other degree or qualification inserted in the register in substitution for or in addition to the degree or qualification already registered at the request of the Council or Board, as the case may be, and on payment of such fee as may be prescribed by regulations made by the Council or Board, as the case may be and approved of and published as in this Act is provided.

No degree or qualification whatever shall be entered in register unless Council or Board be satisfied that the person claiming is entitled to it.

38. No degree or qualification shall be entered on the register, either on the first registration or by way of addition to a registered name or as in the last section mentioned, unless the Council or Board, as the case may be, be satisfied by the proper evidence that the person claiming is entitled to it, and any entry which shall be proved to the satisfaction of the Council or Board, to have been fraudulently or incorrectly made may be erased from the register: provided that a record of the reason for every such erasure shall be signed by the Under Colonial Secretary and kept in the Office of the Colonial Secretary.

The name of any person who has become or is disqualified, or whose name has been struck off the Hospital, University, or College roll, may be erased from the register.

39. The Colonial Secretary shall at the request of the Council or Board, as the case may be, cause to be erased from the register the name of any person who either before or after the passing of this Act may have been declared disqualified for practice by or whose name may have been struck off the roll, register or record of the Hospital, University, College or other body in this Colony or elsewhere from which such person received any diploma, degree, certificate, or other instrument upon the faith of which such person

was admitted to practise or obtained a licence in this Colony, and thereupon such person shall no longer be deemed to be a medical practitioner, dentist, or chemist and druggist as the case may be; provided that the Colonial Secretary, before causing the name of such person to be erased, shall be satisfied that such person has, if possible, had an opportunity of showing cause before the Council or Board, as the case may be, why his name should not be erased from such register.

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40. [Repealed by Act 7, 1899. See Section 13 of latter Act.]

41. Any licence or certificate obtained either before or after the taking effect of this Act by means of any false or fraudulent representation or by personation, shall be void, and any person holding or practising by virtue of any such licence or certificate shall be liable to the penalties provided by the thirty-fourth section of this Act, for practising without a licence.

Licence fraudulently obtained to be void.

Penalty.

PART V.

KEEPING AND SALE OF POISONS.

42. The several articles named and described in Schedule B to this Act shall be deemed to be poisons within the meaning of this Act, and the Council or Board may from time to time, by resolution, declare that any article in such resolution named ought to be deemed a poison within the meaning of Division I or Division II of the said Schedule of this Act, and thereupon such resolution shall be submitted through the Colonial Secretary for the approval of the Governor, and if such approval shall be given then such resolution and approval shall be published in the *Gazette*, and on the expiration of one month from such publication the article named shall be deemed to be a poison accordingly within the meaning of this Act.

The articles named and described in Schedule B deemed to be poisons.

Council or Board may from time to time declare other poisons.

43. All medical practitioners, chemists and druggists shall label all vessels, boxes, bottles, wrappers, or packages in their possession and containing poisons, as enumerated in Schedule B to this Act, with the word "Poison" and shall exercise due care and caution in the custody of the same.

All poisons to be labeled "Poison" and due care and caution exercised in their custody.

44. If any medical practitioner or chemist and druggist shall suffer such poisons as aforesaid to be kept without due care or shall sell or keep for sale by himself or any apprentice, servant or agent,

Penalties on chemists and druggists failing to exercise due care, and for selling or keeping for sale drugs of a bad quality.

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any medicines or drugs of bad quality, he shall be liable to a fine not exceeding twenty pounds, or 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, and the person convicted shall further become liable to withdrawal and cancellation of his licence if the Governor shall deem it fit to withdraw or cancel the same.

Poisons shall only be sold by licensed apothecary, chemist and druggist, or by their indentured apprentice or paid assistant.

Exception.

45. Poisons, within the meaning of this Act, shall not be sold by any person other than a duly licensed apothecary, or chemist and druggist, or the indentured apprentice or *bonâ fide* paid assistant of such apothecary or chemist and druggist: provided that nothing herein contained shall be deemed to limit the operation of the twenty-second section of this Act. But nothing in this section contained shall prevent the sale of any poison by an importer or general dealer to any other importer or general dealer, or to any medical practitioner or chemist and druggist.

Certificate to importer or general dealer to sell certain poisons.

46. Notwithstanding anything in the last preceding section contained it shall be lawful for any importer or general dealer upon obtaining a certificate ⁽¹⁾ for which a charge of one pound shall be made, from the Resident Magistrate of the district in which he carries on his business as such importer or general dealer to the effect that in the opinion of the said magistrate he is a fit and proper person to deal in poisons under the terms of this section, to keep for sale and to sell arsenic or any compounds thereof in quantities of not less than one pound weight, and strychnine, or any compounds thereof in unbroken vials properly corked and sealed, and labelled with the name of the article, and bearing the name of the person or persons by whom such article was in the first instance made up for sale.

Poisons to be sold only if required for certain purposes.

47. No such importer or general dealer, as is in the last section mentioned, shall sell or dispose of any poison therein specified, unless he is satisfied that the person obtaining the same requires it for the destruction of wild animals or vermin, or for the treatment of scab or other disease in animals.

Book of sale of poisons to be kept.

48. Every such importer or general dealer as aforesaid shall, in regard to every such sale or disposal, enter in a book to be kept for that purpose:

- (a) The date of the sale or disposal;
- (b) The nature and the quantity of the poison disposed of;
- (c) The name of the purchaser;
- (d) The purpose for which the poison was required;

and shall allow the said book to be at any time inspected by the Resident Magistrate of the district, or any person authorised by the said magistrate in writing. And any importer or general dealer contravening the provisions of this or the last preceding section, shall be liable to a fine not exceeding fifty pounds.

¹ Printed as amended by § 6, Act 7, 1899.

49. If any person not being a medical practitioner, or chemist and druggist, shall keep in his possession, or under his control, any poison, without exercising all due care and caution in the custody of the same, he shall be liable to a fine of not exceeding £10, or in default of payment to imprisonment for any period not exceeding one month.

50. (1) Every chemist and druggist, and the indentured apprentice or *bonâ fide* paid assistant of such chemist and druggist, may sell poisons, within the meaning of this Act, under the following conditions, but no other:

- (a) If the box, bottle, vessel, wrapper or cover in which any poison is contained on delivery to the purchaser be, in every case of sale of any such poison, distinctly labelled with the name and address of such chemist and druggist, with the name of the article and with the word "Poison";
- (b) If the sale be by wholesale in the ordinary course of trade or business, on an order in writing signed by the purchaser;
- (c) If the sale be to a person producing the prescription of a medical practitioner prescribing any poison now enumerated or hereafter added to this list of poisons named in division I of Schedule B to this Act, in manner provided by the forty-second section of this Act, and if an entry be made in a book, called the Prescription Book, to be kept for that purpose, setting forth in separate columns the date of sale, the name and address of the purchaser, and the ingredients and quantities of the prescription;
- (d) If no such prescription by a medical practitioner be produced, if an entry be made in a book called the Poisons Book to be kept for that purpose, in lieu of the ingredients and quantities aforesaid, a statement of the quantity sold and the purpose for which such poison is stated to be required, and if such entry shall, in case the purchaser be not known to the seller, and in case the poison sold be a poison now enumerated or hereafter added as aforesaid to the list of poisons named in division I of Schedule B to this Act, be, before delivery of the poison, signed by the purchaser, and also by some person, known to the seller, who shall have introduced the purchaser to the seller.
- (e) If the contract for the sale of any poison now enumerated or hereafter added as aforesaid to the list of poisons named in Division I of Schedule B to this Act, and if the seller shall keep the correspondence from the purchaser relative to such sale, shall make such entry of all particulars as aforesaid in the aforesaid book, and shall either be

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Penalty.

Conditions under which poisons may be sold.

Labelled with name and address of chemist and druggist and "Poison."

If wholesale on written order of purchaser.

On production of prescription of a medical practitioner.

Entry to be made in a book called Prescription Book, giving full particulars.

In absence of prescription entry to be made in Poisons Book to state quantity sold, purpose for which acquired; and shall be signed, if purchaser unknown to seller by purchaser and some person known to seller who has introduced purchaser to seller.

Correspondence to be kept and all particulars entered in book.

¹ Sub-section (f) added by § 6, Act 7. 1899.

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Must be acquainted with purchaser's signature or have attestation as to genuineness.

Penalty for contravening sections 45 or 50.

Chemist and druggist responsible for every act or default of those in his employment due to negligent supervision in respect of improper sale of poisons.

Poisons book to be submitted on demand for inspection of Secretary of Board, failing which a penalty will be imposed.

Penalty on purchaser of poison giving false information; signing as a witness to an unknown person, or failing to comply with provisions of this Act.

Certain sales of poison exempted from this part of this Act.

acquainted with the signature of the purchaser or shall receive and keep a written attestation by some Resident Magistrate, Justice of the Peace, or Minister of Religion of the genuineness of such signature.

(f) No poison shall be sold to any person under the age of fifteen years unless upon the prescription of a medical practitioner.

51. Any person convicted of a contravention of any provision of the forty-fifth or fiftieth sections of this Act shall be liable to a fine not exceeding fifty pounds sterling, or in default of payment to imprisonment with or without hard labour for any term not exceeding three months, and every chemist and druggist shall be responsible for every act or default of any apprentice, clerk, servant, or agent in his employment other than a person entitled to take out an annual licence as a chemist and druggist, in respect of the improper sale of any poison in breach of any provision of either of the said sections, in case the said act or default was due to negligence on the part of such chemist or druggist in supervising the conduct of such apprentice, clerk, servant or agent.

52. The book kept by every chemist and druggist in manner provided in sub-section (d) of the fiftieth section of this Act shall be submitted forthwith upon demand for the inspection of the Secretary of the Board or of any person authorised by him in writing under his hand, and any such apothecary or chemist and druggist who personally or by any apprentice, clerk, servant or agent employed by him shall fail forthwith upon demand to produce such book for inspection, shall be liable upon conviction to a fine not exceeding twenty pounds sterling, and in default of payment to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

53. If any person purchasing any poison, within the meaning of this Act, shall give false information to the seller in relation to the particulars which the seller is authorised to require, or if any person sign as witness to the sale of any such poison to a person unknown to such witness, or if any person fail to comply with any provision of this part of this Act for which no specific penalty is provided, every such person shall on conviction be liable to a fine not exceeding twenty pounds sterling, and, in default of payment of such fine, to imprisonment with or without hard labour for any term not exceeding three months.

54. The preceding provisions of this part of this Act shall not apply to the sale ⁽¹⁾ of:

- (a) Any poison in the form of homœopathic medicine unless in the crude state, mother tincture, or of a greater strength than the third decimal potency;
- (b) Patent or Dutch medicines;
- (c) Photographic materials for the purpose of photography;

¹ See § 3, Act 7, 1899, for definition of "shop."

- (d) Medicines dispensed by veterinary surgeons or farriers for animals under their treatment;
- (e) Fly poison papers when duly marked as such;
- (f) Any poison supplied by the chairman or secretary of any poisoning club to any member of a poisoning club for the purpose of destroying wild animals or vermin;

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Provided that particulars of all such sales under sub-section (f) (1) shall be entered in a book by the seller, and that the box, bottle, vessel, wrapper or cover in which such poison is immediately contained, shall be labelled in manner provided by the forty-third section of this Act.

Proviso.

PART VI.

MISCELLANEOUS.

55. It shall be lawful for the Secretary of the Council or Board, as the case may be, or any person duly authorised in writing under the hand of the president, to take and institute any proceedings, civil and criminal, on behalf of the Council or Board, but nothing herein contained shall be deemed to deprive any person of any right which, but for this section, he would have to institute any proceedings, civil or criminal, against any other person.

Institution of legal proceedings, either civil or criminal.

56. If in any proceedings, civil or criminal, it shall be material to determine whether any person be or be not in any capacity duly licensed or certified under this Act, a certificate, under the hand of the Under Colonial Secretary, to the effect that such person is or is not, as the case may be, duly licensed and registered in such capacity, shall be deemed and taken to be sufficient *prima facie* proof of the fact alleged in such certificate.

Certificate of Under Colonial Secretary *prima facie* proof of licence and registration under this Act.

57. The Council shall be deemed to be concerned with and interested in matters arising out of or in connection with so much of this Act as deals with medical practitioners and dentists, and the Board shall be deemed to be concerned with and interested in matters arising out of or in connection with so much of this Act as deals with apothecaries and chemists and druggists.

Council concerned with medical practitioners and dentists.

Board concerned with apothecaries and chemists and druggists.

58. All rules or regulations by this Act authorised to be made by the Council or the Board shall be of legal validity only when approved of, and published by the Governor by notice in the *Gazette* and by such regulations, penalties for the breach thereof may be prescribed not exceeding in any case a fine of ten pounds sterling.

Rules and regulations shall be of legal validity, only when approved and published by the Governor.

59. For the purposes of any inquiry by the Council or Board authorised by this Act, it shall be lawful for the President for the time being of the Council or Board to administer an oath to any person testifying before the Council or Board, and any person who shall wilfully give false testimony on oath as to any matter material to any such enquiry, shall be guilty of a contravention of this section, and be liable to the punishments by law provided for the crime of perjury.

For purposes of any inquiry the President of Council or Board may administer the oath: false testimony punished as perjury.

¹ Printed as amended by Act 7, 1899, § 6.

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Only licensed registered persons entitled to recover any charge in any court of law for medical advice and medicines, &c.

Only licensed registered persons to be medical officer or apothecary in any hospital or other public establishment or society.

No certificate required by law from medical practitioner valid unless signed by licensed registered person.

Fees for admission for licensing to be paid to Council and Board, who shall administer the fund.

All regulations to be approved by Governor and published in *Gazette*.

60. No person shall be entitled to recover any charge in any court of law for any medical or surgical advice, or attendance, or for the performance of any operation as a medical practitioner or dentist, or commonly performed only by a medical practitioner or dentist, or for any medicine which he shall have prescribed or supplied, unless he shall prove upon the trial that he is licensed under this Act.

61. No person shall hold any appointment as a physician, surgeon, or other medical officer, or dentist, ⁽¹⁾ or as an apothecary or compounder of any medicines in any hospital, or in any lunatic asylum, convict station, house of correction, or other public establishment, or institution, or to any friendly or other society for affording mutual relief in sickness, infirmity, or old age, or as a medical officer of health, unless he be licensed and registered under this Act as a medical practitioner or dentist, ⁽¹⁾ or as a chemist and druggist, as the case may be.

62. No certificate required by any law, now or hereafter in force, from any medical practitioner shall be valid unless the person signing the same be licensed and registered under this Act.

63. The Council and the Board shall respectively administer for the purposes of this Act such funds as may be derived from fees or charges payable under this Act or any law or under any regulations made under this Act, in respect of the admission or licensing of medical practitioners, dentists and chemists and druggists, which fees or charges shall be paid over to the Council and the Board respectively; and the administration of such funds shall be duly accounted for and audited in manner by law provided in respect of the administration of further funds, as the case may be.

64. All regulations framed under the provisions of this Act shall be approved by the Governor and published thereafter in the *Gazette*, and shall take effect only after such approval and publication.

Schedule A.

SCHEDULE A.

I, _____, residing at _____, and holding the qualification of _____, hereby declare that I was *bonâ fide* engaged in the practice of dentistry at _____ at the date of the taking effect of the „ Medical and Pharmacy Act, 1891.”
 Dated at _____ this _____ day of _____ 18____
 (Signed) _____
 (Witness) _____

¹ Printed as amended by Act 7, 1899, § 6.

SCHEDULE B. (1)

No. 34—1891.
Schedule B.

LIST OF POISONS WITHIN THE MEANING OF THE ACT No. 34 OF 1891, AND ACT 7, 1899.

DIVISION I.

DIVISION II.

<p>Not to be sold unless the purchaser is known or is introduced by some person known to the seller :</p>	<p>ARSENIC, and its preparations ;</p>	<p>Must, in every case of sale, be labelled with</p>	<p>CARBOLIC ACID ; ALMONDS, ESSENTIAL OIL OF (unless deprived of Prussic Acid).</p>
<p>Entry to be made in Poison-Book OF 1. Date of Sale ; 2. Name and address of purchaser ; 3. Name and quantity of articles sold and Purposes for which it is wanted ; and 4. Attestation by signature of purchaser and person introducing him.</p>	<p>ACONITE ATROPINE, STRYCHNINE, and all poisonous alkaloids and their salts ;</p>	<p>1. Name of article. 2. The word "Poison." 3. Name and address of seller. Unless sold on medical prescription when need not be labelled poison with the word "Poison" nor the name of the article, but entry to be made in Prescription Book of</p>	<p>BELLADONNA, and its preparations ; CANTHARIDES, Tincture, and all vesicating liquid, preparations ;</p>
<p>AND Must, in every case of sale, be labelled with</p>	<p>CANTHARIDES ;</p>	<p>1. Date of Sale ; 2. Name and address of purchaser ; 3. Ingredients and quantities of prescription.</p>	<p>CHLOROFORM ; CHLORAL HYDRATE, and its preparations ;</p>
<p>EXCEPT When sold on medical prescription for internal use when need not be labelled with the word "Poison" nor the name of the article, but entry to be made in Prescription Book</p>	<p>CORROSIVE SUBLIMATE, and its preparations ;</p>	<p>VERMIN KILLERS, if preparations of poisons the preparations of which are in Division I. of this schedule.</p>	<p>COCAINE ; NUX VOMICA, and its preparations ;</p>
<p>OF 1. Date of Sale ; 2. Name and address of purchaser ; 3. Ingredients and quantities of prescription.</p>	<p>CYANIDE OF POTASSIUM, and all metallic cyanides and their preparations.</p>		<p>OPIUM and MORPHIA, and their preparations, and preparations of Poppies ;</p>
	<p>TARTAR EMETIC ;</p>		<p>OXALIC ACID ; PRECIPITATE, RED (Red Oxide of Mercury) ;</p>
	<p>ERGOT OF RYE, and its preparations ;</p>		<p>PRECIPITATE WHITE (Amoniated Mercury) ;</p>
	<p>PRUSSIC ACID, and its preparations ;</p>		<p>VERMIN KILLER (see Division I.) Compounds containing "Poisons," prepared for the destruction of vermin, if not subject to the provisions of Division I. are in Division II.</p>
	<p>SAVIN, and its oil ;</p>		

¹ Printed as Amended by Act 7, 1899, § 18.

No. 35—1891.]

[March 15, 1892.

ACT

To Amend the Law relating to Lunatics.

[Repealed by Act 1, 1897.] [Pages 2927 to 2940.]

No. 36—1891.]

[August 21, 1891.

ACT

To Abolish the exemption from Certain Rates in respect of Certain Immovable Property vested in Her Majesty the Queen in Her Colonial Government, or occupied by the said Government for public purposes. (1)

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. So much of section one hundred and fifteen of "The Municipal Act, 1882," or of any other law as is repugnant to or inconsistent with the provisions of this Act, is hereby repealed. (2)

Repeal of repugnant laws.

2. From and after the taking effect of this Act any immovable property which is situated within the limits of any (3) municipality or corporate town, and which is vested in Her Majesty the Queen in Her Colonial Government, or occupied by the Colonial Government for public purposes, shall, subject to the provisions hereafter contained, be liable to be rated for municipal purposes, by the council of such municipality, or town, to the same extent, and in the same manner, as if the said property had been owned or occupied, as the case might be, by a private person.

Immovable property belonging to Colonial Government situated in municipalities, to be rateable for municipal purposes.

3. Nothing in this Act contained shall render liable to any municipal rate any immovable property vested in Her Majesty as aforesaid, or occupied by the Colonial Government, which at the

Property exempt from municipal rates on other grounds than mere ownership by Government to remain exempt.

¹ Amended by Act 19, 1892 (p. 3028).

² See Act 26, 1893, § 97 (p. 3231).

³ Simon's Town specially excepted from operations of this Act. See Act 2, 1896 § 2 (p. 3586). And railway property in Stellenbosch for water rate by § 19, Act 20, 1904 (p. 4729).

This Act extended to all Native Territories by Proclamation 401, 1897.

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Lands and other property exempt from the provisions of the 2nd section of this Act.

date of the taking effect of the Act may be exempt from municipal rates on other grounds than the mere ground of such ownership or occupation.

4. Notwithstanding the provisions of the second section of this Act, no rates ⁽¹⁾ shall be levied by or be payable to the Council of any Municipality or corporate town in respect of

- (a) Any land which has not been built upon, or upon which permanent works or improvements have not been effected.
- (b) Any dock, breakwater, wharf, pier, retaining wall, or immovable property of any kind (not being a dwelling house or a store or building from which revenue is derived by any harbour authority), which forms part of or is used for the purpose of any harbour works.
- (c) Any line of railway and railway buildings, ⁽²⁾ situated in any part of the Colony.
- (d) Any gaol or convict station.
- (e) Any land or buildings the property of the Colonial Government, but occupied by Her Majesty the Queen in Her Imperial Government for Naval or Military purposes.

5. No rates shall be levied by or be payable to the Town Council of Cape Town upon

- (1) The building and grounds situate at Cape Town and known as the Houses of Parliament.
- (2) Any immovable property, other than dwelling houses erected after the promulgation of this Act, which is under the control of the Table Bay Harbour Board, and is situated within the dock area as enclosed for Customs purposes, and any land reclaimed from the sea which is under similar control and upon which no dwelling house has been erected.

Rates not to be levied on Houses of Parliament and certain immovable property under control of Harbour Board.

6. The amount of any rates duly imposed hereafter upon any such immovable property as is mentioned in the second section shall be paid to the council entitled to receive the same out of the Colonial Treasury.

Rates levied under this Act to be paid out of Treasury.

Short title.

7. This Act may be cited for all purposes as the "Crown Property Rating Act, 1891."

No. 37—1891.]

[August 21, 1891.]

Act to amend "The Scab Act, 1886."
[Repealed by Act No. 20, 1894.]

¹ Printed as amended by § 3, Act No. 19, 1892.

² See § 3, Act 19, 1892 (p. 3028).

No. 38—1891.]

[August 21, 1891.]

ACT

To Amend the Act No. 36 of 1886, commonly called "The Game Law Amendment Act, 1886." (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. All the words after "Governor" in the fourth section of the Act No. 36 of 1886, commonly called "The Game Law Amendment Act, 1886," are hereby expunged, and the following inserted in their stead, "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."

2. From and after the passing of this Act, no person shall, anything to the contrary in the fourth section of the "Game Law Amendment Act, 1886," or any other law notwithstanding, sell, barter, hawk, or expose for sale any game, without having previously taken out a licence, to be duly issued by any Distributor of Stamps or any other authorised officer, which licence shall be in addition to the licence to kill, catch, capture, pursue, hunt, or shoot at game required by the said section of the said Act, and shall be issued subject to the following conditions:

- (a) No such licence shall be issued by any Distributor of Stamps or any other authorised officer, without a certificate from the Resident Magistrate of the District, that the applicant for such licence is to the best of his knowledge and belief a fit and proper person to sell game.
- (b) Every such licence shall, no matter at what period of the year the same be taken out, expire on the 31st December following; provided that when any such licence shall be taken out from or after the first of July, there shall be payable only one half of the sum appointed in respect of such licence.
- (c) The sum of three pounds sterling shall be payable in respect of every such licence.

Every person who shall sell, barter, hawk or expose for sale any game, without having previously taken out such licence, shall be liable to a penalty not exceeding ten pounds, or, in default of pay-

Preamble.

Penalty in Section 4 of Act 36 of 1886 expunged and different penalty inserted.

Licence of £3 for persons selling, hawking, or exposing game for sale.

Conditions of licence.

¹ See Act 30, 1894, § 4. Amended by Act 33, 1899 (p. 4153.) See footnote to Act 36, 1886 (p. 2419). Extended by Proclamation No 42 of 1892 to Transkei and Griqualand East: by Proclamation No. 356 of 1893 to Tembuland and by Proclamation 157, 1896, to Port St. John's.

No. 3—1892.

ment, to imprisonment, with or without hard labour, for a period not exceeding one month, unless the fine be sooner paid: Provided that nothing in this section contained shall apply to the selling, bartering, hawking or exposing for sale by the owner or occupier of land of any game killed upon the land owned or occupied by him.

Not to apply to owners or occupiers of land.

Amendment of Section 7 of Act 36 of 1886.

3. After the words "shoot at any game" in the seventh section of the said Act, there shall be inserted the following words, "or with gun or dog trespass." And there shall be added to the said section the following: "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 on the lands in question."

Section 5 of Act 36 of 1886 not to apply to possession of game transmitted from district in which at time of transmission there was no close season.

4. Nothing in the fifth section of Act No. 36 of 1886 contained shall render it illegal to possess game in any district during the close time of such district if such game shall have been transmitted into such district from some other district in which at the time of such transmission there shall not have been a close season for such game.

5. All fines and penalties under this Act shall be recoverable in the court of the Resident Magistrate of the district in which the offence shall have been committed.

Short title and effect of Act.

6. This Act may be cited as "The Game Law Amendment Act, 1891," and shall be read as one with "The Game Law Amendment Act, 1886."

No. 1—1892.]

[June 24, 1892.

Act to apply a further Sum not exceeding Eighty-seven Thousand One Hundred and Forty-three Pounds Sterling for the Service of the year ending the 30th June, 1892.

[Spent.]

No. 2—1892.]

[June 24, 1892.

Act to Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1893.

[Spent.]

No. 3—1892.]

[June 24, 1892.

ACT (1)

To Amend the Cape of Good Hope General Loans Acts, 1881 and 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:—

Repeal of sub-section (1) of section 9 of Act 16 of 1881.

1. Sub-section (1) of Section 9 of Act 16 of 1881 is hereby repealed, and the second section of this Act shall be read in lieu thereof; but such repeal shall not affect any act done, any right

¹ See Act 16, 1881 (p. 1764), and footnote thereto.

acquired, or any liability incurred heretofore under the terms of the said sub-section.

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2. The Governor may from time to time declare any loan of this Colony, whether already issued or about to be issued at the time of such declaration in the form of Debentures or Consolidated Stock or Colonial Stock, to be convertible into Colonial Stock or Consolidated Stock, as the case may be, of such denominations and on such conditions as he may, before the creation of the stock issued in exchange, see fit to prescribe: Provided that the holder of any Colonial Stock converted into Consolidated Stock shall be required to pay any amount payable under the hundred and fourteenth Section of Act 54 and 55 Vict. Ch. 39, or other Act in force in the United Kingdom at the date of conversion, as composition for Stamp duty chargeable on transfers of Stock.

Governor may declare any loan of the Colony to be convertible into Colonial Stock or Consolidated Stock.

3. All loans converted under the authority of this Act, and all charges and expenses incurred in carrying out the provisions hereof, shall be chargeable upon and payable out of the revenues of this Colony.

Loans converted under this Act chargeable on Colonial revenue.

4. The interest on all Colonial Stock bearing interest at the rate of three-and-a-half per cent. per annum, whether such stock has been already issued, or may be issued hereafter, shall, from and after the taking effect of this Act, be payable on the first day of January, and the first day of July in each and every year, anything in the Cape of Good Hope General Loans Acts, 1881, 1883 and 1888, to the contrary notwithstanding.

Interest on Colonial Stock, bearing interest at $3\frac{1}{2}$ per cent. per annum, when payable.

5. The first payment of interest after the taking effect of this Act on Colonial Stock of the denomination in the preceding section mentioned, and in existence at the date of the said taking effect, shall become due on the first half-yearly date prescribed in the said preceding section, which shall happen after the promulgation of this Act.

First payment of such interest on such existing Colonial Stock.

6. The Governor may, from time to time, frame or approve of regulations, not inconsistent with this Act, for carrying into effect the conversions hereby authorised, and for the adjustment and alteration of the dates upon which interest upon any stock converted shall become payable.

Governor may frame regulations for carrying into effect conversions.

7. From and after the taking effect of this Act it shall be lawful for the Governor, anything in the Cape of Good Hope General Loans Acts, 1881, 1883 and 1888 to the contrary notwithstanding, to raise the whole or part of any sum of money authorised by Parliament by the issue in this Colony of Cape of Good Hope Consolidated Stock: such stock so issued shall be registered in the stock books of the Treasury, and while so registered shall be subject to all the provisions of the law as to transfer in the said books which affect Colonial Stock, but it may be transferred to the register of Consolidated Stock in England in accordance with such regulations, not inconsistent with this Act, as the Governor may from time to time approve.

Governor may raise money authorised to be raised by issue in Colony of Cape of Good Hope Consolidated Stock.

No. 4—1892.

Nominal amount of debentures or stock issued not to exceed amount authorised by Parliament.

Loan raised at a premium.

8. In the case of any loan hereafter raised under any authority, granted or to be granted by Parliament, the nominal amount of debentures or stock issued shall not exceed the amount authorised by Parliament to be borrowed for the work or service, and in the event of the loan being raised at a premium, any premium accruing over and above the amount so authorised, shall after deducting the expenses incurred in raising such loan be paid to the Commissioners of the Sinking Fund to be by them applied in reduction of the Debt of the Colony, in manner provided by law.

Effect and short title of Act.

9. This Act shall be construed as one with "The Cape of Good Hope General Loans Acts, (1) 1881, (2) 1883, and (3) 1888," and may be cited as "The Cape of Good Hope General Loans Act, 1892."

No. 4—1892.]

[July 14, 1892

ACT

To make better Provision for the Management of Reformatory Institutions and the Apprenticeship of Juvenile Offenders in Custody in such Institutions:

Preamble.

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:—

Effect and short title.

1. This Act shall be read as one with the "Reformatory Institutions Act, (4) 1879," and may be cited as the "Reformatory Institutions Act, 1892."

Meaning of "The Minister."

2. "The Minister" for the purposes of this Act means the Minister to whom the management of Reformatory Institutions shall be assigned by the Governor.

Removal by Minister's warrant of Juvenile Offenders from prison to Reformatory Institution, and apprenticeship of such offenders.

3. The Minister may by warrant under his hand remove to any Reformatory Institution any child under the age of sixteen years who is in custody under sentence in any prison, and such warrant shall authorise the detention of such child in such Institution or his apprenticeship under the provisions of the "Reformatory Institutions Act, 1879," and of this Act: provided that

- (a) Such child may be detained under apprenticeship until the expiration of such sentence, notwithstanding that he may before that time reach the age of sixteen years;
- (b) The Minister may, at any time, by warrant under his hand, remove such child from the Reformatory Institution to any prison, there to undergo the remainder of his sentence.

¹ No. 16 (p. 1764).

² No. 18 (p. 2084).

³ No. 17 (p. 2568).

⁴ No. 7 (p. 1595). See also Act 4, 1905 (p. 4808), providing for detention otherwise than in gaol of juvenile offender awaiting conveyance to a Reformatory.

4. The Minister may by warrant under his hand transfer any destitute child to an industrial home, or if that be found impracticable to a Reformatory Institution, if he shall be satisfied on information received from any Resident Magistrate that after the lapse of a reasonable time and the exercise of reasonable endeavours such Resident Magistrate has been unable to apprentice such child to any relative or any fit and proper person under the provisions of the Masters and Servants Acts, 1856 to 1889, and such child if so transferred to a Reformatory Institution shall, until he attain the age of sixteen years, or until he be apprenticed, be an inmate of such Reformatory Institution within the meaning of the Act No. 7 of 1879 and of this Act: Provided that the Minister may at any time order the discharge of such child if not lawfully apprenticed.

5. Notwithstanding anything to the contrary contained in the "Reformatory Institutions Act, 1879," or in this Act, any child being an inmate of any Reformatory Institution may, with the consent of the Minister, be there detained as an inmate until he shall have attained the age of eighteen years; or may be apprenticed to any useful calling or occupation in manner provided by the Act No. 7 of 1879 and this Act, until he shall have attained the age of twenty-one years; if in either case such child when of the full age of fifteen years shall in writing signed by or bearing the mark of such child and executed before a Resident Magistrate, intimate his full and free consent to such detention or apprenticeship beyond the age of sixteen years: Provided that such consent shall not be required from any child apprenticed until the expiration of the period for which he was sentenced under section three of this Act.

6. The provisions of the Masters and Servants Acts, 1856 to 1889, relating to apprentices, save in so far as they may be inconsistent with any provision of the "Reformatory Institutions Act, 1879," or of this Act, shall, so far as they are applicable, be of full force with regard to every child apprenticed under the last-named Acts throughout the term of the apprenticeship of such child.

7. Notwithstanding the refusal or failure on the part of any parent or guardian to consent to the apprenticeship of any inmate of a Reformatory Institution, such apprenticeship may take place with the consent of the Minister, after due inquiry by him into the circumstances of the case.

8. Every Resident Magistrate shall have jurisdiction in any case brought against any person being at the time within his district, for any offence or any breach of duty, or obligation under any contract of apprenticeship under the "Reformatory Institutions Act, 1879," or this Act, and may in the exercise of such jurisdiction enforce the performance by every master and every apprentice of the duties and obligations imposed on them respectively by law, whether the offence, or breach of duty, or failure to

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Destitute children, not apprenticed by Resident Magistrates made inmates of Industrial Home or Reformatory Institution by warrant of Minister.

Age to which inmate may be detained or apprenticed.

Application of Masters and Servants Acts.

Minister's consent sufficient for apprenticeship.

Jurisdiction of Resident Magistrates in respect of contract of apprenticeship.

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Persons who may enforce the duties and obligations of masters.

Cancellation of contract by Court of Resident Magistrate on breach by apprentice or master.

observe any obligation in the contract shall have occurred within the area of his jurisdiction or not.

9. The duties and obligations of any master referred to in the last preceding section of this Act may be enforced at the instance of the apprentice, or of his parent or guardian, or of any person authorised in writing by the Attorney-General (or by the Solicitor-General and Crown Prosecutor within their respective jurisdictions), or by the Superintendent of the Reformatory Institution from which the child was apprenticed.

10. If it be proved to the satisfaction of the Court of the Resident Magistrate that any master or any apprentice has broken a material condition of any contract of apprenticeship, such Court may direct the said contract to be cancelled, and shall thereupon by warrant under the hand of the Resident Magistrate either return the child to the Reformatory Institution from which he was apprenticed, or by writing under the hand of the said Resident Magistrate transfer the said contract to some fit and proper person ready and willing to undertake the duties and obligations of the master under such contract for the unexpired period thereof: Provided that

- (a) Any Resident Magistrate who may authorise any such person to become the master of such apprentice for such period, shall forthwith give notice in writing, setting forth the full name and address of such person to the Superintendent of the Reformatory Institution from which such child was apprenticed;
- (b) The cancellation of any contract shall not be deemed to deprive any master or apprentice of any right or remedy which had accrued to him before the cancellation of such contract;
- (c) Any child returned under warrant under this section to any Reformatory Institution may be dealt with as though he had not been apprenticed under the cancelled contract, but had continued to be an inmate of such Reformatory Institution;
- (d) No apprentice shall without his consent given in manner provided by the fifth section of this Act, be detained after his return by warrant under this section in any Reformatory Institution, if he had reached the age of sixteen years at the time of the cancellation of his contract of apprenticeship, unless he shall have been apprenticed under the provisions of section three of this Act, and unless any portion of the period of his sentence has not yet expired, in which case he may be there detained until his removal is authorised by warrant of the Minister in accordance with the said section to undergo in any prison the remainder of such sentence.

11. The twenty-second section of the Reformatory Institutions Act, 1879, is hereby repealed, and from and after the taking effect of this Act any person who, without authority under regulations duly framed in terms of the last named Act or of this Act, shall

Section 22 of Act No. 7 of 1879 repealed. Offences in relation to the inmates and premises defined, and penalties enacted.

- (a) Hold communication with any inmate of any Reformatory Institution; or
- (b) Give to or receive from any such inmate any article or thing whatsoever; or
- (c) Enter any Reformatory Institution or any building, yard, or ground attached or belonging thereto and refuse when ordered by any duly authorised officer of such institution to depart therefrom,

shall be liable on conviction to a fine not exceeding ten pounds sterling, or in default of payment of such fine to imprisonment with or without hard labour for any term not exceeding three months, or, in the case of an offender under the age of sixteen years, to twelve cuts with a cane.

12. Any officer of any Reformatory Institution not being a superintendent, assistant superintendent, schoolmaster, or medical officer, who shall be guilty of deserting from the institution, or of any neglect or violation of duty or of contravening any of the rules or regulations made by the Governor, shall, upon conviction before any Resident Magistrate having jurisdiction, be liable, unless any other penalty is by any law specially provided for his offence, to a fine not exceeding ten pounds sterling, or in default of payment, to imprisonment with or without hard labour for any term not exceeding three months.

Punishment of breach of duty by subordinate officers of Reformatory Institutions.

13. The sixteenth and twenty-sixth sections of the Act No. 7 of 1879, together with all rules and regulations made and published under the last mentioned section shall be repealed from and after the date of a notice in the *Gazette*, publishing rules and regulations made under this section, and the Governor may from time to time by notice in the *Gazette* make, repeal, or amend rules and regulations for all or any of the following objects or purposes:

Sections 16 and 26 of Act No. 7 of 1879 repealed. Power of Governor to make regulations.

- (a) For the general government, management, and inspection of Reformatory Institutions and their officers and inmates;
- (b) For the regulation of the periods of service and the duties and conduct of officers and inmates of Reformatory Institutions;
- (c) For the mode of supplying food, the scale of diet, and the clothing and necessaries to such officers and inmates;
- (d) For the safe custody of inmates of Reformatory Institutions when at labour or otherwise;
- (e) For rewards by mitigation or remission of sentence or otherwise to well conducted inmates;
- (f) For the granting and withdrawing of indulgences to inmates;
- (g) For preventing the supply to inmates and the introduction into Reformatory Institutions of any article of food or drink, or any other article, without proper authority;
- (h) For assigning to certain officers of Reformatory Institutions power and jurisdiction to try and punish inmates who may be found guilty of any breach of any rule or regulation;

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(i) For the visiting and inspection of children apprenticed under the provisions of the Reformatory Institutions Act, 1879, or of this Act.

By such rules and regulations the Governor may impose a penalty at his discretion for any breach of any such rule or regulation, or different penalties in case of successive breaches.

Repeal of Sections 16 and 26 of Act No. 7 of 1879, not to affect acts committed before date of repeal.

14. The repeal of the sixteenth and twenty-sixth sections of the Act No. 7 of 1879 shall not alter the liability of any person in respect of any act or omission or of any matter or thing done or occurring before the date of the notice in the *Gazette* in the last preceding section mentioned, but such acts, omissions, matters, and things shall be judged of as though this Act had not been passed.

Repeal of section 12 of Native Territories Penal Code.

15. From and after a date notified by the Governor in the *Gazette*, section twelve of the "Native (1) Territories Penal Code" shall stand repealed.

No. 5—1892.]

[October 14, 1892.

ACT (2)

To repeal the Act 7 of 1882, commonly called "The Friendly Societies Act, 1882," 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:—

Repeal of the Act No. 7 of 1882.

1. The Act No. 7 of 1882, commonly called "The Friendly Societies Act, 1882," is hereby repealed, but this repeal or anything in this Act contained shall not affect the past operation of the said Act, or the force or operation, validity or invalidity of anything done or suffered, or any bond or security given, right, title, obligation or liability accrued, contract entered into, or proceedings taken under the said Act, or under the rules of any society registered thereunder, before the taking effect of this Act.

Definitions.

2. In the interpretation of this Act the following terms shall bear the meanings respectively set opposite them:

"Friendly Society."—Every Friendly Society or affiliated Branch thereof established under the provisions of this Act, as well as every Friendly Society established under the Friendly Societies Act, 1882, and in existence at the taking effect of this Act.

"Registrar."—The Registrar of Friendly Societies appointed under this Act.

¹ Act 24, 1886 (p. 2349).

² Amended by Act 26, 1895 (p. 3518).

“Treasurer.”—The officer appointed by the Society to act in that capacity.

“Minister.”—The Minister for the time being charged by the Governor with the administration of this Act.

“Committee of Management.”—The body of persons appointed to manage and direct the affairs of a Friendly Society, by whatever name such body may be called.

“The Court”—shall mean the Supreme Court, the Court of the Eastern Districts, the High Court of Griqualand West, or any Circuit Court, in their respective jurisdictions.

3. It shall be lawful for any number of persons, not being less than ten, to form and establish under the provisions of this Act a Friendly Society for the purpose of raising by the voluntary subscription of the members thereof, with or without the aid of donations, a fund for any of the following purposes:

Friendly Societies may be instituted under this Act.

(a) The relief or maintenance of members, their husbands, wives, children, fathers, mothers, brothers, sisters, nephews, nieces, or kindred, or infancy, old age, widowhood, sickness or other infirmity, bodily or mental, or the endowment of members or nominees of members at any age.

Purposes of such societies.

(b) Providing medical attendance and procuring medicines for the persons mentioned in the foregoing clause (a), or any of them.

(c) Insuring a sum of money to be paid on the birth of a member's child, or on the death of a member or for the funeral expenses of the husband, wife or child of a member.

(d) Any purpose which shall be authorised by the Governor as a purpose to which the facilities and powers of this Act ought to be extended; provided that no member shall contract for any annuity exceeding £30 per annum, except with the special consent of the Registrar, who may allow an annuity not exceeding £60 per annum to be contracted for, or any other contingency exceeding £200.

4. Any Friendly Society may at any time hereafter register itself, in manner and subject to the conditions hereinafter prescribed, as a Friendly Society under the provisions of this Act: provided that until so registered, every Friendly Society registered under “The Friendly Societies Act, 1882,” shall remain under the operation of that Act as if the same had not been repealed.

Societies remaining under operation of Act No. 7 of 1882.

5. The Governor may from time to time appoint an officer to be known as the Registrar of Friendly Societies, who shall be charged with the registration of Friendly Societies in manner provided by this Act, and shall have the custody of all returns and documents required by this Act.

Appointment of Registrar.

6. Before any Friendly Society shall be established under this Act, the persons intending to establish the same shall agree upon and frame a set of rules for the regulation, government, and

Rules to be framed before society established under this Act.

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management of such society; and in such rules they may, amongst other things, make provision for appointing a general committee of management of such society, and delegating to such committee all or any of the powers given by this Act to the members of Friendly Societies formed, established, or registered under or by virtue of the same; and such rules shall set forth:

- (1) The name of the society, and place of meeting for the business of the society.
- (2) The whole of the objects for which the society is to be established, or for which it exists, the purposes for which the funds thereof shall be applicable; and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such society.
- (3) The manner of making, altering, and rescinding rules.
- (4) A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.
- (5) A provision for the investment of the funds, and for periodical audit of accounts to be conducted at least once in every year.
- (6) The manner in which disputes between the society and any of its members, or any persons claiming by or through any member, or under the rules, shall be settled.

And the rules of every such society shall provide that all moneys received or paid on account of each and every particular fund or benefit assured to the members thereof, their husbands, wives, children, fathers, mothers, brothers, sisters, nephews, nieces, or kindred, for which a separate table of contributions payable shall have been adopted, shall be entered in a separate account, distinct from the moneys received and paid on account of any other benefit or fund; and also that a contribution shall be made to defray the necessary expenses of management and the medical expenses, if any, and an account of such contributions and such management and medical expenses shall be kept separate and distinct from the account of any other benefit or fund. The moneys belonging to any one such benefit or fund shall not be used in any manner for the advantage of any other benefit or fund: Provided, always, that it shall be lawful to apply any savings out of moneys applicable for management and medical expenses, in aid of any of the funds and benefits of the society.

7. With respect to the registration of Friendly Societies under this Act, the following provisions shall have effect:

- (1) No Friendly Society shall be registered which does not consist of ten persons at least.
- (2) For the purpose of registration, an application to register the society, signed by seven members and the secretary, or other officer, and written or printed copies of the rules,

Provisions with respect to registration.

together with a list of the names of the secretary and of every trustee or other officer authorised to sue and be sued on behalf of such society, shall be sent to the Registrar.

- (3) Along with the application for registration, a copy of the proposed tables of contributions and benefits shall be forwarded to the Registrar: such tables shall in every case provide for the payment by the members of a contribution for management and medical expenses, separate and distinct from the contributions of the sick and funeral and other benefits. On receipt of such tables the Registrar shall test the adequacy of the contributions for the proposed sick and funeral or other benefits (without reference to the management and medical expenses) by the aid of standard tables of sickness and mortality. After having done so the Registrar shall, if in his opinion such contributions are insufficient to provide for the promised benefits, report to that effect to the Minister, and shall embody in such report a table of higher contributions which he considers sufficient, and no society shall be allowed to register unless it be shown to the satisfaction of the Registrar that the contributions which it proposes to charge are adequate to provide for the benefits which it undertakes to grant.
- (4) No society shall be registered under a name identical with that under which any other existing society is registered or so nearly resembling such name as to be likely, or in any name likely, in the opinion of the Registrar, to deceive the members of the public as to its nature and its identity, and no society shall change its name without the sanction of the Registrar.

8. The Registrar on being satisfied that a Friendly Society has complied with the provisions as to registration required by this Act, and that the rules of such society are in accordance with the provisions of this Act, shall, subject to the approval of the Minister, issue to such society a formal certificate of registration in the form set forth in the Schedule A to this Act.

Certificate of registration.

9. If the Registrar shall refuse to register any society or the rules or amended rules of any society, such society may apply to the court for an order compelling him so to register the said society, rules or amendments, and the court may make such order and give such directions as may be necessary and the circumstances of the case may require.

Appeals from refusal to register.

10. With respect to the cancelling of the registration of Friendly Societies the following provisions shall have effect:

Cancelling and suspending of registration.

- (1) The Registrar may cancel the registration of a Friendly Society by writing under his hand (*a*) at the request of such society, evidenced in the manner provided in subsection three of this section, (*b*) with the approval of the Minister, on proof to his satisfaction that a certificate of

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registration has been obtained by fraud or mistake, or that a society exists for an illegal purpose and has wilfully and after notice from the Registrar violated any of the provisions of this Act or has ceased to exist.

- (2) The Registrar, in any case in which he might, with the approval of the Minister, cancel the registration of a society, may suspend the same by writing under his hand for any term not exceeding three months, and may, with the approval of the Minister, renew such suspensions from time to time for the like period.
- (3) Not less than three months previous notice in writing, specifying the ground of any proposed cancellation or suspension of registration, shall be given by the Registrar to a society before the registration of the same can be cancelled (except at its request expressed by a majority of not less than three-fourths of the members of such society at a meeting specially called for that purpose) or suspended; and notice of every cancellation or suspension shall be published in the *Gazette*, and in some newspaper circulating in the district in which the registered office of the society is situated, as soon as practicable after the same takes place.
- (4) Any society whose registration has been cancelled, or has been suspended for a period of six consecutive months, may apply to the court for an order compelling the Registrar to place the society again upon the register, or to rescind the suspension, as the case may be.
- (5) A society whose registration has been suspended or cancelled shall from the time of such suspension or cancelling (but if suspended, only whilst such suspension lasts) absolutely cease to enjoy, as such, the privileges of a registered society but without prejudice to any liability previously incurred by such society which may be enforced against the same as if such suspension or cancellation had not taken place.

Power to amend rules.

11. It shall be lawful for any Friendly Society, by a resolution at a meeting specially called for that purpose to alter, amend, or rescind any of its rules or to make new rules, but no amendment of a rule or new rule made by a registered society shall be valid unless the same has been registered under this Act, for which purpose copies of the same, signed by three members and the secretary, shall be sent to the Registrar, who shall, if satisfied that such amendment or new rule is not contrary to the provisions of this Act, issue to the society a certificate of registration in the form set forth in the Schedule B to this Act, which shall be conclusive evidence that the same has been duly registered.

Registered office.

12. Every registered Friendly Society shall:

- (1) Have a registered office to which all communications and

notices may be addressed, and send to the Registrar notice of the situation of such office and of every change of such situation.

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- (2) Deliver to any person demanding the same, a copy of the rules of the society, on payment of a sum not exceeding one shilling for each copy so delivered, and if any person shall, with intent to mislead or defraud, give to any other person a copy of any rules, laws, regulations or other documents, other than the rules for the time being registered under this Act, on the pretence that the same are existing rules of a registered society, or that there are no rules of such society, or give to any person a copy of any rules on the pretence that such rules are the rules of a registered society, when the society to which such rules apply is not registered, the person so offending shall be deemed guilty of the crime of fraud.

Copies of rules to be delivered on demand.

13. Every Friendly Society registered under this Act shall from time to time at a meeting called for that purpose and by a resolution of a majority of the members present and entitled to vote appoint one or more trustees of the society, and send to the Registrar a copy of every resolution appointing a trustee or trustees signed by the trustee or trustees so appointed and by the secretary of the society.

Trustees to be appointed.

14. All property whatsoever, movable and immovable, including books and papers belonging to any Friendly Society registered under this Act, shall be vested in such trustee or trustees for the time being, for the use and benefit of such society and the members thereof; and the movable or immovable property of any branch of such society shall be vested in the trustees of such branch and be under the control of such trustee or trustees, and, upon the removal, resignation, or death of any such trustee or trustees, the same shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, without any cession, transfer, or assignment whatsoever; and in all actions or suits or indictments in any court, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in his or their proper name or names as trustees of such society without any further description.

Property to be vested in Trustees.

15. The trustee or trustees of any such society are hereby authorised to bring or defend, or cause to be brought and defended, any action, suit, or prosecution, in any court, touching or concerning the property, right, or claim to property of the society for which he or they are such trustee or trustees as aforesaid. And such trustee or trustees shall or may, in all cases concerning the immovable and movable property of such society, sue and be sued in any court, in his or their proper name or names as trustee or trustees without any other description; and no such action, suit,

Trustees to bring and defend actions.

QQ

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or prosecution shall abate or be discontinued by the death of such person, or his resignation or removal from office of trustee, but the same shall and may be proceeded in, by, or against the succeeding trustee or trustees, as if such death, resignation, or removal had not taken place: Provided that every such prosecution shall be commenced under and subject to the law in force respecting private prosecutions.

Liability of Trustees.

16. No trustee or trustees of any such society shall be liable to make good any deficiency which may arise or happen in the funds of such society, but shall be liable only for the moneys which shall be actually received by him or them on account of such society.

Investment of society's funds.

17. The trustee or trustees of every Friendly Society established under this Act shall, from time to time, with the consent of the committee of management of such society, or of a majority of the members of such society, present at a general or special meeting thereof, or in accordance with the rules of such society, invest the funds of such society or any part thereof to any account in any bank on deposit, or in Government or municipal securities, or in the Post Office Savings Bank, or in first mortgage upon immovable property, or on such security as the rules of such society may direct, not being the purchase of immovable property except where a society may have a mortgage on such property and not being personal security. A society may, however (if the rules thereof so provide), for the purpose of holding the meetings and transacting the business of such society hold, purchase or take on lease, in the names of the trustees for the time being of such society, any land, and may sell, exchange, mortgage, lease or build upon the same with power to alter and pull down buildings and again rebuild, and no purchaser, assignee, mortgagee or tenant shall be bound to enquire as to the authority for any sale, exchange, mortgage or lease by the trustees, and the receipt of the trustees shall be a discharge for all moneys arising from or in connection with such sale, mortgage or lease; provided that no moneys shall be expended in the purchase as aforesaid of any land, or in building, pulling down, altering or rebuilding any building forming part of any fund that was not specially contributed for that purpose unless out of a clear surplus of such fund over and above the sum of ten pounds for every person interested therein, or forming part of any fund applicable for any of the purposes of section three, subsection (c) of this Act, unless out of a clear surplus of such fund over and above the sum of one pound for every two pounds payable on the death of all the persons for the time being interested therein: Provided, further, that the provisions of this section shall not affect or apply to any funds of any Friendly Society already invested at the time of the taking effect of this Act, unless and until such funds shall again be uninvested.

Treasurer to give security.

18. The treasurer of every Friendly Society established under this Act, or any other officer who is required by the rules to

give security, shall, before he take upon himself the execution of his office, become bound, with one or more sufficient sureties, in a bond as near as may be to the form set forth in Schedule C to this Act, in such penal sum as the society or committee of management shall direct and appoint; and every such bond shall be given to the trustee or trustees of the said society for the time being, and shall be, by him or them, duly registered. And if the said bond shall become forfeited, it shall be lawful for such trustee or trustees to sue upon such bond for the use of such society.

19. Every such treasurer or other officer, at such time as, by the rules of such society, he should render such account as is hereinafter mentioned, or upon being required so to do by the trustee or trustees of such society, or by a majority of the said committee of management, or by a majority of the members present at a meeting of the said society, called for that purpose within seven days after such requisition, shall render to the trustee or trustees of the society, or the said committee of management, or to the members of such society at a meeting of the society, a just and true account of all moneys received and paid by him since his appointment, or since he last rendered an account, and of the balance then remaining in his hands, and of all bonds or securities of such society, which account the said trustee or trustees, or committee of management, shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, thereunto required, upon said accounts being audited shall forthwith hand over to the said trustee or trustees the balance which, on such audit, shall appear to be due from him; and shall also, if required, hand over to such trustee or trustees, all securities and effects, books, papers, and property of the said society in his possession or custody; and if he fail to do so, the trustee or trustees of the said society may sue upon the bond aforesaid, or may sue such treasurer in any court having jurisdiction, for the balance appearing to have been due from him, and for all moneys received by him on account of said society and not paid over, and for the securities and effects, books, papers, and properties in his possession or custody, leaving him to set off in such action the sums, if any, which he may have paid on account of said society, and in such action, the trustee or trustees shall be entitled to recover their full cost of suit, to be taxed as between attorney and client.

Treasurer to render accounts to Trustees.

20. Every Friendly Society registered under this Act shall—

Audit.

- (1) Once every year submit its accounts for audit to two or more persons appointed as the rules of the society provide, such auditors to have access to all the books and accounts of the society and to examine the general statement of the receipts and expenditure, funds and effects of the society, and verify the same with the accounts and vouchers relating thereto, and either to sign the same as

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found by them to be correct, duly vouched and in accordance with law, or specially report to the society in what respects they find it incorrect, unvouched or not in accordance with law. Such audit in every case where practicable to include an examination and comparison of the entries on the pence cards of the members with the corresponding entries in the receipt or cash book of the society, and the auditors to state in their report whether such examination and comparison have been made, and with what result.

Annual Returns.

- (2) At least once in every year before the 1st day of June send to the Registrar a general statement (to be called the annual return) of the receipts and expenditure, funds and effects of the society as audited, which shall show separately the expenditure in respect of the several objects of the society, and shall be made out to the 31st December, then last inclusively, and a copy of the auditors' report shall accompany such annual return, and such annual return shall state the name, address and calling or profession of the auditors and the manner in which and the authority under which they were respectively appointed: and there shall also be sent with such general statement a list of the members of the society, together with the age of each, and the periods of sickness, the deaths and other contingencies in respect of which benefits are given by the society, experienced by the society during the year ending as aforesaid, specifying the members in respect of whom such sickness, deaths, or contingencies have been experienced, and such other information as the Registrar, with the approval of the Minister, may from time to time prescribe.

Quinquennial valuation.

- (3) Once at least in every five years furnish to the Registrar full statistical information, to enable him to make or cause to be made an actuarial valuation of the liabilities and assets of the society. After such valuation has been made the Registrar shall send a statement of the results with a full report thereon to be circulated by the officers of the society amongst its members.

Inspection of books.

- (4) Allow any member or person having an interest in the funds of the society to inspect the books during business hours at the registered office of the society or at any place where the same are kept.

Supplying copies of Annual Returns.

- (5) Supply gratuitously every member or person interested in the funds of the society, on his application, with a copy of the last annual returns of the society for the time being.

Copies of returns to be kept.

- (6) Keep a copy of the last annual balance sheet for the time being, and of the last quinquennial valuation for the time being, together with a report of the auditors, if any, always hung up in a conspicuous place at the registered office of the society.

21. Every annual, quinquennial or other return, abstract of valuation and other document required for the purposes of this Act shall be made in such form and shall contain such particulars as the Registrar shall, subject to the approval of the Minister, from time to time prescribe.

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Returns to be in prescribed form.

22. A person under the age of twenty-one may be elected and admitted a member of any society established under this Act, the rules of which do not prohibit such election, and may, and he is hereby empowered, to execute all necessary instruments, and to give all necessary acquittances: Provided that, during minority, he shall not be competent to hold any office of trustee or treasurer of such society.

Minors may be members of society.

23. In any society in which a sum of money may be insured, payable on the death of a child under ten years of age, it shall not be lawful to pay any sum for the funeral expenses of such child, except upon production of a certificate signed by a qualified medical practitioner, stating the probable cause of death; and no trustee or officer of any society upon an insurance of a sum for the funeral expenses of any child shall knowingly pay a sum which shall raise the whole amount receivable from one or more than one society for the funeral expenses of a child under ten years to a sum exceeding six pounds: and any such trustee or officer who shall make any payment otherwise than as aforesaid, shall be liable to a penalty not exceeding ten pounds upon the conviction thereof before the Resident Magistrate of the district in which such death shall have taken place.

Funeral expenses of child under 10, medical certificate required before payment of.

24. The trustee or trustees of any Friendly Society registered under this Act may, out of the funds thereof, subscribe to any hospital, infirmary, charitable or other provident institution, such annual or other sum as may be agreed upon by the committee of management, or by a majority of the members at a meeting called for that purpose, in consideration of any member of such society, his wife, child, or other persons nominated, being eligible to receive the benefits of such hospital or other institution, according to the rules thereof.

Power of trustees to subscribe to hospitals, &c.

25. Every dispute between any member or members of any society registered under this Act, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society; but an appeal from any such decision may be made to the Court or to the Resident Magistrate's Court of the district within which the usual or principal place of business of the society in this Colony shall be situated.

Decision of disputes between members and officers of society.

26. Application for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes, or to enforce the

Application in certain cases to the Court.

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decision of any arbitrators, or to hear or determine any dispute, if no arbitrator shall have been appointed, or if no decision shall have been made by the said arbitrator within forty days after application has been made by the member or person claiming through or under a member, or under the rules of the society, may be made to the Court or to the Resident Magistrate's Court of the district within which the usual or principal place of business of the society in this Colony shall be situated; and the Court, or Resident Magistrate's Court, shall, upon the application of any person interested in the matter entertain such application; and either of the said courts, as the case may be, may give such relief, and make such order and direction in relation to the matter of such application as may be necessary, and the circumstances of the case may require.

Dissolution of
society—Powers of
members for.

27. It shall be lawful for the members of any Friendly Society established under this Act at some meeting of such society to be specially called in that behalf, to dissolve and determine the said society by consent: Provided that no society established under this Act shall be dissolved or determined, without obtaining the votes of five-sixths in value of the then existing members, and, for the purpose of ascertaining the votes of five-sixths in value of the members as aforesaid, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member of said society; but no one member shall have more than five votes in the whole; and such society shall not be determined and dissolved, unless all persons then receiving or entitled to receive any relief, annuity, or other benefit from the funds thereof, shall first have testified under their hands that such claim is duly satisfied to the satisfaction of the Registrar, or unless adequate provision is made for satisfying such claim. And the intended appropriation or division of the funds or other property shall be fairly and distinctly stated in the agreement for dissolution, prior to such consent being given: and the agreement for such dissolution, accompanied with a declaration by one of the trustees, that the provisions of the Act have been complied with, shall be transmitted to the Registrar to be by him filed with the rules: and such agreement shall thereupon be an effectual discharge to the trustees, treasurer, and other officers of such society, and operate as a release from all the members of the society to such trustees, treasurers and other officers: and it shall not be lawful in any society to direct a division or appropriation of any part of the stock thereof, except for the purpose of carrying out the general objects declared in the rules, as originally certified, unless the claim of every member is duly satisfied, or adequate provision be made for satisfying such claim, and in case any member of any such society shall be dissatisfied with such provision, it shall be lawful for him to apply to the court, upon motion for relief or other order, and such court shall make such order or direction, in relation thereto as the nature of the case may require.

28. If any officer, member, or other person representing himself to be a member of any Friendly Society established under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition, shall obtain possession of any moneys, securities, books, papers, or other effects of such society, or, having the same in his possession, shall withhold or misapply the same, or shall wilfully apply any part of the same to purposes other than those expressed or directed in the rules of the society, or any part thereof, the person so complained of may upon the complaint or information of the trustees, or any officer or member of the society, be prosecuted before the Resident Magistrate's Court having jurisdiction over the locality where the offence may have been committed: and if the Magistrate presiding shall determine the said complaint proved against such person, he shall order such person to deliver up all such moneys, securities, books, papers, or other effects to the society, or to repay the amount of money applied improperly, and to pay, if he should think fit, a further sum of money, not exceeding twenty pounds sterling, together with necessary costs, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs, the person so convicted may be imprisoned with or without hard labour, for any period not exceeding three months: Provided that nothing herein contained shall prevent the said party from being proceeded against by indictment: Provided, also, that no person shall be proceeded against by indictment, if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

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Prosecution of
person misappropriating
society's
funds.

29. If any Friendly Society registered under this Act shall

Penalties.

- (a) Fail to give any notice, send any return or document, or do or allow to be done any act or thing which the society is by this Act required to give, send, do, or allow to be done;
- (b) Wilfully neglect or refuse to do any act or thing, or to furnish any information required for the purposes of this Act, by the Registrar or other person authorised under this Act, or do any act or thing forbidden by this Act;
- (c) Make a return or wilfully furnish information in any respect false or insufficient;

such society shall be liable to a fine of not less than one pound and not more than five pounds, recoverable at the suit of the Registrar.

30. For the purpose of carrying out the provisions of this Act the Registrar shall from time to time, with the approval of the Minister,

- (1) Prepare or cause to be prepared, and cause to be circulated for the use of Friendly Societies, model forms of accounts, balance sheets, and valuations.

Preparation
model forms.

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Circulation of information.
- (2) Collect from the returns under this Act and from other sources, and publish and circulate either generally or in any particular district, or otherwise make known such information on the subject of the statistics of life and sickness, and the application thereof to the business of Friendly Societies, and from time to time publish generally or in particular districts such particulars of their returns and valuations and such other information useful to the members of and the persons interested in Friendly Societies, whether registered or not, as the Registrar shall from time to time think fit.
- Construction of tables.
- (3) Cause to be constructed and published tables for the payment of sums of money on death, in sickness or old age, or on any other contingency forming the subject of an assurance authorised under this Act, which may appear to be calculable. Such tables shall be calculated so as to show the minimum contributions which should be charged for the various kinds of benefits, and no society shall be admitted to registration unless it adopts such tables or some other tables which do not show lower rates of contribution, in the case of all members admitted subsequent to the date of registration.
- Rules, &c., under Act of 1882 to be transferred to Registrar.
31. All rules, documents, &c., which have been lodged with the Registrar of Deeds by societies registered under the Act of 1882 shall, as soon as practicable, after the registration under this Act of the societies to which they relate, be transferred to the custody of the Registrar appointed under this Act.
- No fee for registration.
32. There shall not be paid by any Friendly Society registered under this Act, any fee for such registration or for anything done by the Registrar in pursuance of this Act.
- Short title.
33. This Act may be cited as "The Friendly Societies Act, 1892."

SCHEDULE A.

FORM OF CERTIFICATE OF REGISTRATION OF SOCIETY.

The _____ Society is registered as a Friendly Society under the Friendly Societies Act, 1892, this _____ day of _____

A.B.,
Registrar of Friendly Societies.

SCHEDULE B.

No. 5—1892.

FORM OF CERTIFICATE OF REGISTRATION OF AMENDMENTS OF RULES.

The foregoing amendment of the rules of the———Society is registered under the Friendly Societies Act, 1892, this———day of———

A.B.,
Registrar of Friendly Societies.

SCHEDULE C.

FORM OF BOND.

Know all men by these presents, that we, A.B., of —— treasurer (or other officer of the —— society established at ——, in the district of ——, and C.D., of —— (as surety on behalf of the said A.B.) are jointly and severally held and firmly bound to E.F., of ——, and G.H., of ——, the trustees of the said society, in the sum of —— to be paid to the said E.F. and G.H. as such trustees, or their successors, trustees for the time being, or their certain attorney, for which payment to be well and truly made we jointly and severally bind ourselves, and each of us, our heirs, executors, and administrators as well as our and each of our property according to law, renouncing as we hereby renounce all and every exception which may by any law or custom be made by sureties or otherwise.

This done at ——, this —— day of ——, 18——.

A.B.
C.D.

WITNESSES :

I.K.

L.M.

Whereas the above bounden A.B. has been duly appointed treasurer (or other officer) of the —— society, established as aforesaid, and he, together with the above bounden C.D., as surety and co-principal debtor, have entered into the above-written bond, subject to the conditions hereinafter contained.

Now, therefore, the condition of the above-written bond is such that if the said A.B. shall do and faithfully execute his office of treasurer (or other officer) of the said society, established as aforesaid, and shall make and render a just and true account of the moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers and property of or belonging to the said society, in his hands or custody, to such person or persons as the said society

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shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments; and likewise shall and do in all respects well and truly perform and fulfil his office of treasurer (or other officer) to the said society according to the rules thereof, then the above-written bond shall be void and of no effect, but otherwise shall be in full force and effect.

A.B.
C.D.

WITNESSES :

I.K.
L.M.

No. 6—1892.]

[August 2, 1892.

ACT (1)

For Regulating the Frere Hospital at East London.

Preamble.

WHEREAS grants of land have at various times been made to the Commissioners of the Municipality of the Town of East London, and to the Mayor, Councillors, and Townsmen of East London, respectively, in trust for the purpose of erecting and endowing an Hospital:

And whereas the said Mayor, Councillors and Townsmen are the successors in title and office of the said Commissioners of the said Municipality:

And whereas an Hospital has been erected out of the proceeds of the sale of portion of the said land, upon land granted for that purpose, and the remaining portion sold upon quitrent for the endowment thereof.

And whereas it is expedient that the management of the Hospital should be vested in a Board of Managers, and that the said Board should be incorporated, and that certain matters in connection with the land granted for endowment purposes, and other matters and things likely to promote the welfare of the said Hospital, should be provided for by Parliament:

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Designation of Hospital.

1. The Hospital aforesaid shall be called the "Frere Hospital at East London," and shall be managed by a Board of Managers.

Constitution of Board of Management.

2. The Mayor and Seven Councillors of the Municipality of East London, chosen from time to time for the special purpose by the Council of East London, the Civil Commissioner of East London, and two gentlemen to be nominated by the Governor, together with the Life Governors hereinafter mentioned, and three elective members, which members shall be elected as hereinafter provided, shall form a Board for the management of the said

¹ See Act 10, 1898 (p. 3872), authorising alienation of certain ground to Trustees of "Victoria Home."

Hospital, of which Board the Mayor for the time being shall be the Chairman: Provided, always, however, that when the Mayor is not present, then the Managers present shall choose their own Chairman and, in case of an equality of votes upon any matter or question submitted to the said Board, the Mayor or the Chairman for the time being shall, besides a deliberative vote, possess a casting vote.

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Chairman.

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

Board to be a corporation: Style

4. The elective members of the said Board shall be elected by the Life Governors of, and the annual subscribers to, the said Hospital as is hereinafter provided.

Elective members.

5. Any person making a donation to the funds of the said Hospital of not less than twenty pounds shall become a Life Governor of the said Hospital, and shall have a seat on the said Board, and be entitled to elect the aforesaid members thereof.

Life Governors.

6. Any person making a donation to the funds of the said Hospital of not less than twenty-five pounds shall be entitled to nominate some other person as a Life Governor in his place who shall have a seat on the said Board, and be entitled to elect the aforesaid members thereof.

Donor to funds entitled to elect.

7. Any person who shall have subscribed, during the period of twelve months immediately before any election, a sum of not less than one guinea, shall be entitled to elect the aforesaid members of the said Board and be elected as a member thereof.

Donor of one guinea entitled to elect and be elected.

8. Any person who shall have subscribed, as in the last preceding clause is provided, a sum of not less than half a guinea, shall be entitled to elect the aforesaid members of the said Board, but not to be elected as a member thereof.

Donor of half a guinea entitled to elect.

9. As soon as there shall be twenty persons entitled to vote at the election of the elective members of the said Board but not sooner, the Mayor aforesaid shall, by a notice to be published in one or more of the local newspapers, for not less than twenty-one days before the day appointed, call a meeting of the Life Governors and subscribers to the said Hospital, to be held in some place in East London, to be specified in such notice, for the purpose of electing so many members of the said Board as there shall then be vacancies.

First election.

10. At the meeting last mentioned the Mayor, or, in his absence a chairman to be elected by a majority of the voters present, shall preside, and the votes shall be given in writing, and signed by the voters; each voter shall have so many votes as there shall be vacancies to be filled up, but shall not be entitled to give more than one vote to any one candidate; the Mayor shall transmit the

Who shall preside at meeting, manner of voting, number of votes.

Publication of result.

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Proxies.

names of the members elected to the Colonial Secretary, who shall cause the same to be published in the *Gazette*; provided that at such meeting all persons entitled to vote, who shall be females, or who shall reside beyond the limits of the municipality of East London, but no other person, shall be entitled to appoint, by any writing under their hands respectively, some other person being himself a person entitled to vote, to be the proxy of or for the person by whom he shall have been so appointed, and to vote in such person's behalf.

Elective members
to hold office for
one year.

11. The elective members elected at the first meeting, held for the election of elective members, shall hold office for one year, at the expiration of which time such first elected members shall go out of office, and be succeeded by others to be then elected, and so on for ever: Provided that all outgoing elective members, if duly qualified, shall be eligible to be re-elected.

Election of new
members.

12. On the Monday next before the day on which the elective members are appointed to go out of office, as aforesaid, a meeting shall be holden of the Life Governors and subscribers to the said Hospital, for the election of elective members for the year next ensuing, of which meeting a notice of not less than twenty-one days shall be given by the Mayor aforesaid in one or more of the local newspapers.

Casual vacancies
and proceedings to
fill up same.

13. If any elective member of the said Board shall die or resign, or shall cease to reside in the division of East London, or shall become incapacitated for fulfilling the duties of his office by mental or bodily infirmity or disease, he shall *ipso facto* vacate his office, and the said Board shall give notice of such vacancy to the Mayor aforesaid, who shall, upon the like notice as that in the last preceding section mentioned, call a meeting of Life Governors and subscribers for the purpose of filling up such vacancy, and the person elected to fill such vacancy shall be entitled to continue in office until the next annual election, but no longer: Provided that every such person, if duly qualified, shall be eligible to be re-elected.

Proceedings in case
of omission to hold
meeting at due
time or failure to
elect.

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

15. Until elective members of the Board of Managers shall be elected, the following gentlemen shall be deemed and taken to form the said Board, and shall possess all and singular the powers and authorities of the said Board as fully as if elective members had been elected, viz.:—David Rees, Mayor, Chairman; J. T. Stacey, J. McGrath, J. Gately, F. Kelland, E. J. Carroll, G. Wetzler, and T. A. King, Councillors; the Civil Commissioner; J. O. Paterson, Charles D. Griffith, Government Nominees; George McKay, William Smale, and Henry N. Willets, in the place and stead of elective members, and John Dircks, W. H. Fuller, C. E. Nicholls, J. Bowers Janion, Life Governors, and no vacancy or vacancies at any time occurring amongst the members of the said Board for the time being shall be deemed or taken to render the said Board incomplete, or to suspend or impair any of its powers.

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First members of Board.

16. The said Board shall stand and be possessed of all ⁽¹⁾ lands, and remaining portion of lands, which have been granted to the Commissioners of the Municipality of the town of East London and to the Mayor, Councillors and Townsmen of East London respectively, in trust for the purposes aforesaid as set forth in Schedule A to this Act, and of all the buildings and erections thereon, including the furniture and of all moneys and other things appertaining to the said Hospital, and of all the quitrents due, or which may hereafter become due and payable in respect of land already disposed of, and of all lands which may be granted to the said Board by the Governor, or by any private person, for the use and benefit of the Hospital aforesaid, and of all lands and buildings which may be purchased, erected, or in any manner acquired by the said Board for the purposes of the said Hospital, and of all funds and moneys granted to the said Board from and out of the public revenue of this Colony, or given, bequeathed, subscribed, paid, or in any manner coming to the said Board, for the use and benefit of the said Hospital, and generally of all property, movable and immovable, belonging to the said Hospital.

Landed or other property vested in Board.

17. Whenever any holder of land referred to in Schedule A, shall desire to surrender his land, it shall be lawful for the said Board, if they shall deem fit, to accept such surrender, and to cause the title to such land to be cancelled, on condition that the quitrent due up to the date of such acceptance be paid, or payment thereof secured by two good and sufficient sureties to their satisfaction; provided, however, that when any such person shall satisfy the said Board of his inability either to pay such quitrent or to secure its payment as aforesaid, it shall be lawful for the said Board to remit such quitrent, or to grant such relief in regard to such payment as may to them seem expedient.

Surrender and cancellation of quitrent titles.

18. In case any holder of land as aforesaid shall be in arrear with the payment of his quitrent for two or more years, it shall be lawful for the said Board to give notice to such holder of

If quitrent tenant in arrear, power of Board to cancel titles.

¹ See Act 10, 1898 (p. 3,872) and § 10, Act 39, 1905 (p. 4948.)

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the intention of the Board to resume possession of such land, and to cancel the title thereof, and if the quitrent, in arrear as aforesaid, shall remain unpaid for a period of three months from the date of such notice, it shall be lawful for the said Board to cause the title deed to be cancelled, and to resume possession of the land; provided that the notice herein referred to shall be in writing and be delivered to the holder aforesaid in person, if he reside within the Municipality of East London, or otherwise be posted to his last known address.

Reduction of quitrents.

19. Any holder of land as aforesaid not being in arrear with payment of quitrent who shall consider the annual quitrent payable by him to be in excess of the true annual value of such land may, at any time within six months from the date of the promulgation of this Act, apply for reduction of such quitrent to the said Board, and thereupon the said Board shall enquire into and investigate the circumstances of each case and if, upon such investigation, it shall appear to the said Board that good and sufficient reason has been shown why the relief sought for should be granted, it shall be lawful for the said Board to reduce the quitrent set forth in the original title, and to substitute in its stead the amount determined upon by the said Board to be paid from and after the day when quitrent next becomes due and payable: Provided that every application for relief under this clause shall be considered at a special meeting of the said Board to be called for the purpose at which not less than nine members shall be present.

Sales of landed property on quitrent.

20. It shall be lawful for the said Board with the sanction of the Governor, first had and obtained, but not otherwise, to sell by public sale upon quitrent, but not otherwise, any portion or portions of any land which may have been granted to the said Board by the Governor, which land it may be found expedient to alienate, and the said Board may, in case the sanction aforesaid shall have been obtained, lease any of the said last mentioned lands at the best rent that can be obtained: Provided, however, that it shall not be necessary to obtain the sanction of the Governor to the public sale on quitrent of any erf or erven which may revert to the Board, being a portion of the land the sale of which has already been sanctioned.

Execution of legal and other documents.

21. All transfers, leases, contracts, powers to sue or defend, or other instruments to be executed by the said Board for any of the purposes of this Act or of the said Hospital, shall be executed by three members of the said Board, acting for and on behalf of the Board, of which three members the chairman of the said Board for the time being shall be one.

Persons in poor circumstances to be treated free of charge.

22. The Hospital at East London shall be at all times open, as far as its funds and accommodation will permit, to receive all persons standing in need of medical or surgical aid or treatment and to supply such aid and treatment to all persons in poor or indigent circumstances, free of any fee or charge whatever.

23. It shall be the duty of the said Board to make provision for the reception and treatment of a certain number of patients able and willing to pay for the same, and to frame in regard to such paying patients, a scale or tariff of the charges to be made by or on behalf of the said Hospital.

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Treatment of paying patients.

24. It shall be lawful for the said Board to appoint all such medical officers as may be required for the said Hospital at such salaries as the said Board shall deem expedient, and to discharge any such medical officer when a majority of the members of the Board at a meeting specially called shall consider it to be in the interest of the Hospital to do so, or for immoral or improper conduct, or for non-fulfilment of his engagements with the said Board: Provided that no such medical officer shall be discharged upon any of the grounds in this section mentioned until he shall have been furnished in writing by the said Board with a statement of the charges against him or reasons alleged for his dismissal, and shall have had an opportunity of making his defence, or until the majority of the members present at a meeting, specially convened for the purpose, shall have resolved that such medical officer be so discharged.

Appointment and discharge of medical officers.

25. All persons other than medical officers employed in or about the said Hospital shall be engaged and shall hold their situations at the pleasure of the said Board.

Board to engage other officers.

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

Regulations for management of Hospital to be framed.

27. The Board of Managers shall submit to the Governor a copy of the rules and regulations aforesaid for the time being for approval, and shall regularly report to the Governor all amend-

Regulations to be submitted to Governor.

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Board may purchase or hire lands and buildings: contracts.

ments thereof and additions thereto: Provided that no such regulations shall have any force and effect until the same shall have been approved of by the Governor.

28. It shall be lawful for the said Board to purchase or rent all such lands or buildings as shall be necessary for the purposes of the said Hospital, and when it shall be desirable so to do, to sell again by public sale, but not otherwise, any lands or buildings which the said Board shall have purchased and shall no longer require, and the said Board may also contract for the erection, maintenance and repair of any buildings, or the purchase of any furniture, apparatus, medicines, supplies and necessaries, which shall be required for such Hospital. No contract for any purpose which shall require an expenditure above twenty pounds shall be entered into unless tenders for the same shall have been called for by an advertisement to be published in some one or more of the local newspapers for not less than eight days.

Accounts to be framed and audited, and laid before Parliament.

29. The said Board shall cause detailed accounts in writing of all sums of money received by them for any of the purposes of this Act, and of all sums expended by them for any purpose thereof, to be made up to the thirty-first day of December in every year and to be properly audited, and the said Board shall also frame a full report of the state and proceedings of the Hospital up to the same day in each year, and shall cause a copy of such accounts and of such report to be transmitted to the Colonial Secretary not later than the first day of March in the next succeeding year, and the Colonial Secretary shall lay copies of such report and of such accounts before both Houses of Parliament as soon as possible after receipt of the same.

Taking effect of Act.

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

Short title.

31. This Act may be cited for all purposes as "The Frere Hospital (East London) Act, 1892."

Schedule to Act.

SCHEDULE A.

Freehold Grant to the Commissioners of the Municipality of the Town of East London of Lot H, situated within the Commonage of East London, as a site for a Hospital, dated 17th December, 1880.

Freehold Grant to the Commissioners of the Municipality of the Town of East London of Block W; situate within the Township of East London, proceeds to be devoted to the erection of a Public Hospital, dated 17th December, 1880.

Freehold Grant to the Commissioners of the Municipality of the Town of East London of Blocks CC and DD, situate within the Township of East London, proceeds to be devoted to the endowment of a Public Hospital, dated 17th December, 1880.

Freehold Grant to the Mayor, Councillors and Townsmen of East London of Blocks C and D, situate in the Division of East London,

on the West Bank of the Buffalo River, proceeds to be devoted to the endowment of the Public Hospital, dated 22nd November, 1882.

No. 8—1892.

Freehold Grant to the Mayor, Councillors and Townsmen of East London of Block II, situate in Ward 2, within the Township of East London, proceeds to be devoted to Hospital Building purposes, dated 2nd July, 1883.

No. 7—1892.]

[August 2, 1892.

Act to Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1893.

[Spent.]

No. 8—1892.]

[August 16, 1892.

ACT

To Authorise the Application of certain Unexpended Balances of Sums appropriated for the Construction and Equipment of certain Railway to meet the Deficiencies in the Appropriations for the Construction and Equipment of certain other Railways.

BE it enacted by 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 to apply the unexpended balance remaining over under the Railway Construction Balances Act of 1885, to meet the deficiencies incurred in the construction, completion and equipment of the following lines:

Application of unexpended balances.

Kalk Bay and Simon's Town.
Eerste River and Sir Lowry's Pass.
Colesberg and Norval's Pont.
Norval's Pont and Bloemfontein.

And it shall be lawful to apply to the same purpose and to carry to the Railway Construction Balances Accounts the balances which may remain over on the appropriations for the following lines after the completion thereof:

Kimberley and Vryburg.
Midland and Eastern Junction.
Burghersdorp and Springfontein *via* Bethulie.

2. (1) It shall be lawful hereafter to carry to the said Railway Construction Balances Account the balance of any appropriation for any railway line or work authorised by Parliament, whether surplus or deficiency, on a resolution to that effect being agreed to by Parliament.

Balances to be carried to Railway Construction Balances Account.

3. This Act may be called "The Railway Construction Balances Account Act, 1892."

Short title.

¹ The provisions of this section apply to all works for which money may be raised by loan or advanced out of revenue. Act 39, 1898, § 4 (p. 4003).

No. 9—1892.]

[August 16, 1892.

ACT (1)

To Amend the Law with regard to the Qualification of Voters for Members of Parliament, and to make provision for taking Votes by Ballot at Parliamentary Elections.

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 repugnant laws.

1. So much of any law as shall be repugnant to or inconsistent with the provisions of this Act is hereby repealed; but nothing herein contained shall affect the validity of any roll of parliamentary voters in force at the date of the taking effect of this Act in any Electoral Division of the Colony.

Interpretation of terms.

2. In this Act, unless the context otherwise requires, the following words in inverted commas shall have the meaning set opposite to them respectively:

“Election”—Any election of a member or members of the Legislative Council or of the House of Assembly.

“Polling Officer”—The person appointed by law to take the poll at any election.

“Returning Officer”—The person appointed to act as returning officer at any election according to law.

“Competent Witness”—Any Field-cornet or Justice of the Peace, and any person who is registered as a parliamentary voter in the fiscal division in respect of which the claimant whose signature he attests claims to be registered; provided that a Registering Officer shall in all cases be a competent witness.

Certain sections of Act not to apply to voters already registered so long as they continue to reside on place in respect of which they are registered.

3. The provisions of the fourth, fifth, sixth, seventh, seventeenth, twenty-ninth, thirtieth and thirty-first section of this Act as hereinafter set forth, shall not apply to any person who at the date of the taking effect of this Act was registered as a parliamentary voter in any Fiscal Division of this Colony, so long as such person continues to reside in the division in which he was registered as a voter at the said date. The qualification of all such persons to be registered thereafter as parliamentary voters shall be judged of while they so continue to reside in all respects as if this Act had not been passed.

Amendments in Constitution Ordinance, and Act 14, 1887.

4. Subject to the provisions in the third section contained

(a) The words “twenty-five” where they first occur in the eighth section of the Constitution Ordinance shall be expunged, and the words seventy-five inserted in their stead.

(b) The words, “or who having been in the receipt for the “space aforesaid of salary or wages at and after the rate

¹ Amended by Act 19, 1898, § 18, *et seq.* (p. 3909); 48, 1899, § 5, *et seq.* (p. 4233). See also Act 26, 1902, *Illegal Practices at Elections* (p. 4445). The provisions of this Act (§ 33 excepted) applied to Cape Town by § 1, Act 48, 1899 (p. 4232.)

“of not less than twenty-five pounds by the year shall, in addition to such salary or wages, have been supplied with board and lodging,” where they occur in the said eighth section of the said Ordinance, shall be expunged.

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(c) The words “twenty-five” wherever they occur in the ninth section of the said Ordinance, or in the seventeenth section of the Act 14 of 1887, or wherever they are used in any statute to denote the value of property required to be occupied in connection with the qualification of a parliamentary voter, shall be expunged, and the words seventy-five inserted in their stead.

5. Subject to the proviso in this section contained the seventh, eighth and ninth sections of Griqualand West Proclamation No. 24 of 1873, are hereby repealed, and the qualification of parliamentary voters in that part of this Colony which formerly comprised the Province of Griqualand West, shall, from and after the passing of this Act, be in all respects identical with the qualification required by law in the other portions of the Colony save and except that every person not otherwise disqualified by law who shall in any Electoral Division formerly comprised in the said Province for the space of six months immediately preceding the day when any registration of voters shall commence, have been the duly registered holder of a licence to dig and search for diamonds in any claim or portion of a claim shall be entitled to be registered as a parliamentary voter: Provided always that the qualification of any such person as is in the third section of this Act exempted from the provisions of this section, if such person was at the date of the taking effect hereof, registered in any Fiscal Division formerly comprised in the said Province, shall be judged of in all respects as if the seventh, eighth and ninth sections of the said Proclamation were still unrepealed.

Repeal of 7th, 8th, and 9th sections Griqualand West Proclamation No. 24 of 1873.

Qualification of voters in Griqualand West.

Proviso.

Education Test.

6. Subject to the exemptions in the third and fifth sections contained, no person shall, from and after the taking effect of this Act, be entitled to be registered as a parliamentary voter for any Electoral Division in this Colony, unless such person is able to sign his name and to write his address and occupation.

7. In framing the provisional list of persons entitled to vote at parliamentary elections as required by the fourth (1) section of the Parliamentary Voters' Registration Act No. 14 of 1887, no Registering Officer (1) shall insert in the said list the name of any person though qualified in every other respect, unless he is satisfied that such person is able to sign his name and to write his address and occupation; unless such person is one exempted by the third or fifth sections of this Act from the operation hereof.

Duty of registering officer with regard to education test.

8. The fifth (2) section of the Act 14 of 1887, called the Parliamentary Voters' Registration Act, 1887, is hereby amended by adding the words “as amended by the Franchise and Ballot Act,

Fifth section of Act 14 of '87 amended, seventh to twelfth sections repealed.

¹ See § 28, Act 25, 1894, as to Glen Grey (p. 3379).

² See Act 48, 1899, § 5 to 9 (p. 4233).

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1892," at the end of the said section; and the seventh, eighth, ninth, tenth, eleventh and twelfth sections of the said Act are hereby repealed.

Substitution of sections of this Act for repealed sections.

9. The provisions of sections ten to twenty-seven inclusive of this Act are hereby substituted for the sections of the Act 14 of 1887, repealed as aforesaid.

Provisional lists, framing, posting, and requirements of.

10. Every provisional list, framed and posted or affixed by any Registering Officer in terms of the fifth (1) and sixth sections of the Act No. 14 of 1887, shall remain so posted or affixed between the hours of seven in the morning and five in the afternoon daily, for a period of not less than five weeks, which period shall be considered as substituted for the period of fourteen days mentioned in the said sixth section; and subjoined or annexed to every such list shall be a notice signed by the Registering Officer, which notice shall be both in the English and Dutch languages, and shall be in substance as follows:—

Form of notice.

"Notice is hereby given that if any person whose name is not inserted in the above list shall claim to be entitled to have his name inserted therein, then any such claimant may, at any time before the day of (here name a date twenty-one days from the date when the notice was signed), lodge with the Registering Officer at (here insert the address or residence of the Registering Officer) either by transmission through the post or in some other manner, his claim to be registered as a voter, which claim shall be in substance in the form hereunto annexed, in order that such claim may be considered and dealt with as the law directs.

"And if any person shall object to the right of any other person whose name is inserted in the above list to have his name so inserted, then every such objector may attend personally or by an agent authorised in writing at (here name some convenient place within the field-cornetcy), on the day of (here name some date not less than fourteen days from the date fixed above as the limit of time for sending in written claims), and lodge his objection, which shall be in substance in the form hereunto annexed, in order that such objection may be considered and dealt with as the law directs.

"Blank forms of claim and of objection may be obtained upon application to the undersigned or to the Civil Commissioner of the division.

"Given under my hand this day of 189 ."

Forms of claim and objection.

11. (1) The form of claim and the form of objection to be annexed to the notice in the last preceding section mentioned shall be in substance the forms set out in Schedule A to this Act.

Registering officer's duty with regard to claims.

12. (1) It shall be the duty of the Registering Officer to receive, and deal as directed by this Act, with all claims to be registered as a voter which are lodged with him within the period prescribed for lodging claims as aforesaid, whether such claims are

¹ § 5 is repealed by Act 48, 1899, § 4 (p. 4233).
See also § 5 to 7 Act 48, 1899 (p. 4233).

transmitted through the post or delivered or sent to him in any other manner. Immediately upon the expiration of the period prescribed as aforesaid for lodging claims the Registering Officer shall frame an alphabetical list of all claimants whose claims have been lodged with him, which list shall be in the form prescribed in Schedule B to this Act.

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13. The Registering Officer shall forthwith post or affix the said list of claimants in the same place or places where the provisional list of voters, already framed by him, has been posted or affixed, and as close as possible to the said provisional list. The said list of claimants shall remain so posted or affixed between the hours of seven in the morning and five in the afternoon daily until the date fixed for the hearing of objections by the Registering Officer.

Lists of claimants to be posted up.

14. Subjoined or annexed to every such list of claimants, posted or affixed as aforesaid, a notice shall be written, signed by the Registering Officer, which notice shall be written both in the English and Dutch languages, and shall be in substance as follows:—

Notice annexed to each list of claimants.

“Notice is hereby given that if any person shall object to the right of any other person whose name appears in the above list of claimants, or whose name is inserted in the provisional list of voters posted by the Registering Officer, to have his name registered as a parliamentary voter for the division of _____, then every such objector may attend personally, or by an agent authorised in writing, at (here name the place already fixed as the place for hearing objections), on the _____ day of _____ (here insert the date already fixed by notice as the date for hearing objections), and lodge his objection, which shall be in substance in the form hereunto annexed, in order that such objection may be considered and dealt with as the law directs.

“Blank forms of objection may be obtained upon application to the undersigned or to the Civil Commissioner of the division.

“Given under my hand this _____ day of _____ 189 _____.”

The form of objection to be annexed to the above notice shall be the following:—

“To the Registering Officer appointed to make out the list of voters in the Field-cornetcy of _____ in the division of _____ of _____

“Please take notice that I object to the name of _____ being placed on the list of parliamentary voters in the above Field-cornetcy, and that I shall support my objection at the time fixed by law for that purpose, the ground of my objection being (here state the ground of objection).

“Dated the _____ day of _____
(Signed) _____ A. B.,
of (here state place of residence.)”

15. At the time and place fixed by the notice in the last preceding section the Registering Officer shall inquire into and decide upon all objections made to him on the said day by the objectors personally or by their duly authorised agents.

Registering Officer's duty as to objections.

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Registering
Officer's duty after
claim received.

16. With regard to any claim lodged with the Registering Officer as aforesaid, either by transmission through the post or in any other manner, if the Registering Officer is satisfied that such claim has been duly signed, filled in, and witnessed as in the seventeenth section of this Act required, he shall add the name of the claimant to his provisional list; unless he has allowed in manner aforesaid any objection lodged with him against such claim or unless he is not satisfied that the claimant possesses the qualification required by law. If not signed, filled in and witnessed, or if he has allowed an objection lodged against such claim, or if he is not satisfied that the claimant possesses the said qualification he shall disallow such claim.

Form of claim.

17. Every claim lodged with or handed in to the Registering Officer under the provisions of this Act shall be substantially in the form set out in Schedule A hereto. Save in the case of persons exempted by the provisions of the third or fifth sections of this Act, every such claim shall be personally signed, and the claimant's occupation and address shall be written by the claimant himself, without his hand being guided in any way by any person, and the fact that such signature and writing have been duly made shall be attested by a competent witness. But in the case of any person who is exempted by the provisions of the third or fifth sections of this Act, such person shall not be required to personally sign his claim or to write his address and occupation; but the claim may be filled in for him, and he may affix his mark thereto which shall be witnessed by a competent witness. In every such case, the declarations of the claimant and of the witness shall be amended by leaving out all such portions thereof as refer to the personal writing of his name, address, and occupation by the claimant.

Printed forms of
claims and objec-
tions to be distri-
buted.

18. The Colonial Secretary shall, a sufficient time before the preparation of the provisional lists as aforesaid, cause to be supplied to the Civil Commissioner of every division an adequate number of printed forms of claim and objection as required by this Act. The Civil Commissioner shall cause so many of the said forms to be sent to each Registering Officer as are likely to be required, and it shall be the duty of the Civil Commissioner and of every Registering Officer to supply a reasonable number of such forms to any resident of the division who applies for them.

Duties of Register-
ing Officer after
claims and objec-
tions dealt with.

19. As soon as the Registering Officer shall have dealt with and decided upon the claims and objections as aforesaid, and shall or shall not have added names to or expunged names from the provisional list in accordance with such dealing or decision, he shall:

- (a) Frame a complete alphabetical list of persons who shall in his judgment be entitled to be registered as voters within the Field-cornetcy. This list shall be in the form prescribed in Schedule C to this Act.
- (b) Frame an alphabetical list of persons whose names have been removed from the provisional list by reason of the allowance

of objections lodged against them, and of persons whose claims to have their names inserted in the list of voters have been lodged or handed in but have been disallowed. This list shall be in the form prescribed in Schedule D to this Act.

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- (c) Transmit to the Civil Commissioner of his division the said two last mentioned lists, and also transmit to him all the original claims and objections lodged with or handed in to him, whether such claims and objections have been allowed by him or not.

20. When transmitting the said lists, and the said claims and objections to the Civil Commissioner, the Registering Officer shall cause copies of the said lists to be posted and affixed to the door of, or in some conspicuous place near to his office or dwelling-house, or in some other public place or places within the Field-cornetcy, there to remain for general information, between the hours of seven in the morning and five in the afternoon daily, during not less than fourteen days. And if any person shall during that time wilfully tear down, cover over, deface or obliterate either wholly or in part any such list or any such notice as is hereafter required to be annexed to it, such person shall on conviction be liable to be imprisoned with or without hard labour for any period not less than one month, and not exceeding three months.

Copies of lists fixed to door of office.

21. Subjoined or annexed to every such list so framed, posted or affixed, a notice shall be written signed by the Registering Officer, which notice shall be both in the English and Dutch languages and shall be in substance as follows:—

Notice subjoined to lists so posted or affixed.

“Notice is hereby given that the ⁽¹⁾ Civil Commissioner will attend in the court room on a day to be notified by publication in the *Gazette* and in a local newspaper, for the purpose of finally revising, amending and settling the voters’ lists for the division of . . . All persons whose claims have been disallowed by the Registering Officer, or whose names have been removed from the provisional list by reason of the allowance of objections made to them; and all persons who have objected in writing to the right of any person inserted in the said provisional list to be so inserted, or to the right of any person claiming to have his name registered as a parliamentary voter to be so registered, and all persons who have been so objected to may appear before the Civil Commissioner on the day and place aforesaid for the purpose of establishing their said claims or objections. All claimants and objectors must appear either personally or by an agent specially authorised in writing.

“Dated the . . . day of . . . 189 .”

22. On receipt of the two lists aforesaid, and of the original claims and objections, the ⁽¹⁾ Civil Commissioner shall by notice in the *Gazette* and in some paper circulating in the division,

Duty of Civil Commissioner on receipt of lists.

¹ See § 15, Act 19, 1898 (p. 3909). For Woodstock, Wynberg, Simon’s Town, Griqualand East and Tembuland, Governor may appoint person to perform functions of Civil Commissioner, Act 19, 1898, § 15.

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appoint a day on which he will attend in his court room for the purpose of revising, amending and settling the list of voters in his division; the day so appointed shall not be less than fourteen days from the date of the first publication of such notice.

Notice in the Gazette fixing day for revising and settling lists.

23. Such notice shall be published as often as the Civil Commissioner may deem to be necessary; and it shall in substance correspond with the notice in the twenty-first section mentioned, save that the date fixed for the attendance of the Civil Commissioner in his court room shall be expressly inserted. The Civil Commissioner shall post copies of the said lists and of the said notice in some conspicuous position at or near the door of his court room there to remain until the date fixed as aforesaid.

Notice to persons whose names have been disallowed by Registering Officer.

24. The Civil Commissioner shall also forthwith give notice by letter, posted through the Post Office, to all persons whose claims have been disallowed by the Registering Officer, or whose names have been removed from the provisional list by reason of the allowance of objections made to them, and also to all persons who have objected, in writing, to the right of any person inserted in the said list to be so inserted, or to the right of any person claiming to have his name registered as a parliamentary voter to be so registered, notifying the fact of such rejection or removal in the case of claimants, and in all cases notifying the date fixed for the holding of the court of revision aforesaid.

Procedure on hearing claims and objections and settling lists.

25. (1) Upon the day so notified the Civil Commissioner shall attend in his court, and it shall be lawful for any person whose claim has been disallowed by the Registering Officer, or whose name has been removed from the provisional list by reason of the allowance of an objection made to it, and for every person who has objected in writing to the right of any person inserted in the said list to be so inserted, or to the right of any person claiming to have his name registered as a parliamentary voter to be so registered, and for any person, who shall have been so objected to, to appear before the Civil Commissioner, who shall hear them, and if he thinks fit take the evidence upon oath. The Civil Commissioner may, if he thinks fit, summon before him and examine upon oath any person, including the attesting witness to any claim, whom he shall in the course of such inquiry deem it necessary to examine, and may impose a fine not exceeding ten pounds on any person duly summoned who shall without lawful cause, refuse or neglect to attend, and he shall finally determine all questions brought before him, and revise and amend the voters' lists according to law. The Civil Commissioner may, if necessary adjourn his sitting from time to time.

Person whose name has been removed or claim disallowed on objection to it must prove his qualification.

26. (1) Every person whose claim has been disallowed by the Registering Officer, or whose name has been removed from the provisional list by reason of the allowance of an objection made to it, shall be bound to prove his qualification to the satisfaction of the

¹ The procedure in this section to be followed by Resident Magistrate for division in which the provisions of the Glen Grey Act applied. See § 30, Act 25, 1894. See also footnote to § 21 of this Act.

Civil Commissioner; and should he not appear, either in person or by an agent specially authorised in writing, then the claim of such person shall be dismissed.

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27. (1) If a person who has lodged a written objection with the Registering Officer, which objection has not been allowed, shall not either in person or by an agent specially authorised in writing, appear to make good his objection, then such objection shall, without requiring any appearance or proof on the part of the person objected to be dismissed. If such objector shall appear, and if the person objected to shall not appear in person, then in case the objector, or should he have appeared by agent, his agent, shall make oath that to the belief of the deponent such ground of objection does really exist, or that the person whose name has been so inserted by the Registering Officer does not possess the qualification required by law, as the case may be, then the Civil Commissioner may, after forthwith enquiring into the grounds for such belief, either at once allow the objection or dismiss it or make such further enquiry on a subsequent day as shall appear just, giving notice in every case of a further inquiry to the person objected to, of the date when such inquiry will be held.

When objector does not appear.

If person objected to does not appear.

28. [Sections 28 to 31 inclusive repealed by Act 48, 1899.]

¹ The procedure in this section to be followed by Resident Magistrate for division in which the provisions of the Glen Grey Act applied. See § 30 Act 25, 1894 (p. 3380).

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Penalty for
allowing another
person to write
claimant's name,
address, occupa-
tion, or to guide
claimant's hand, &c.

32. Every person not exempted by the third or fifth sections of this Act from the operation hereof who knowingly allows his name, address, or occupation, to be written for him on any such claim as is in the seventeenth, twenty-eighth, twenty-ninth or thirty-first sections of this Act referred to, or who in writing the said particulars allows his hand to be guided by any other person; and any person knowingly writing on any such claim the name, address, or occupation of a claimant who is not exempted as aforesaid, or guiding the hand of such claimant in order to assist him in writing the said particulars, and any person falsely witnessing the signature and the writing of the address and occupation on any such claim, shall be liable on conviction to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment.

Printed copy of
list to be supplied
to Civil Commis-
sioners.

33. The Colonial ⁽¹⁾ Secretary shall cause to be supplied to every Civil Commissioner an accurate printed copy of the list of registered parliamentary voters for his division as such list existed at the date of the taking effect of this Act; and every Civil Commissioner shall preserve such list in his office for purposes of reference. And any person who shall, in making or supporting any claim or application to be registered in terms of this Act, falsely and knowingly assert or pretend to any Registering Officer or any Civil Commissioner that he or any other person is entitled to the exemption

¹ This section does not apply to Cape Town. See § 1, Act 48, 1899 (p. 4232).

granted by the third section hereof to those persons whose names appear on the list aforesaid shall be liable, upon conviction, to the penalties prescribed by the last preceding section.

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34. In every list of voters or claimants posted or affixed by any Registering Officer or transmitted by him to any Civil Commissioner or Resident Magistrate, whether in terms of Act 14 of 1874 or of Act 14 of 1887, or of this Act, it shall be the duty of such Registering Officer clearly and distinctly to underline the names of those persons who are inserted as voters or who claim to be voters by reason of the qualification reserved by the third or fifth sections of this Act to the persons in the said section specified.

Names of persons whose qualifications reserved to be underlined on list.

35. Notwithstanding anything to the contrary contained in the tenth section of the Constitution Ordinance, a person who has been convicted of, and sentenced for, any of the crimes therein mentioned, not being the crimes of ⁽¹⁾ treason or murder, shall be entitled to be registered as a voter, and to vote at any time after the lapse of five years from the date of the expiration of such sentence, in all respects as if he had never committed such crime.

Person convicted of crime entitled to be registered five years after expiration of sentence.

BALLOT.

36. From and after the 1st day of July, 1894, at every election for a member or members of the Legislative Council or the House of Assembly in this Colony, where a poll is taken, the votes shall be given by ballot in manner hereinafter in this Act provided.

Voting by ballot.

MODE OF VOTING, AND PROCEDURE AT THE POLL.

37. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall be in the form set out in Schedule F to the Act, shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark by the polling officer and delivered by him to the voter within the polling station, and the number of such voter on the list of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the polling officer of the polling place where the voter shall be entitled to vote, after having shown to him the official mark at the back.

Ballot paper.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written or marked by which the voter can be identified, shall be void and not counted.

Ballot paper void for lack of official mark, &c.

¹ But see § 50, Act 6, 1900 (p. 4264).

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Ballot boxes when poll closed in charge of returning officer; duties of returning officer with regard to ascertaining state of poll, &c.

After the close of the poll the ballot boxes shall be sealed up by the polling officer as hereinafter directed so as to prevent the introduction of additional ballot papers, and shall be delivered to, and taken charge of by the Returning Officer, and that officer shall, subject to the directions hereinafter contained, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall in case of elections of members of the Legislative Council make a return thereof forthwith under his hand to the Colonial Secretary or other person who may be appointed to receive the same, and such return shall be laid before the committees of scrutineers for the purpose of addition of the number of votes in such returns to be certified by such scrutineers; and in the case of elections of members of the House of Assembly the Returning Officer shall forthwith declare to be elected the candidate or candidates to whom the majority of votes have been given, and return their names, together with the number of votes received by each candidate, to the Colonial Secretary, to be by him communicated to the Governor. The decision of the Returning Officer as to any question arising in respect of any ballot paper shall be final, subject to the reversal on petition questioning the election or return.

Duty of returning officers subject to regulations by the Governor.

38. The Governor shall have power from time to time to make regulations for the purpose of more effectually carrying out the provisions of this Act, and not inconsistent with any of its terms, and, subject to such regulations as may be made in that behalf, every Returning Officer shall provide such polling stations, ballot boxes, ballot papers, stamping instruments, and other things, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

Expenses incurred by returning officer.

All expenses properly incurred by any Returning Officer in carrying into effect the provisions of this Act, in the case of any election, shall be payable in the same manner as expenses of a poll are now by law payable. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same Electoral Division.

Compartments for voting.

39. Each polling place shall be furnished with such number of compartments, in which the voters can mark their votes, screened from observation, as the Returning Officer thinks necessary, or as the regulation may prescribe.

No person shall be admitted to vote at any polling place except in the compartment or place allotted to him.

Polling officer to keep order.

40. The polling officer shall keep order at his polling place, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except his assistant or polling clerk, candidates, such agents of the candidates as the regulations may prescribe, and the constables on duty.

41. Every ballot paper shall contain a list of the candidates with their descriptions arranged alphabetically in order of their surnames, and (if there are two or more candidates with the same surname) of their other names, it shall be in the form set forth in Schedule F to this Act, or as near thereto as circumstances admit, and shall be capable of being folded up.

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Contents of ballot
paper.

42. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom without the box being unlocked. The polling officer at any polling place, just before the commencement of the poll shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

Description of
ballot box.

43. Immediately before a ballot paper is delivered to a voter, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name and description of the voter as stated in the copy of the list of voters shall be called out, and the number of such voter shall be marked on the counterfoil, and a mark shall be placed in the list of voters against the number of the voter to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

Mode of delivery
of ballot paper to
voter.

44. The voter, on receiving the ballot paper, shall forthwith proceed into the compartment of the polling place allotted to him, and there mark his paper, and fold it up so as to conceal his vote, and shall then after exhibiting the official mark on the back thereof to the polling officer put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling place as soon as he has put his ballot paper into the ballot box.

Voter to conceal
his vote.

45. Subject to the provisions of the next section the polling officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned, that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the list of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the polling officer."

When voter in-
capacitated from
voting in manner
required by this
Act.

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the polling officer, who shall attest it in the form hereinafter in Schedule F mentioned, and no fee, stamp or other payment shall be charged in respect of such declaration, and the

Form of declara-
tion of inability to
read.

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said declaration shall be given to the polling officer at the time of voting.

Who may make
declaration.

46. Only such persons as are referred to in the third section of this Act, and who comply with the conditions of that section, and such persons as are incapacitated through blindness, shall be allowed to make a declaration of inability to read; no other persons shall be entitled to have their votes marked in manner provided by the last preceding section on the ground that they are unable to read.

“Tendered votes
list.”

47. If a person, representing himself to be a particular voter named on the list, applies for a ballot paper after another person has voted as such voter, the applicant shall upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the list of voters, and set aside in a separate packet, and shall not be counted by the Returning Officer. And the name of the voter and his number on the list shall be entered on a list, in this Act called the tendered votes list.

“Spoilt ballot
paper.”

48. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on delivering to the polling officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the polling officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled, and the fact of such cancellation shall be noted upon the counterfoil.

Duty of polling
officers after close
of poll.

49. The polling officer of each polling place shall, as soon as practicable after the close of the poll, make up into separate packets, sealed with his own seal:

- (1) Each ballot box in use at his station unopened; and
- (2) The unused and spoilt ballot papers placed together; and
- (3) The tendered ballot papers; and
- (4) The marked copies⁽¹⁾ of the list of voters, and the (1) counterfoils of the (1) ballot papers; and
- (5) The tendered votes lists, and the list of votes marked by the polling officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads “physical incapacity” and “unable to read,” and the declarations of inability to read;

and shall deliver or cause to be delivered such packets to the Returning Officer.

¹ These lists and the counterfoils are to be made up in separate packets. See Act 48, 1899, § 32 (p. 4239).

50. The packets shall be accompanied by a statement made by such polling officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

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Statement by
polling officer.

COUNTING VOTES.

51. The candidates at any election may respectively appoint in writing such number of agents as the regulations may prescribe to attend the counting of the votes.

Agents for candidates.

52. The Returning Officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the receipt by him of all the ballot boxes, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

Counting of votes.

53. The Returning Officer, his assistants and clerks, and the agents of the candidates, and no other person, may be present at the counting of the votes.

Who may be present at counting of votes.

54. Before the Returning Officer proceeds to count the votes he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number of such papers in each box separately and then mix together the whole of the ballot papers contained in the ballot boxes. The Returning Officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

Duty of returning officer before counting votes.

55. The Returning Officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree or as the regulations may provide) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the Returning Officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

Counting to proceed continuously as far as practicable.

56. The Returning Officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The Returning Officer shall report to the Colonial Secretary the number of ballot papers rejected and not counted by him under the several heads of—

Endorsements on ballot paper by returning officer, and report.

1. Want of official mark ;
2. Giving more votes than entitled to ;
3. Writing or mark by which voter could be identified ;

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4. Unmarked or void for uncertainty; and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

Duty of returning officer on completion of counting.

57. Upon the completion of the counting, the Returning Officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the list of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each polling officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination.

Report of result.

The Returning Officer shall report to the Colonial Secretary the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

Ballot papers, accounts, &c., forwarded to Colonial Secretary.

58. The Returning Officer shall forward to the Colonial Secretary all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the polling officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of voters' lists sent by each polling officer, endorsing on each packet a description of its contents and the date of the election to which they relate.

Retained by Colonial Secretary for a year.

59. The Colonial Secretary shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a Returning Officer, and then, unless otherwise directed by an order of the Legislative Council or the House of Assembly, or of the Supreme Court, shall cause them to be destroyed.

Rejected ballot papers not open to inspection unless by order.

60. No person shall be allowed to inspect any rejected ballot papers in the custody of the Colonial Secretary except under the order of the Legislative Council or the House of Assembly, or under the order of the Supreme Court, the Court of the Eastern Districts, or the High Court of Griqualand West respectively, to be granted by the Court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the Council, House, or Court making the same may think expedient. Any power given to the Court by this section may be exercised by any judge of such Court in Chambers.

Requisites and conditions under which counterfoils may be allowed to be opened and ballot papers inspected.

61. No person shall, except by order of the Legislative Council or the House of Assembly or any Court having cognizance of petitions complaining of undue returns or undue elections,

open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Colonial Secretary; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Council, House or Court making the order may think expedient: Provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent Court to be invalid.

62. All documents forwarded by a Returning Officer in pursuance of this Act to the Colonial Secretary other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Governor, and the Colonial Secretary shall supply copies of, or extracts from, the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Governor.

Documents other than ballot papers and counterfoils open to public inspection subject to regulations by Governor.

63. Where an order is made for the production by the Colonial Secretary of any document in his possession relating to any specified election, the production by him or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the Court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Colonial Secretary, or his agent, shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number, and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the list of voters at such election the same number as the number written on such counterfoil.

Evidence of documents relating to elections on production by Colonial Secretary.

64. If any person misconducts himself in any polling station, or fails to obey the lawful orders of the polling officer, he may immediately, by order of the polling officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the Returning Officer to remove him; and the person so removed shall not, unless with the permission of the polling officer, again be allowed to enter the polling station during the day.

Misbehaviour and misconduct at polling station.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before the Resident Magistrate of the district.

Provided that the powers conferred by this section shall not be exercised so as to prevent any voter who is otherwise entitled to

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vote at any polling station from having an opportunity of voting at such station.

Penalties on polling officers, returning officers, &c., for contravention of provisions.

65. Every Returning Officer, polling officer, assistant or clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding one hundred pounds.

Mode of giving public notice.

66. Where the Returning Officer is required or authorised by this Act to give any public notice, he shall, in addition to such publication as is by this Act or the regulations directed, carry such requirement into effect by such other practicable means as he thinks best calculated to afford information to the voters.

Returning officer may be polling officer.

67. The Returning Officer may, if he think fit, and if the regulations allow it, preside at any polling station, and the provisions of this Act relating to a polling officer shall apply to such Returning Officer with the necessary modifications as to things to be done by the Returning Officer to the polling officer, or the polling officer to the Returning Officer.

Returning officer may appoint assistants.

68. The Returning Officer may with the sanction of the Colonial Secretary appoint competent persons to assist him in counting the votes.

No one employed in or about election to be so appointed.

69. No person shall be appointed by a Returning Officer for the purposes of an election who has been employed by another person in or about the election.

Candidate may act as his own agent or assist his agent.

70. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

Name and address of agents to be notified to returning officer.

71. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be communicated to the Returning Officer or to the polling officer as may be directed by the regulations, and subject to such conditions as the regulations may prescribe; and the Returning Officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so communicated notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the Returning Officer may be delivered at or sent by post to such address.

Candidate may appoint fresh agent on notice.

72. If any person appointed an agent by a candidate for the purposes of attending at the polling place or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place and shall forthwith give notice thereof to the person and in the manner prescribed by the regulations.

Declaration of secrecy by officers.

73. Every Returning Officer, and every officer, clerk or agent, authorised to attend at a polling place, or at the counting of the

votes, shall, before the opening of the poll, make a declaration of secrecy, in the presence, if he is the Returning Officer, of a Justice of the Peace, and if he is any other officer or an agent, in the presence of a Justice of the Peace or of the Returning Officer; but no such Returning Officer, clerk, or agent as aforesaid shall, save as aforesaid, be required as such to make any declaration or take any oath on the occasion of any election.

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74. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is to be done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

Non-attendance of agent not to invalidate anything duly done.

OFFENCES AT ELECTIONS.

Offences at elections.

75. Every person who—

- (1) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (2) Without due authority supplies any ballot paper to any person; or
- (3) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
- (4) Fraudulently takes out of the polling station any ballot paper; or
- (5) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall upon conviction be liable, if he is a Returning Officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding nine months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes and instruments, as well as the property in the counterfoils, may be stated to be in the Returning Officer at such election. In case the prosecution or indictment be brought against any Returning Officer, then such property may be stated to be in the Colonial Secretary.

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Duties of officers,
clerk and agents in
attendance at poll-
ing station.

76. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting at such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the list of voters of any elector who has or has not applied for a ballot paper or voted at that station or as to the official mark, and no such officer, clerk, or agent, and no person whatsoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling station information as to the candidate for whom any voter at such station is about to vote or has voted, or communicate at any time to any person any information obtained at a polling station as to the candidate for whom any voter at such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain, at such counting, the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Penalty.

Every person who acts in contravention of the provisions of this section shall be liable on conviction before the Resident Magistrate of the district to imprisonment for any term not exceeding six months, with or without hard labour.

MISCELLANEOUS.

Agents may seal
ballot boxes.

77. Whenever any polling officer is by this Act or by the regulations framed thereunder directed to seal any ballot box, packet or parcel, it shall be lawful for an agent or agents of any candidate lawfully present at the time to affix his or their seal or seals to the box, packet or parcel aforesaid, in addition to the seal of the polling officer, but subject always to such conditions as the regulations may impose.

Voter not to be
required in any
legal proceeding to
disclose his vote.

78. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Mistake in use of
forms in schedule
not to invalidate
election if immate-
rial to result.

79. No election shall be declared invalid by reason of any mistake in the use of the forms in the schedule to this Act if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

80. A person applying for a ballot paper under this Act shall for the purposes of any law relating to elections or voting at elections be deemed "to tender his vote," or "to assume to vote," or "to attempt to vote."

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Effect of applying for ballot paper.

81. A person shall be deemed to be guilty of the offence of personation who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

Definition of "personation" under this Act.

82. Any person convicted of the offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be punishable in manner provided by the forty-third section of Act No. 14 of 1874, and the provisions of the forty-fourth section of the said Act shall be applicable to voting by ballot under this Act.

Penalty for personation.

83. When on a trial of an election petition, praying the court to determine that some other person than the respondent is entitled to be declared duly elected under the provisions of this Act in the place of the respondent, it is proved that any person who voted at such election was bribed, or treated, or subjected to undue influence by anyone on behalf of the respondent, or that such person was guilty of ⁽¹⁾ personation, there shall be struck off from the number of votes appearing to have been given to such respondent, the number of votes which were given at the election for the respondent candidate by any such person who voted at such election and shall be proved to have been so bribed, treated, or unduly influenced, or to have been guilty of personation as aforesaid.

On trial of election petition respondent to lose the vote or votes of every voter bribed, treated, unduly influenced or guilty of personation.

84. No written authority given in terms of any section of this Act shall require to be stamped as a power of attorney anything in any Act to the contrary notwithstanding.

Written authority need not be stamped.

85. This Act may be cited as the Franchise and Ballot Act, 1892.

Short title.

¹ The provisions of this section with regard to personation extend to every illegal practice mentioned in Act 26, 1902 (p. 4458).

SCHEDULE A.

No. 9.—1892.
Schedule A.
Form of claim
paper.

Claim to be Registered as a Parliamentary Voter.
Electoral Division.

Ward or Field-cornetcy.....Fiscal Division.....

Name in Full.†	Residence or Address.*	Occupation, Trade, Profession or other description.*	Qualification.†

I, the undersigned, hereby declare that I am to the best of my knowledge and belief entitled to be registered as a voter in virtue of the qualification set opposite my name as above ; that I have myself, and without allowing my hand to be guided by any person, filled in my occupation and address, and that I attach my signature to this declaration without any such aid.

Signature of Claimant.....

I, the undersigned, being a competent‡ witness, resident at _____ within the division of _____ do hereby declare that _____ has in my presence himself, and without his hand being guided by any other person, filled in his occupation and addressed and attached his signature to the above declaration.

Signature of Witness.....

Dated this _____ day of _____ 18____.

Form of Objection to the Registration of a Voter.

Form of "objec-
tion."

To the Registering Officer appointed to make out the List of Voters in the Field-cornetcy of _____ in the Division of _____

Please take notice that I object to the name of _____ being retained on the List of Voters in the above Field-cornetcy, and that I shall support my objection at the time fixed by law for that purpose, the ground of my objection being (here state the ground of objection).

Dated the _____ day of _____

(Signed) A.B.,
of (here state place of residence.)

† These columns need not necessarily be filled in by the claimant personally.

* These columns must be filled in by the claimant himself.

NOTE.—Persons who were registered as Parliamentary Voters in this Fiscal Division on the 1st January, 1893, and who have since continued to reside in the said division need not necessarily fill in the above claim or sign it personally. The claim may be filled in for them and their signature may be affixed by a mark duly witnessed ; in such a case the portions of the declarations both of the claimant and the witness which refer to the personal signature and writing of the claimant may be omitted.

‡ NOTE.—The witness must be either a Justice of the Peace, a Field-cornet, a Registering Officer, or a person who is registered as a parliamentary voter in the same Fiscal Division in which the claimant resides. In case he is a Justice of the Peace, a Field-cornet, or a Registering Officer, it is desirable that the fact be stated below his signature.

SCHEDULE B.

No. 9--1892.
Schedule B.

WARD OR FIELD-CORNETCYDIVISION OF.....

List of persons not included in the provisional list of voters as already framed who have lodged their claims to be placed upon the list of Parliamentary Voters in the above Field-cornetcy.

Dated this.....day of.....

A.B.,
Registering Officer.

Christian name (if any) and surname in full.	Occupation, trade, profession or other description.	Residence or address.	Qualification claimed.

All persons whose names are underlined in the above list claim under the third or fifth sections of the Franchise and Ballot Act, 1892.

SCHEDULE C.

Schedule C.

ELECTORAL LIST.

List of persons appearing to be qualified to vote at the Election of members of the Legislative Council and House of Assembly in the Field-cornetcy of.....in the division of.....

Dated this.....day of.....

A.B.,
Registering Officer.

Christian name (if any) and surname in full.	Occupation, trade, profession, or other description.	Qualification.	Situation of Property in respect of which qualification exists, or present address if qualification be not in respect of property.
A. B.	... Farmer	... Householder	
C. D.	... Storekeeper	... Householder	
E. F.	... Clerk	... Salary	
G. H.	... Farm Labourer	Wages	

All names underlined in the above list are inserted under the third or fifth sections of the Franchise and Ballot Act, 1892.

No. 9—1892.
Schedule D.

SCHEDULE D.

ELECTORAL DIVISION OF.....

List of persons whose names have been removed from the provisional list of voters by reason of the allowance of objections lodged against them ; and of persons whose claims to be placed upon the list of voters have been lodged or handed in but not allowed.

Dated this.....day of.....

A.B.,
Registering Officer.

Christian name (if any) and surname in full.	Occupation trade, profession, or other description.	Residence or address.	Reason for allowing the objection or disallowing the claim
A. B. ...	Farmer ...		(Here state reason as above, e.g., "not resided in district for twelve months." "Property not of required value." "Wages insufficient." "Writing qualification not proved. &c.
C. D. ...	Storekeeper ...		
E. F. ...	Clerk ...		
G. H. ...	Farm Labourer		

Schedule E.

Schedule E—Claim to be registered as a Voter in the Electoral Division of Cape Town.

[Schedule E is repealed by Act 48, 1899. Pages 2995 and 2996.]

Schedule F.

SCHEDULE F.

Form of Ballot Paper

Form of Front of Ballot Paper.

Form of ballot-paper.

ELECTION OF MEMBERS OF (Legislative Council or House of Assembly, as case may be.)

Counterfoil No.

NOTE :
The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

No. of Voter on list.

		BROWN.	
	1	(John Brown, of 52, Ad- derley Street, Cape Town, Merchant.)	
		JONES.	
	2	(William David Jones, of Wynberg, Esq.)	
		SMITH.	
	3	(Henry Sydney Smith, of 72, St. George's Street, Cape Town, attorney.)	

Form of back of Ballot Paper.

No. 9—1892.

No. Election for the Electoral Division of Province, as the case may be. Electoral

18

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to Printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, their other names shall be printed in large characters as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper shall be printed in small characters.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling place and in every compartment of every Polling place. These directions may be varied in manner prescribed by the regulations.

Form of directions for guidance of voters.

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pen or pencil provided in the compartment, place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus x.

A vote recorded in any other manner will be rejected.

If the voter be entitled to give more than one vote for any candidate, he shall place opposite the names of the candidate for whom he votes, the number of votes given for such candidate, thus x x x x or x x x, or x x, as the case may be.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the polling officer, and then, in the presence of the polling officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied with such inadvertence, give him another paper.

If the voter gives more votes than he is entitled to, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a contravention of the Franchise and Ballot Act, 1892, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

No. 10—1892.

Form of declaration of secrecy.

Form of Declaration of Secrecy.

I solemnly promise and declare, that I will not at this election for do anything forbidden by section seventy-five of the Franchise and Ballot Act, 1892, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of declaration of inability to read.

Form of Declaration of inability to read.

I, *A.B.*, of _____, being numbered _____ on the Register of Voters for _____ do hereby declare that I am unable to read. *A.B.*, his mark.
day of _____

I, the undersigned, being the presiding officer for the _____ polling place of _____, do hereby certify that the above declaration having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed *C.D.*,
Presiding Officer for the _____ polling place
of.....
this.....day of.....18

No. 10—1892.]

[August 26, 1892.

ACT (1)

To provide for the Advance of a Certain Sum of Money to the Netherlands South African Railway Company for the purpose of the Construction of a Certain Line of Railway, and further to provide in certain respects for the Working of the said Line.

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:—

Advance to Netherlands South African Railway Company.

1. It shall be lawful for the Governor to advance to the Netherlands South African Railway Company a sum not exceeding in the whole the sum of six hundred and fifty thousand pounds in accordance with and for the purpose of carrying out the provisions of certain three agreements bearing date the 10th day of December, 1891, and entered into between the Government of this Colony and the said Netherlands South African Railway Company; which said agreements have been formally approved by the Government of the South African Republic, and copies of which were presented to both Houses of Parliament by command of the Governor on the 3rd day of June, 1892.

Money advanced, how to be raised.

2. For the purpose of making the said advance it shall be lawful for the Governor from time to time, as he may deem expedient, to raise the said sum of six hundred and fifty thousand pounds either by debentures or stock, or partly by debentures and partly by stock.

¹ Reduced by £100,000. See § 4, Act 24, 1896 (p. 3614). See also §, 3 Act 36, 1899, and § 5, Act 9, 1900.

3. It shall be lawful for the Treasurer of the Colony, or for any person authorised by him to receive from the said company, in exchange for the moneys advanced as aforesaid, debentures of the said company guaranteed in the manner, bearing interest at the rate, and calculated upon the scale, in the said contracts provided; all debentures so received shall be held and dealt with by the Treasurer, or subject to his directions, in trust for public purposes; and the proceeds of or arising from the said debentures shall be applied in manner directed by the fourth and fifth sections hereof.

No. 10—1892.
Treasurer to receive debentures from the Company in exchange for money advanced.

4. Subject to the provisions of the said contracts, the interest from time to time received in respect of the said debentures shall be paid into the general revenue of the Colony.

Interest in respect of debentures paid to general revenue.

5. The proceeds arising from the sale or redemption of the said debentures, or of any of them, shall be paid by the Treasurer to the Sinking Fund Commissioners appointed by the Governor in terms of the Cape of Good Hope General Loans Act, 1883, for the purpose of being applied by them in reducing the debt of the Colony according to law.

Proceeds of sale or redemption of debentures to be paid to the Sinking Fund Commissioners.

6. The Treasurer shall cause to be laid before both Houses of Parliament, in every year, a statement of account showing the amount of debentures held as aforesaid, the interest received thereon during the year, and the charge within the year for interest on the money raised in respect of the advances aforesaid, and secured by the said debentures.

Statement of account of debentures, &c., to be laid before Parliament.

7. It shall be lawful for the Governor to appoint all such engineers and other officers or servants, and to do and perform all such acts, matters and things, as he may deem necessary or expedient for the purpose of carrying out all the duties and obligations, and obtaining the benefit of all the rights and privileges of the Government of this Colony, in respect of the equipment and working of the railways mentioned in the said agreements, so far as such duties, obligations, rights and privileges are provided for by the said agreements, or by any addition or alterations duly made as therein provided,—and so long as the said agreements, additions or alterations, remain in force.

Governor may appoint officers and engineers, &c.

8. This Act may be cited as the "Transvaal Railways Loan Act, 1892."

Short title.

No. 11—1892.]

[August 26, 1892.

ACT

To apply a Sum not exceeding One Hundred and Seventy Thousand Nine Hundred and Fifteen Pounds sterling for the Construction of Certain Public Works, and for other Purposes.

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:—

Construction of certain public works.

1. For the purpose of constructing the public works set forth in the Schedule hereto annexed, it shall be lawful to apply the sum of One Hundred and Fifty-four Thousand Four Hundred and Forty Pounds sterling out of the revenues of the Colony.

Buildings for school purposes.

2. In aid of building for school purposes already erected or to be erected or acquired, it shall be lawful to apply a sum of Sixteen Thousand Four Hundred and Seventy-five Pounds sterling out of the revenues of the Colony, in accordance with a detailed statement of special grants in aid of buildings for school purposes [G. 58—'92] presented to Parliament.

Short title.

3. This Act may be cited as the "Public Works Act, 1892."

Schedule.

SCHEDULE.

South African Museum	...	...	£20,000
Breede River Bridge at a point near Worcester	...	...	10,000
Gamtoos River Bridge...	...	...	20,000
Keiskama River Line Drift Bridge	...	...	18,240
Olifant's River East Bridge	...	...	20,000
Kaffir Kuil's River Bridge	...	...	8,500
Stormberg Spruit Bridge	...	...	8,500
Breede River Bridge, Swellendam	...	...	16,500
Umtata River Bridge	...	...	8,000
Kraai River Bridge (to complete)	...	...	9,000
Bashee River Bridge do.	...	...	15,700
			<u>£154,440</u>

No. 12—1892.]

[August 26, 1892.

ACT

For Constituting an Additional Fiscal Division.

Preamble.

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 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 law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

2. The district of Britstown shall, from and after date of and Proclamation to be issued for that purpose by the Governor and published in the *Gazette*, become and be a division for fiscal purposes, and be styled the division of Britstown.

3. The Proclamation provided for in the last preceding section shall define the several boundaries of the division of Britstown, and the boundaries so proclaimed shall be the boundaries of the said division.

4. From and after the date of any Proclamation issued by the Governor in that behalf and published in the *Gazette*, the Divisional Council for the time being of every division, to which the whole or any part of the division of Britstown, so constituted for fiscal purposes only and named in such Proclamation, belonged, shall stand dissolved, and the provisions of Act No. 40 of 1889, commonly called "The Divisional Councils Act, 1889," and of every other law relating to Divisional Councils, shall apply to the division of Britstown constituted under this Act, and to the divisions to which the said division or any part thereof previously belonged, and such former divisions shall then be limited and bounded precisely as if no Divisional Council in or for such divisions had ever been elected: Provided that the persons who shall be registered as voters for the Divisional Council of any such former division which down to the date of such Proclamation, comprised the whole or any part of the new division of Britstown, and who, in accordance with the Act No. 40 of 1889, are duly qualified to be registered as voters for the Divisional Council of the new division of Britstown shall be entitled to vote at the election of Councillors for the Divisional Council of such new division.

5. The 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 so far as applicable, *mutatis mutandis*, as soon as any Proclamation under this Act shall have been issued, apply to the new division of Britstown, and to the divisions to which the said new division in whole or in part belonged before the issuing of such Proclamation, just as though such new division of Britstown were named in the Schedule to the Act No. 12 of 1857.

6. Notwithstanding the creation of the new division of Britstown by virtue of any Proclamation under this Act, such new division and every part thereof shall, for electoral purposes, continue to form part of whatever electoral division such new division or part thereof belonged to before the date of such Proclamation, precisely as if this Act had not been passed.

7. This Act may be cited as the "Fiscal Divisions Extension Act, 1892."

No. 12—1892.

District of Britstown may be proclaimed fiscal division of Britstown.

Boundaries to be defined by the same Proclamation.

Effect of Act on divisions and Divisional Councils affected by Proclamation: new division to be a division for purposes of Act No. 40 of 1889 and other relative laws.

Provisions of Act No. 24 of 1858 to apply to division of Britstown.

No change of electoral divisions.

Short title.

No. 13—1892.]

[August 26, 1892.

ACT

For Enabling the Municipality of Green Point and Sea Point to borrow a further sum of Money not exceeding £30,000 on Debentures or otherwise, on the credit of the Rates of the Municipality; and to appropriate the Money as follows: £23,000 for a Drainage Scheme, £3,000 for the purchase or building of a Town Hall and Grounds, £4,000 for the opening up and construction of Roads, Side-walks, Surface Drains and General Improvements.

Preamble.

WHEREAS it is expedient to provide the inhabitants of the Municipality of Green Point and Sea Point with a Drainage Scheme, and to purchase or build a Town Hall and grounds, and to open up and construct certain Roads, Side-walks, Surface Drains, and General Improvements:

And whereas at a public meeting of ratepayers, specially convened for the purpose, held on the 29th of April, 1892, it was unanimously resolved that the Commissioners of the said Municipality be authorised to introduce into Parliament a Private Bill enabling them to raise a further loan of not exceeding the sum of £30,000 on debentures or otherwise, on the credit of the rates of this Municipality, and to appropriate the money as follows:—

£23,000 for a Drainage Scheme.

£3,000 for the purchase or building of a Town Hall and grounds.

£4,000 for the opening up and construction of Roads, Side-walks, Surface Drains, and General Improvements.

Provided that no amount be expended on any Drainage Scheme or expenditure incurred for the purchase of a Town Hall, or the opening up of any road without the concurrence of a majority of the ratepayers at a meeting duly convened, and that this proviso be introduced as a clause in the said Bill:

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 for the time being of the Municipality of Green Point and Sea Point to borrow from time to time such sum or sums of money as may necessarily be required for the purposes hereinafter named but not to exceed in the whole the sum of £30,000, viz.:

£23,000 for a Drainage Scheme.

£3,000 for the purchase or building of a Town Hall and grounds.

£4,000 for the opening up and construction of Roads, Side-walks, Surface Drains and General Improvements.

Provided that no portion of any of the said specified sums shall be incurred or expended on any of the objects named without the

Lawful to borrow money not exceeding £30,000.

Provided with consent of ratepayers.

previous approval of a majority of the ratepayers of the said Municipality present and entitled to vote at any meeting of ratepayers specially called for that purpose in the manner meetings of ratepayers are convened by the present private Act of the said Municipality, No. 14 of 1859.

No. 13—1892.

2. It shall be lawful for the Commissioners of the said Municipality to impose, if necessary, for the purpose of providing for the repayment of the capital and of the payment of the annual or half-yearly interest thereon, a certain rate or tax upon all present and future rateable property within the said Municipality, and every rate so imposed shall be of the same force and effect, and be levied in the same manner as rates or taxes are now imposed or levied under the provisions of the said Act No. 14 of 1859.

Commissioners may impose a tax.

Provided that it shall be lawful for the said Commissioners to apply to the payment of capital and interest, or either, any funds or moneys accruing to the said Commissioners from any source whatever and not specially appropriated for any other object.

Payment out of other funds.

3. 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 debenture or written acknowledgment of or for the moneys borrowed by them for the purposes aforesaid, not exceeding in the whole the said sum of £30,000, which debenture or acknowledgment shall be as near as may be in the form in the Schedule annexed to this Act; and shall be signed by two of the Commissioners for the time being appointed for that purpose by a resolution of the Board of Commissioners of the said Municipality.

Debentures or acknowledgments.

4. The said Commissioners shall cause to be kept a separate account of all moneys borrowed under this Act and of the interest paid thereon, and of the expenditure of such moneys, and shall at their annual meetings under the Act 14 of 1859, exhibit for the inspection of the ratepayers an account showing the particulars aforesaid, and give such other information as shall be necessary and lawful.

Separate accounts to be kept.

5. It shall be lawful for the Commissioners to pay the expenses for obtaining this Act, and carrying the provisions thereof into effect, out of the present general revenue of the Municipality.

Expenses of this Act.

6. This Act may be cited for all purposes as "The Municipality of Green Point and Sea Point Loan Act, 1892."

Short title.

SCHEDULE.

Schedule.

We, the undersigned Commissioners of the Municipality of Green Point and Sea Point, 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 Green Point and Sea Point Loan Act,

No. 14—1892.

1892," and certify that the said sum is secured by the said Act in such 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 :—

Given under our hands at Sea Point, this day of
189 .

WITNESSES :

No. 14—1892.]

[October 14, 1892.

ACT

To Establish a "Contingencies (1) Account."

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. To enable the Executive Government from time to time to incur expenditure on such unforeseen services as cannot be postponed without serious injury to the public interests, until adequate provision can be made therefor by Parliament, an account shall be opened in the books of the Paymaster-General, entitled the "Contingencies Account," to which temporary advances to meet such expenditure may be charged on warrants of the Governor: Provided that such advances shall not be available for expenditure on any new department or office, unless Parliament shall have made provision for the same: Provided, also, that no such warrant shall be granted until the Controller and Auditor-General shall have certified that the proposed advance may be made according to law.

2. Any liabilities thus incurred on emergency without the previous authority of Parliament shall in no case exceed the sum of two (2) hundred thousand pounds, together with the excess if any of the railway revenue actually collected within any portion of the financial year then current, over the estimated railway revenue for such portion: unless in respect of any financial year some larger sum shall have been prescribed in the resolutions of both Houses of Parliament as a maximum limit thereof: Provided that such excess of the actual over the estimated railway revenue shall be available only for any insufficiency of the Votes for the Working and Maintenance of Railways, to cover expenditure properly chargeable as ordinary Working and Maintenance Services, and shall not be available for any unauthorised work or service properly or usually regarded as belonging to Railway Capital Account, which may have been included in such votes, or for any other unauthorised service.

3. Such advances may be repaid out of moneys appropriated by Parliament for that purpose, but the aggregate unadjusted balance of such advances shall in no case exceed the sum of (2) two hundred

¹ Amended by Act 23, 1896 (p. 3612).

² Printed as amended by Act 23, 1896. See also Act 6, 1902 (p. 4359), indemnifying the Governor for issue of warrants to cover expenditure incurred in financial years, 1900-01 and 1901-02, in consequence of a state of war.

Contingencies Account may be opened in books of Paymaster-General,

Limit of liabilities incurred on emergency without authority of Parliament.

Advances, how repaid.

thousand pounds, together with such excess of the actual over the estimated Railway Revenue, or such larger sum as may have been prescribed in the aforementioned resolutions of both Houses of Parliament.

4. It shall be lawful for the Controller and Auditor-General, on the requisition of the Treasurer of the Colony, to authorise and allow the issue from the Exchequer account of such sums as may from time to time be necessary to enable such advances to be made: Provided that the aggregate amount of such issues unadjusted shall in no case exceed the sum of ⁽¹⁾ two hundred thousand pounds, together with such excess of the actual over the estimated Railway Revenue, or such larger sum as may have been prescribed in the aforementioned resolutions of both Houses of Parliament.

5. Should any Accounting Officer pay or authorise payment from public funds for any service which is unauthorised according to Regulations framed under the provisions of this Act or of the sixth section of the "Audit Act, 1875," and which is not covered by advances authorised by the Governor under the provisions of this Act, it shall be the duty of the Controller and Auditor-General to surcharge such Accounting Officer personally in the amount so paid, and also to surcharge in a like sum every other officer who may have directed the payment to be made or the service to be performed, notwithstanding that he knew, or with the exercise of reasonable diligence ought to have known, that the payment or service had not been authorised by Parliament, or that the provision made by Parliament had been exhausted, and that it had not been covered by advances made under the provisions of this Act; and the amount of every such surcharge in so far as it is not duly covered by advances made under the provisions of this Act, shall be recovered from such Accounting Officer, and any such other officer or officers, by deductions from their salaries under the provisions of the fourteenth section of Act 32 of 1888, or in such other manner as the Governor may direct: Provided that the total amount thus recovered from all the officers surcharged shall not exceed the amount of the surcharge: Provided further that the provisions of the twenty-fifth section of the "Audit Act, 1875," shall apply to every such surcharge.

6. Any advance from the Contingencies Account for which Parliament may refuse to make provision during the ordinary session next after the date on which such advance shall have been made, shall be recovered from such persons and in such manner as may be directed in resolutions of both Houses of Parliament.

7. The provisions of the sixth section of the "Audit Act, 1875," shall apply to this Act precisely as if the section were repeated herein.

8. This Act may be cited for all purposes as the "Contingencies Account Act, 1892."

No. 14—1892.

Auditor-General may authorise issue of sums for enabling such advances to be made.

When payment made not covered by advances under this Act, duty of Auditor-General.

How advances for which Parliament refuses to make provision, recovered.

Sixth section "Audit Act, 1875," to apply.

Short title.

¹ Printed as amended by Act 23, 1896.

No. 15—1892.]

[September 2, 1892.

ACT

To Consolidate and Amend the Law with regard to Pounds. (1)

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:—

PRELIMINARY.

Short title.

1. This Act may be cited as "The Pounds and Trespases Act, 1892."

Laws repealed.

2. The laws mentioned in Schedule A to the extent therein set forth, and so much of any other law as may be inconsistent with any of the provisions of this Act, are hereby repealed, except as to acts done, rights acquired, liabilities incurred, offences committed, or proceedings taken before the passing of this Act.

Interpretation of terms.

3. For the purposes of this Act, the following terms shall, unless the context otherwise indicate, have the meanings set against them respectively:—

"Cattle," bulls, cows, oxen, heifers, steers and calves.

"Horses," horses, mares, geldings, colts, fillies, asses and mules.

"Sheep," rams, ewes, wethers, lambs.

"Goats," rams, ewes, wethers and kids.

"Ostriches," domesticated male and female ostriches and ostrich chicks.

"Animals," shall include horses, cattle, sheep, goats, ostriches and pigs.

"Stallion," male horse, ass or mule not castrated.

"Flock," any number of sheep or goats more than one, which are in one lot, or under the charge of one person.

"Proprietor," any owner, lessee, or occupier of land.

"Owner," the proprietor of any animal or the agent or caretaker for the proprietor.

"Sufficient fence," when applied to wire fence, shall mean a fence of so many wires and of such construction as the Divisional Council of the division in which the fence is situated shall from time to time decide; in other cases a wall, fence or barrier at least four feet six inches high and through which no animal could pass without breaking.

"Field-cornet" shall include assistant field-cornet.

"Division," fiscal division.

"Council," the divisional council of any division.

ESTABLISHMENT OF DIVISIONAL POUNDS AND APPOINTMENT OF POUNDMASTERS.

4. The management and control of every pound which is not situated in a (2) municipality or corporate town shall be vested in

Management and control of all pounds not in a Municipality, vested a Divisional Council.

(1) See Act 11, 1893 (p.3151). Private land where registered servitude of outspan exempted from operation of this Act. As to scabby sheep sent to Pound, see § 35, Act 20, 1894 (p. 3358).

(2) As to Municipal pounds, see § 81 of this Act and §§ 109 and 164 of Act 45, 1882, (p. 1961.)

the council of the division in which such pound is situate. And every such pound lawfully established at the date of the taking effect of this Act shall continue thereafter to be a lawful pound, within the meaning of this Act.

No. 15—1892.

5. The Governor may, at the request of the council of any division, establish, by proclamation in the *Gazette*, a pound at any spot desired by such council; and may similarly abolish any existing pound. But nothing herein contained shall prejudice any legal rights vested in any person lawfully interested in the continuance of any pound which may hereafter be abolished, or deprive such person of any legal remedy arising out of any contract with any council.

Governor may at request of Council proclaim or abolish pounds.

6. The council of any division may appoint and dismiss any poundmaster in the division, subject to the terms of the contract entered into between such council and such poundmaster: Provided that

Council may appoint and dismiss poundmasters.

- (1) No person shall, at the same time, be poundmaster of more than one pound; and
- (2) No person shall be appointed or continued as poundmaster who is a licensed dealer in intoxicating liquor.

DUTIES OF POUNDMASTER.

7. It shall be the duty of every poundmaster to receive into his charge all animals tendered at his pound, between sunrise and sunset, by any proprietor, or by the caretaker for any proprietor, or by any person authorised in writing thereto by such proprietor or caretaker, in order to be impounded as having been found trespassing upon the land of such proprietor.

Poundmaster to receive animals tendered as having trespassed.

And any poundmaster who refuses or neglects to receive animals tendered as aforesaid shall be liable on each occasion to a fine not exceeding five pounds. And he shall, in addition, be liable for any damage caused to the owner of the said animals, or to any other person, by reason of such refusal or neglect.

Penalty for refusal.

Provided that in case any horse or cattle suffering from any contagious disease shall be sent to the pound, such horse or cattle shall be kept separate from all other impounded stock, and the poundmaster shall cause the same to be destroyed under the provisions of section fourteen of this Act.

Proviso.

8. Every poundmaster shall give to the person delivering animals into his charge a written receipt, setting forth the number and description of the animals so delivered, and specifying the trespass for which the said animals are reported to be impounded.

Receipt for impounded animals.

9. Every poundmaster shall maintain in good repair, and as far as possible free from all infection, not less than three separate enclosures, for ostriches and horses; for cattle; and for sheep, goats and pigs.

Number of enclosures to be kept.

But any council may, in regard to any pound in its division, give permission to the poundmaster to maintain in manner aforesaid a lesser number of enclosures.

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Poundmasters answerable to owner for injury by neglect.

Penalty for using impounded animal.

Record of death of or injury to animal to be kept.

Poundmaster may in certain cases destroy animals suffering from contagious disease or dangerous.

10. [Repealed by Act No. 20, 1894.]

11. Every poundmaster shall take proper care of any animal impounded, and shall be responsible to the owner of any such animal for any damage or injury sustained by reason of any neglect or default on the part of himself or any person acting for him or on his behalf.

12. Any poundmaster who shall ride, or otherwise work or use any impounded animal shall be liable for every such offence to a penalty of not exceeding five pounds.

13. In case of the death or injury of any impounded animal the poundmaster shall enter in his pound book a description of such animal and the cause of its death or injury; and the absence of any such entry, or its falsity in any material respect shall be held to be a *prima facie* proof of the fact that the death or injury in question was due to the default of the poundmaster.

14. It shall be lawful for any poundmaster to destroy, subject to the exceptions hereinafter stated, any impounded animal suffering from a contagious disease, or likely to prove dangerous to human life, or destructive to other animals impounded. Provided that

- (1) No such animal shall be destroyed until a justice of the peace, a field-cornet, or two disinterested landowners shall have examined it, and shall agree with the poundmaster as to the necessity for its destruction.
- (2) The poundmaster shall summon the owner of such animal, if known, to attend the examination aforesaid. Such summons may be by letter duly sent through the post.
- (3) If the owner of the animal object to its destruction, he may release it, if he do so forthwith, and if he release at the same time all other animals belonging to him which may have been impounded on the same occasion as the animal proposed to be destroyed.
- (4) Every justice of the peace, field-cornet or landowner attending for the purpose of the inspection aforesaid, shall be paid by the poundmaster the sum of seven shillings and sixpence, together with horse-hire at the rate of one shilling and sixpence per hour. The amount so paid may be recovered by the poundmaster from the owner of the animal if it be destroyed; if the animal be not destroyed, or the owner unknown, or if it be impossible to recover from the owner the whole or any part of such amount, then the said amount, or the portion of it unrecovered as the case may be, shall be paid to the poundmaster by the said council.
- (5) Nothing in this section shall apply to sheep or goats suffering merely from scab.

15. No poundmaster who is in charge of a pound situated within a distance of nine miles from any other pound, in the same division, shall confine in his own pound any animal found tres-

Animals trespassing on poundmaster's own property.

passing upon property belonging to himself; but such animals shall be sent to such other pound in the same division as may be nearest to his own pound by a practical road or thoroughfare.

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And any poundmaster sending such animals to another pound shall enter in his pound book the number and description of the animals sent.

For a contravention of any of the provisions of this section, a poundmaster shall be liable to a penalty of not exceeding ten pounds.

Penalty.

16. Every poundmaster who knows the name of the owner of any animals impounded in his pound shall forthwith send through the post or otherwise a written notice addressed to such owner at his place of residence, informing him of the fact that the said animals have been impounded.

Poundmasters to give notice to owner of impounded animals.

17. Every poundmaster shall have and preserve at or near his pound, a copy of this Act, in English and Dutch, and such Act shall at all reasonable times be open for reference to the public.

Copy of Act to be kept at every pound.

And he shall erect and maintain at or near the pound, a board upon which shall be printed, painted, or written in legible characters, the rates of fees and damages fixed by the Schedules B, C, D, E, F, and G to this Act; or such other rates as the council of the division may authorise in their place.

Board with rates of Fees, &c. posted thereon to be erected at every pound.

18. Every poundmaster shall keep a pound book, the entries in which shall be made in the English or the Dutch language, or in both, according as the council of the division may direct. The following particulars shall be legibly entered by every poundmaster in his pound book:—

Pound book to be kept.

- (1) The date when, and the cause for which, all animals received by him are impounded;
- (2) The number and description of such animals;
- (3) The name and residence of the person impounding such animals, and the name and residence of the owner or supposed owner;
- (4) The date and particulars of the release or sale of the animals, as the case may be;
- (5) Any other matters which he may be directed by the council of the division to ascertain and record; and the particulars of any notice sent to him in terms of section twenty-nine of this Act.

The said entries shall be made at the time the acts recorded were done, or so soon thereafter as possible; but not after any dispute concerning them has arisen.

And, generally, in regard to the forms in which entries in the pound book are to be made, the poundmaster shall follow such directions as he may receive from the council of the division.

19. Every pound book shall be kept at the residence of the poundmaster, and shall at all reasonable times be open for the inspection of the secretary or any member of the council for the district, and of any member of the police force, free of charge:

Inspection of pound book.

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Extracts from pound book to be granted.

Copy of pound book to be sent to Secretary of Divisional Council after every pound sale.

Penalties for contravening certain provisions.

Penalties for false entries, &c.

Inspection of pound book at place of sale.

Saving clause with regard to functions and duties imposed by other laws.

and shall be similarly open to every other person upon payment of a fee of sixpence for each inspection.

And every poundmaster shall grant extracts, signed by himself, from his pound book to any person demanding the same, upon payment of one shilling for every such extract, not exceeding one hundred words; and sixpence for every subsequent hundred or part of one hundred words.

20. Every poundmaster shall within a fortnight after the date of each pound sale forward to the secretary of the council of his division a copy of all entries in his pound book made since the date of the preceding transmission; provided that the first copy so forwarded, after the taking effect of this Act, shall be a copy of all entries made after a date to be fixed by the council. And the secretary shall preserve all such copies in his office for the inspection of any person desirous of seeing them.

21. Every poundmaster who shall

- (a) Refuse to allow his pound book or copy of this Act to be inspected by any person having a lawful right to inspect it, or
- (b) Neglect in any respect to comply with the provisions of sections sixty-four to sixty-nine inclusive of this Act; or
- (c) Neglect or refuse to forward to the secretary of the council the copies of entries referred to in the preceding section, shall be liable on each occasion to a penalty of not exceeding five pounds.

22. Every poundmaster who shall

- (1) Knowingly make a false entry in his pound book.
- (2) Fraudulently destroy or erase any entry already made, or
- (3) Wilfully deliver to the secretary aforesaid, a false copy or extract from his pound book, shall be liable for each offence, to a penalty not exceeding twenty-five pounds.

23. Every poundmaster shall take his pound book with him to every sale of animals impounded in his pound, and such book shall be open, at the place of sale, free of charge, to all persons desirous of inspecting it.

24. Nothing in this Act contained shall be deemed to alter in any way the powers, functions, and duties, conferred or imposed upon poundmasters, by any of the following laws, or by any other law not repealed by this Act:—

The Ordinance 9 of 1846, sections (1) fourteen and fifteen.

The Act 14 of 1870, sections (2) five, six, seven and eight, commonly called "The Cattle Removal Act, 1870."

The Act 37 of 1884, section (3) sixteen, commonly called "The Native Locations Act, 1884.

The (4) Act 28 of 1886, section eight, commonly called "The Scab Act, 1886."

¹ Page 387.

² Page 1173.

³ Page 2240.

⁴ Act 28, 1886, is repealed by Act 20, 1894. See § 35 of the last-named Act (p. 3358).

The (1) Act 33 of 1888, sections eight, twelve and fifteen, commonly called "The Scab Act, 1888."

The Act 12 of 1890, sections twenty-one, twenty-two and twenty-three, commonly called "The Brands (2) Registration Act, 1890."

TRESPASS ON PRIVATE PROPERTY.

25. Any proprietor upon whose land any animals are found trespassing may send such animals to that pound which is the nearest, by a practicable road or thoroughfare, to the land trespassed upon, and to no other pound. Provided that upon the application of the Divisional Council of any division, it shall be lawful for the Governor, by Proclamation in the *Gazette*, to direct that from and after a date to be notified in such Proclamation, any animals found trespassing on any land shall be sent to that pound in such division which is nearest by a practicable road or thoroughfare to the land trespassed upon, and to no other pound. And from and after the date aforesaid, this section shall, for the purpose of its operation in such division, be read as if the words "in the same division" had been inserted after the word "pound" where it first occurs in the said section.

Pound to which animals are to be sent.

26. All pigs, poultry or pigeons found trespassing in or upon

(a) Any garden, vineyard or orchard;

(b) Any place upon which any species of cultivated crop is growing, or upon which such crop having been gathered is still lying;

(c) Any place containing grain;

may be destroyed by the proprietor, or any person acting in his authority.

Destruction of pigs, poultry, and pigeons.

And any dog found trespassing between the first day of December and the first day of May in any vineyard or raisin floor, and doing damage therein, may be similarly destroyed.

Destruction of dogs.

Provided that any dog found trespassing at any time in a fenced camp or enclosed place in which there are game or animals may be destroyed; and provided further that the owner of any dog, or any person having a dog in his possession or under his control, shall be liable to make good any damage done by such dog to any game, ostriches or animals in any fenced camp or enclosed place.

27. The owner of any animals liable to impoundment for trespass may, before the animals have been removed from the property trespassed upon, tender to the person complaining of the trespass a sum of money to cover the damage suffered by him, or the trespass money lawfully claimable under any section of this Act in connection with such trespass; such tender to be made to the complainant himself or his caretaker. If such animals as aforesaid are in course of being conveyed to the pound, then their owner may tender a sum of money to cover the damage or trespass money aforesaid, and also the mileage to which the complainant would be entitled under this Act if the animals had actually been impounded; such tender may be made either to the com-

Tender by owner before animals are impounded.

¹ Repealed by Act 20, 1894, which see.

² Page 2806.

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plainant himself or to his servant or agent charged with the duty of conveying the animals to the pound. And if the said tender be refused, the complainant shall pay the cost of all legal proceedings which he may thereafter institute, and shall be liable for all damages sustained by the owner of the animals by reason of their detention after the date of tender, unless the tender is found to be insufficient by a competent Court; or unless, in the opinion of such Court, the tender was refused by the complainant or person in charge of the animals in the *bonâ fide* belief that the person making the tender was not the owner or the duly authorised agent of the owner.

Penalty for selling animal found trespassing.

28. No proprietor shall sell or dispose of any animal found trespassing upon his property, under a penalty not exceeding ten pounds, recoverable at the suit of the owner of the animal so sold or disposed of.

But the enforcement of the penalty shall not deprive the owner of any legal right he may have to recover from such proprietor the value of such animal and any damage sustained by reason of its detention or sale.

Use and detention of animals found trespassing.

29. No proprietor shall ride, work, or use any animal found trespassing upon his land, or detain such animal for any space of time longer than twenty-four hours.

No proprietor shall knowingly allow any stray animal to remain upon his property for a period longer than two weeks unless he shall have forwarded to the owner of the animal, if known to him, or to the nearest poundmaster, a notice of the presence of such animal upon his property. Such notice shall be sent by letter delivered or duly posted, and shall set forth, as nearly as possible, the species, marks, and distinguishing peculiarities of the animal in question, and in regard to horses and cattle their colour also.

Furious driving and ill-treatment.

And no person shall furiously drive, worry, or wantonly ill-treat any animal found trespassing, or conduct the same to the pound by any except the shortest available road or thoroughfare, unless some other shall be more desirable for the animal itself, or send any number of animals found trespassing at the same time and place in separate lots to the pound with the object of obtaining additional mileage.

Penalty.

Any person contravening this section shall be liable to a penalty not exceeding five pounds; and shall make good to the owner of such animal or animals any damage sustained by reason of such infringement.

Rescue and penalty therefor.

30. No person shall rescue, or incite or assist any other person to rescue, any animals lawfully impounded, or lawfully seized for the purpose of being impounded, under a penalty of not exceeding ten pounds for each offence.

Mileage payable to person delivering animals to be impounded.

31. Every person who delivers any animal to a poundmaster to be impounded, shall be entitled to receive from such poundmaster mileage at the rate set forth in Schedule B to this Act: Provided that

- (1) When the person so delivering the said animals is not himself the proprietor of the land trespassed upon, or the caretaker for the proprietor, then he shall produce a written memorandum signed by such proprietor or caretaker giving a description of the animals, and authorising the bearer to convey them to the pound, and every such memorandum shall be preserved by the poundmaster as a voucher;
- (2) When more persons than one have been necessarily employed in conveying the said animals to the pound, mileage shall only be paid by the poundmaster to one of such persons; but the person impounding the animals may recover from the owner, in any competent court, similar mileage in respect of every other of such person so employed.

Provided that when ostriches are impounded the poundmaster shall pay mileage for as many drivers as are necessarily employed.

32. The owner of any animal lawfully impounded for trespass upon:

Trespass upon
gardens, vineyards,
&c.

- (a) Any garden, vineyard or orchard;
 - (b) Any place upon which a cultivated crop is growing, or upon which such a crop, having been gathered, is still lying;
 - (c) Any yard, floor, or place containing grain or dried fruit;
- shall, subject to the provisions hereinafter contained, be liable to pay trespass money to the proprietor of the property trespassed upon, calculated according to the rates set forth in Schedule C to this Act.

Provided that:

- (1) Any proprietor, or the caretaker for any proprietor, sending animals to the pound for a trespass under this section shall at the same time send a signed memorandum to the poundmaster, setting forth the number and description of the animals and the species of place or property upon which they have trespassed.
- (2) When the person impounding elects to claim damages calculated according to Schedule C to this Act, the memorandum shall state the amount so claimed.

But if he elects to refer the amount of damage to the award of the field-cornet and landowners as hereinafter provided, or if he elects to proceed for damages by action, the memorandum shall state such election on the part of the person signing it.

- (3) If the memorandum delivered with the animals does not state the species of place or property upon which they have trespassed, then they shall be considered as impounded for trespass under section thirty-three of this Act.
- (4) When such animals are taken to the pound by the proprietor or caretaker aforesaid in person, then the verbal statement of such proprietor or caretaker upon the matters referred to in the preceding sub-sections of this section shall be taken and recorded by the poundmaster.

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Trespass upon un-
cultivated ground.

33. The owner of any animals lawfully impounded for trespass upon any uncultivated ground or any place not of the description in the last section given, shall be liable to pay trespass money to the proprietor of the property trespassed upon at the rate set forth in Schedule D of this Act.

Penalty for repeti-
tion of trespass.

34. In case any property shall be trespassed upon twice within the space of one fortnight by the same cattle or horses belonging to the same owner, then the said owner shall be liable in respect to the second trespass to pay twice the amount of trespass money which would have been payable under this Act had such second trespass not been a repeated trespass.

Liability of
poundmasters on
releasing animals
without payment
of damages due.

35. No poundmaster shall release any impounded animal until there shall have been paid to him, over and above all other fees and charges the amount of all damages or trespass money due and payable under either of the three last preceding sections, or under the thirty-eighth, thirty-ninth, forty-first, forty-fifth, fifty-first and fifty-second sections, in respect of such animals.

And in case of the release of any such animals, without payment of the damages or trespass money aforesaid, the poundmaster shall be liable for such damages or trespass money.

Assessment of
damages when pro-
prietor considers
tariff inadequate.

36. If any proprietor shall consider the amount of trespass money claimable under this Act inadequate for the damage done to his property by animals trespassing thereon, he may demand that such damage shall be assessed by the nearest field-cornet or justice of the peace as umpire or referee, and two landowners as arbitrators. In every such case the following provisions shall apply:

- (1) The proprietor intending to have the amount of damages assessed by arbitration under this section shall give notice to the owner of the animals (where he is known) and the nearest field-cornet within twenty-four hours after the trespass has been committed.
- (2) The proprietor shall appoint one arbitrator and the owner of the animals (where he is known) the other. If the owner refuses to appoint an arbitrator then the arbitrator nominated by the proprietor shall proceed to assess the damage.
- (3) If the nearest field-cornet or justice of the peace is absent from home or is unable or unwilling or fails to act, then the two arbitrators appointed shall select some other impartial landowner to act as referee in place of the field-cornet or justice of the peace.
- (4) If the owner is unknown then the assessment shall not take place except in the presence of a field-cornet or justice of the peace, and the proprietor shall then obtain the services of the nearest available field-cornet or justice of the peace, who shall appoint two land-owners as arbitrators and shall himself act as umpire or referee.
- (5) The field-cornet, or justice of the peace, or referee shall appoint a convenient time for the inspection of the property

trespassed upon; and the referee and arbitrators shall be entitled to receive from the complainant for their services the sum of seven shillings and sixpence each, together with horsehire at the rate of one shilling and sixpence per hour, which charge, as well as the damages assessed, shall be paid to the complainant by the owner, in case the damages assessed shall exceed the amount which would under any of the said schedules have been claimable.

- (6) If any proprietor who demands arbitration under this section shall agree with the person from whom he claims damages to submit the matter to any single referee or to any arbitrators whom the parties may select, then such referee or arbitrators shall, unless the written agreement for arbitration shall otherwise provide, be bound to act in accordance with the provisions of this section; and their award shall be considered to be of the same effect as if it has been given by the field-cornet or justice of the peace and landowners herein mentioned.

37. Every award made under the preceding section shall be in writing, and shall be signed by the arbitrators and by the field-cornet, justice of the peace, or referee, or in the case of a single landowner being lawfully entitled to make it, as hereinbefore provided, by such landowner; and it shall state the amount at which the damage has been assessed, and also whether the complainant or the owner of the animals is liable to pay the charge for the award; provided that if the field-cornet, justice of the peace, or referee, and landowner shall not agree in their assessment, then the amount agreed upon by any two of them shall be the amount awarded.

Award to be in writing.

38. Every such award shall be handed to the complainant, who shall send a true copy of such award to the poundmaster of the pound to which the animals have been sent, and thereupon the assessed damages and charges, if allowed, shall become a charge upon the animals impounded.

Complainant to receive award and send copy to poundmaster.

39. The owner of any sheep or goats infected with scab, and found trespassing upon any property, shall, if the said sheep or goats are not found mixed with other sheep or goats belonging to the proprietor, and free from the said disease, be liable to pay to the proprietor twice the amount of trespass money which would have been payable under the provisions of the thirty-second or thirty-third sections of this Act in regard to a similar trespass by sheep or goats not so infected.

Trespass money due for scabby sheep or goats.

And in case the trespassing sheep or goats are found so mixed, as aforesaid, then their owner shall be liable to pay to the proprietor four times the amount of trespass money which would have been payable under the aforesaid sections in regard to a similar trespass by sheep or goats not so infected.

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And any person who shall wilfully drive any sheep or goats infected with the said disease into or upon the property of another person, upon which property there are at the time any sheep or goats not infected with the said disease, shall over and above any damage or trespass money payable under this Act or otherwise, be liable on conviction to be imprisoned, with or without hard labour, for any period not exceeding six months.

If one sheep or goat trespassing is infected whole flock deemed infected.

40. For the purposes of this Act if any sheep or goat found trespassing is infected with the disease in the last section mentioned, then all sheep or goats in the same flock, and found trespassing at the same time, shall be deemed to be similarly infected, and if any sheep or goat in any flock with which any other flock has become mixed is so infected then the entire mixed flock shall be deemed to be similarly infected.

Assessment of damages for trespass of infected sheep or goats.

41. Any proprietor who is entitled to claim damages under this Act for the trespass of any sheep or goats infected with the disease aforesaid upon his property, may require that the amount of damage shall be determined by a field-cornet, justice of the peace, or referee and two landowners: Provided that

- (1) The provisions of the thirty-sixth, thirty-seventh and thirty-eighth sections of this Act shall be applicable to every such case;
- (2) The field-cornet, justice of the peace, or referee, and the arbitrators shall, before awarding any damages, be satisfied that the trespassing sheep or goats are infected with scab, and shall ascertain whether or not the trespassing sheep or goats were found mixed with sheep or goats not trespassing, and free from such disease;
- (3) No person claiming damages under this section shall be entitled to claim any sum by way of special damage under the provisions of the eighth section of "The Scab Act, 1886,"¹ or any similar provisions in any future Act.

Owner of stock alleged to be infected may deposit security and demand arbitration.

42. The owner of any sheep or goats alleged to be infected as aforesaid, and in respect to the trespass of which damages or trespass money are claimed under this Act, may upon depositing with the poundmaster the sum of twenty-two shillings and sixpence, demand that the question whether the said sheep or goats are so infected be submitted for decision to the award of the field-cornet, or justice of the peace, and the two arbitrators; and thereupon the provisions of the thirty-sixth section of this Act shall apply to every such case.

Trespass of stallions, bulls, sheep, rams, and goat rams, when found amongst mares cows, etc., etc.

43. The owner of any stallion, bull, sheep, ram or goat ram, found trespassing upon the property of another person, and found to be in company with any mare, cow, heifer or ewe, respectively belonging to the proprietor or upon his property with his consent, shall be liable to pay to the proprietor, over and above all other pound fees or charges, a penalty calculated upon the following scale:—

¹ Repealed by Act 20, 1894. See § 35 and 36 of Act 20, 1894 (p. 3358).

- (a) For every stallion so found, a sum of not exceeding ten pounds;
- (b) For every bull so found, a sum not exceeding five pounds;
- (c) For every sheep ram or goat ram so found, a sum not exceeding one pound.

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such penalty in every case may be recovered in any court of Resident Magistrate having jurisdiction.

44. The provisions of the preceding section shall not apply to any stallions under the age of two years, to any bull under the age of one year, and to any sheep ram or goat ram under the age of nine months, and the trespass money payable in respect of any stallion, bull, sheep ram or goat ram, found trespassing, but not under the circumstances detailed in the preceding section, shall be the same amount that would have been payable in respect of a similar trespass by a gelding, ox, or wether, as the case may be.

Trespass by stallions, bulls, &c., &c., under ordinary circumstances

45. Any person who is entitled to claim damages under the forty-third section may require that the amount of damages shall be determined by a field-cornet, justice of the peace, or referee and two landowners; and in that case the provisions of the thirty-sixth, thirty-seventh and thirty-eighth sections of this Act shall apply to such determination and inquiry.

Assessment of damages, under 43rd section.

46. No stallion above the age of two years which shall hereafter be lawfully impounded shall be released by the owner thereof, or sold out of the pound, without being previously castrated, unless such stallion shall be released under the provisions of the forty-ninth section hereof.

Stallions to be castrated before released or sold

47. Every such stallion not released under the provisions of the forty-ninth section hereof shall be castrated by the poundmaster, if competent to perform such operation, or by some other competent person employed by him at his own expense, and such poundmaster shall be allowed for the performance of this duty a fee of ten shillings, to be recovered from the owner of such stallion, if known, or deducted from the proceeds of sale should such animal be sold out of the pound: Provided, however, that no such fee as aforesaid shall be recoverable from the owner in respect of any animal which shall die while in the poundmaster's keeping in consequence of such castration. If the said proceeds be insufficient to pay the said fee, then the amount of such fee shall be paid to the poundmaster by the council.

Castration, and fee for.

48. No stallion shall (except as hereinafter is provided) be castrated under the provisions of this Act until it shall have remained impounded for at least three weeks; and any stallion not sooner released by or on behalf of the owner thereof, shall, subject to such regulations as may be in force at the date of such sale, be sold at the first pound sale occurring after the expiration of thirty days from the date of such stallion having been impounded: Provided, however, that if the owner of such stallion shall give his consent, or shall decline to release it under the forty-

Period to elapse prior to castration.

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ninth section hereof, such stallion may be castrated forthwith, and shall be castrated without unnecessary delay, should the owner thereof desire to release the same under the ordinary provisions of the law.

Conditions under which impounded stallion may be released without castration.

49. The owner of any stallion which may hereafter be impounded shall be entitled to release such stallion without its being castrated, upon payment of pound fees and other charges, and upon giving security, to the satisfaction of any Resident Magistrate or justice of the peace or field-cornet, for the payment of any fine or penalty and costs of suit recoverable under the forty-third section of this Act: Provided, always, that every such owner shall be entitled to tender to any person claiming any penalty under the sections aforesaid, such sum as he shall consider adequate to cover such fine or penalty as aforesaid; and in the event of such tender being refused, the person claiming any such fine or penalty shall be condemned in the costs of such legal proceedings as he may afterwards institute for the recovery thereof, unless the court in which the same shall be pending shall award such fine or penalty as shall exceed the amount so tendered.

TRESPASS ON OUTSPANS AND GOVERNMENT PROPERTY.

Who may impound for trespass on outspan

50. Every justice of the peace, field-cornet, and member of the council, and every road inspector, and secretary in the service of the council in any division, and also any person authorised in writing by any of the said persons, may impound any animals found upon any outspan place or vacant Crown land in the said division.

But this section shall not apply to animals in the possession of travellers who have outspanned for a period not greater than twenty-four hours, or for any period during which they may be detained by stress of weather or other sufficient cause upon the said outspan place.⁽¹⁾

Pound to which such animals sent.

51. All animals impounded under the preceding section shall be sent to the same pound as would have been the case had the outspan or vacant Crown land been private property, and they had trespassed thereon; and the same mileage and trespass money shall be payable as if the said outspan were private property. But the mileage shall be paid to the person taking the animals to the pound, and the trespass money shall be paid to the secretary of the council of the division or to some person entitled to receive it for him.

Trespass upon dam or tank, the property of Government.

52. Any animal not belonging to, or in the possession of a traveller which is found trespassing upon any dam or tank belonging to the Government, or to some council, and intended for the use of travellers and their cattle only, may be impounded by any of the persons in the fiftieth section mentioned, or by any persons

¹ Shall not extend to any animals being in the lawful custody of the occupier of any land which is subject to a registered servitude of outspan. § 4, Act 11, 1893. (p 3151).

duly authorised to take charge of such dam or tank; and the person so impounding shall be entitled to the mileage as in the preceding section provided.

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53. If any animal belonging to any person shall trespass upon any such dam or tank as aforesaid, twice within the space of three months, then such person shall, over and above all other fees and charges, be liable to a penalty of not exceeding five pounds.

Penalty for repeated trespass.

FEES RECEIVABLE BY POUNDMASTER.

54. Every poundmaster shall be entitled to demand or retain (as the case may be) in respect of every animal impounded with him, under this Act, the fees enumerated in Schedule E to this Act; and no animal shall be considered to be impounded until it shall have been actually placed within the pound kraal.

Poundmaster's fees.

55. Every poundmaster shall be entitled, over and above the fees in the last preceding section mentioned, to demand or retain (as the case may be) a further fee for every day during which any such animal shall be herded, grazed and fed by him; such fee to be in accordance with the Schedule F to this Act.

Fees for herding or grazing.

56. Every stallion above the age of two years, every bull above the age of two years, every sheep ram, goat ram or boar, above the age of nine months, and every animal which, from contagious disease, dangerous vice, or other reason, shall be unfit to run with the remaining herd, shall be kept and fed separately; and the fees to be received or retained (as the case may be) by the poundmaster for the keeping and feeding of such animal, shall be thus enumerated in Schedule G to this Act.

Fees for keeping and feeding animals separately.

57. The fees mentioned in the last three preceding sections shall be paid to the poundmaster, for his own use, by the owner of the animals impounded; and the said fees, together with the mileage paid by the poundmaster, in terms of this Act, shall be a charge upon such animals; and such animals may be detained by the poundmaster in security of the said fees and mileage: Provided that—

To whom fees to go.

(1) If the value of the animals impounded is in excess of the total charges due thereon and ascertained under this Act, and if the owner is unable to pay the said charges, then the poundmaster shall only detain so many of the said animals as may be reasonably sufficient to secure the total charges due upon all the animals, and shall deliver the remainder of the animals to the said owner.

(2) Any poundmaster who shall retain, after demand, any greater number of such animals than is reasonably necessary to secure such charges as aforesaid, shall be liable to the owner thereof for any damages sustained by him on account of such retention.

58. Every poundmaster shall, for his attendance at every pound sale, as hereinafter provided, be allowed a fee of ten shillings, to

Fees for attending pound sales.

No. 15—1892.

be paid proportionately out of the proceeds of the animals sold at such sale. And if such proceeds be insufficient, then the council shall pay to the poundmaster such amount as, together with the sum received by him from the proceeds, shall amount to ten shillings.

Fees for animals not branded.

59. In addition to the fees hereinbefore provided, every poundmaster whose pound is situated in a division in which the "Registration of Brands Act, 1890," is in force, shall receive such fee for every horse, head of cattle or ostrict above the age of one year, impounded in his pound, and bearing no registered brand, as the council of the division may determine, but in no case to exceed three pence per head.

ALTERATION OF RATES OF POUND FEES, MILEAGE AND TRESPASS MONEY.

Alteration of tariff by Divisional Councils.

60. It shall be lawful for the council of any division, from time to time to alter the tariff of fees and rates fixed in any of the Schedules B, C, D, E, F, and G to this Act, in respect of all pounds, other than municipal pounds, situate in such division.

Effect of alteration.

61. Every such alteration or amendment of any of the said schedules, when published as hereinafter provided, shall be of the same legal force as if it had formed part of the original schedule, and shall be taken to be included in any reference made in this Act to such schedule.

Publication of altered tariff.

62. No such altered tariff shall take effect until it has been published in the *Gazette* and in some newspaper circulating in the division, and until such published alteration by the council of any division, the rates fixed by the schedules to this Act shall be in force.

Council to furnish poundmasters with copy of tariff as altered.

63. So soon as the council of any division shall have framed and published an altered or amended schedule as hereinbefore provided, each poundmaster in the division shall be furnished by the secretary with a copy thereof.

SALE OF IMPOUNDED STOCK.

Advertisement to secretary divisional council before sale of animals.

64. Whenever any impounded animals shall not be released within ten days from the date of their impoundment, the poundmaster shall forward to the secretary of the council for the division in which the pound is situated, an advertisement setting forth the species, marks and distinguishing peculiarities (if any) of such animals; and in regard to horses and cattle their colour also. And such advertisement shall notify that the animals therein mentioned will be sold at the next sale of impounded cattle; and shall set forth the time and place of such sale.

Publication of advertisement.

65. Every advertisement or notice of the sale of impounded animals shall be published at least twice in succession in such paper or papers, as the council for the division may direct, and the expense of such publication shall be borne by the said council.

66. Every poundmaster, upon sending such advertisement to the secretary of the council as aforesaid, shall post a copy of it in some conspicuous place at or near his pound, there to remain until the day of sale, and the secretary of the divisional council shall also send a copy by post to every other poundmaster in the division—including poundmasters of municipal pounds,—and every poundmaster receiving such a copy of an advertisement as aforesaid shall post the same in a conspicuous place at or near his pound, there to remain until the date of sale therein mentioned.

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Copy to be posted at or near pound and sent to other poundmasters in division.

67. The sales of animals impounded in the several pounds of each division shall take place, as nearly as may be, at intervals of one month; and shall be held at such towns, villages, or other places as the council may appoint: Provided that

Time and place of sales.

(1) The dates of the said sales shall, as far as possible, be so arranged as to cause each successive sale to be held in a different month, and to allow a notice of at least fifteen days to be given of the sale of any animals.

Dates of sales and publication of notices.

(2) The secretary of every council shall transmit to the Colonial Secretary, for insertion in the *Gazette*, once in the month of January, and again in the month of July in each year, a notice setting forth the dates and places at which the several pound sales in the division are appointed to take place.

68. Every sale of impounded stock shall be held at the hour of ten in the morning on the day fixed; and at every such sale the poundmaster shall act as auctioneer,—no auctioneer's licence shall be necessary in order to enable a poundmaster so to act, nor shall auction duty be payable in respect of purchases at any such sale. But no poundmaster shall be directly or indirectly interested in any purchase at any sale so held by himself.

Poundmaster to act as auctioneer.

69. No animal shall be put up at any such sale unless it has been impounded for at least three weeks, except with the consent of the owner.

Animal to be impounded 3 weeks before sale.

70. At every such sale, all animals, except sheep and goats, shall be sold singly. Sheep and goats shall be sold in lots of not more than ten. And in no case shall sheep and goats, or sheep or goats with different marks or brands, be sold together in the same lot.

Animals to be sold singly, except sheep and goats.

71. At every such sale the animals shall be sold for cash; and the proceeds, less the amount of pound fees and other fees and charges properly payable in respect of such animals and less the amount of any damage due or assessed under this Act, shall be forthwith upon receipt, handed by the poundmaster to the secretary of the council, to be by him paid to the owners of the animals sold according to their respective rights: Provided that

Sales shall be for cash

(1) If in any case the animals sold shall not realize sufficient to satisfy all such fees, charges, and damages as aforesaid, the proceeds shall be first applied to the payment of the mileage

Proceeds of sale how to be dealt with.

No. 15 1902.

due to the poundmaster; and if the said proceeds be insufficient to satisfy such mileage, then the balance of mileage shall be paid to the poundmaster by the council; and the balance of other fees, charges, or damages, shall be recoverable from the respective owners by action in any competent court.

- (2) Any money, being the proceeds of the sale of any impounded animal sold as aforesaid, which shall remain in the hands of the secretary of the council for the division for a period of twelve months, without being claimed by the owner of such animal, shall become the property of such council.
- (3) Every poundmaster shall be obliged, after the sale of any head of cattle, horse or ostrich, and before delivery to the purchaser to brand the same with such distinguishing mark as may be fixed upon by the council of his division, for which branding he shall be allowed a fee of one shilling and sixpence in each case. Every poundmaster contravening this section shall be liable to a fine of £2 in each case.

GENERAL.

Illegal impounding and penalties therefor.

72. Any person who illegally impounds any animal shall be liable to make good to the owner all damages, costs and charges arising out of such proceeding, together with two shillings for every horse or head of cattle, and one penny in respect of every other animal so illegally impounded.

When property trespassed on is in different division to that of the proper pound and the rates of the two divisions differ.

73. In case any property trespassed upon is situated in a different division from that in which the pound proper for the receipt of trespassing animals is situated,—and in case the rates of mileage and trespass money in the two divisions shall be different, then mileage and trespass money shall be payable according to the rate for the division in which the property trespassed upon is situated, but all rates payable upon the delivery of such animals to the poundmaster, and for herding, grazing and feeding the same, shall be payable according to the rate for the division in which the pound is situated.

Molestation of animals on owner's property.

74. Every person who shall wrongfully molest, drive, or scatter the animals of another person when upon the property of such last mentioned person; or take away such animals from off the land of their owner, shall be liable upon conviction to a penalty not exceeding ten pounds.

Reservation of action for trespass.

75. Nothing in this Act contained shall be construed so as to prevent any person complaining of trespass from seeking redress according to law in any competent court: Provided

- (1) No person who shall once have claimed damages under sections thirty-two or thirty-three shall be competent afterwards to require an assessment by a field-cornet, or a referee and arbitrators, nor shall any person who shall once have

claimed either such damages or such assessment be competent afterwards to seek redress by legal process.

- (2) Whenever any complainant shall decide to proceed at law for the recovery of damages for any alleged trespass, the owner of the animals impounded for such alleged trespass shall be entitled to release the same upon payment of pound fees, and upon giving security to the satisfaction of any resident magistrate or justice of the peace, for the payment of any damages and costs which the complainant may recover.

76. All fines and penalties imposed by any of the provisions of this Act shall be recoverable in the court of the resident magistrate of the district in which the offence shall have been committed, and may be proceeded for by any person in regard to whose property the act or omission entailing any such fine or penalty shall have taken place.

Recovery of fines and penalties.

And any fine or penalty which shall not be incurred by any act or omission affecting the property of any particular person may be proceeded for by any person whomsoever.

And all fines and penalties, when recovered, shall be paid to the person proceeding for the same.

77. Every person contravening any of the provisions of this Act, in regard to which no penalty is expressly herein provided, shall incur and be liable to a penalty not exceeding five pounds.

Penalty for contravention where not specially prescribed.

78. It shall be lawful for any court of resident magistrate, and for any court to which an appeal from such resident magistrate's decision may be brought, to order that the costs of prosecution or defence, and the costs of such appeal, shall be paid either by the person proceeding for the recovery of a fine or penalty under this Act, or by the person accused of a contravention of any provision of the Act; or it shall be lawful to make no order as to costs. The costs referred to in this section to be such as would be taxed and allowed if the proceedings were in the nature of a civil action.

Costs of prosecution or defence.

79. When any person convicted of an offence against any provision of this Act shall not pay the penalty imposed, he may be sentenced to imprisonment with or without hard labour for any period not exceeding two months, unless any other term of imprisonment be hereinbefore provided in respect of the non-payment of such penalty.

Imprisonment on non-payment of fine.

80. Any magistrate or assistant magistrate may send to any pound in the district within his jurisdiction any animals alleged or proved to have been stolen, and may remove or authorise the removal of the same at his discretion. It shall be the duty of the poundmaster to receive any animals so sent to his pound. Such animals shall not be subject to the usual pound regulations for the sale of impounded animals, but shall be dealt with in such manner as the resident magistrate of the district may direct. No mileage shall be payable on said stock; and in the absence of any

Magistrate may impound and remove animals alleged to have been stolen.

No. 15—1892.

special agreement as to the charge to be made for keeping the said animals, the poundmaster may charge only the sustenance fees set forth in Schedule F. Any sum due in terms of this section for keeping or sustaining such animals shall be a first charge upon the said animals, and shall be paid before the poundmaster is bound to deliver the animals.

MUNICIPAL POUNDS.

Application of Act to municipal pounds.

81. The provisions of this Act shall apply to every pound in any municipality constituted or brought under the provisions of the "Municipal Act, 1882."

But the council of every such municipality shall in regard to every such pound respectively exercise all the powers by this Act given to the council of a division in regard to the pounds in that division.

Government of Municipal pound, where Municipality not under Municipal Act, 1882.

82. Every pound situated in any municipality or corporate town, not constituted or brought under the Act aforesaid, shall be regulated and governed by the provisions of the Act or Ordinance under which the said municipality or corporate town has been constituted, and by any rules or bye-laws lawfully framed thereunder.

Animal trespassing beyond limits of municipality.

83. All animals seized or detained for any trespass committed beyond the limits of a municipality shall be sent to any pound within the said limits, if that pound be the one nearest to the place of trespass and be in the same district; and the poundmaster shall be bound to receive the animals so sent.

Animals impounded in municipal pound subject to regulations of such pound.

84. All animals impounded in any municipal pound shall be subject to the regulations of such pound. But all questions respecting trespass committed beyond the limits of a municipality shall be determined, and the damages claimable therefrom shall be regulated by the provisions of this Act.

Schedule A. Laws repealed.

SCHEDULE A.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Ordinance 16 of 1847...	Ordinance for the better regulation of Pounds, and prevention of Trespassers	The whole.
Act 1 of 1869	Act to Amend the Ordinance No. 16 of 1847	
Act 31 of 1875... ..	The Pounds Act, 1875	The whole.
Act 30 of 1886... ..	The Pounds and Trespases Amendment Act, 1886	The whole.
Act 29 of 1889... ..	The Pounds Ordinance Amendment Act, 1889	The whole.

SCHEDULE B.

RATE OF MILEAGE.

For all animals whether one or more, per mile, going to the pound ... 0 6

No. 15—1892.

Schedule B.
 Mileage.

SCHEDULE C.

TRESPASS ON CULTIVATED LANDS.

Schedule C.
 Trespass on cultivated land.

Description of Animal.	If Land enclosed with sufficient fence.		If Land not so enclosed.	
	s.	d.	s.	d.
Horses, Cattle, Ostriches and Pigs, per head ...	1	6	0	9
Goats, per head ...	0	6	0	3
Sheep, per head...	0	3	0	1

SCHEDULE D.

TRESPASS ON UNCULTIVATED LAND.

Schedule D.
 Trespass on uncultivated land.

Description of Animal.	If Land enclosed with sufficient fence.		If Land not so enclosed.	
	s.	d.	s.	d.
Horses, Cattle, Ostriches and Pigs, per head ...	0	6	0	3
Goats and Sheep, per head, if under 300 in number, per head ...	0	1	0	0½
„ „ if over 300 in number, then for every goat or sheep in excess of 300, per head ...	0	0½	0	0¼

SCHEDULE E.

POUND FEES.

Schedule E.
 Pound Fees.

	s.	d.
Horses, Cattle, Pigs and Ostriches, per head ...	0	6
Sheep and Goats, per head ...	0	0½

SCHEDULE F.

SUSTENANCE FEES.

Schedule F.
 Sustenance fees.

	s.	d.
Ostriches, per head, per diem ...	0	4½
Horses, Cattle and Pigs, per head ...	0	4½
Sheep and Goats ...	0	0½

No 17—1892.

SCHEDULE G.

Schedule G.
Fee for animals
separately herded.

FEES FOR ANIMALS TO BE SEPARATELY HERDED.

	s.	d.
For every Stallion, per diem	1	6
For every Ostrich, per diem	1	6
For every Bull „	1	0
For every Boar „	0	9
For every Sheep Ram, Goat Ram, or other separated animal per diem	0	3

No. 16—1892.]

[September 2, 1892.

Act to Apply a Sum not exceeding Twenty Thousand One Hundred and Sixty-three Pounds Twelve Shillings and Ninepence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

No. 17—1892.]

[September 2, 1892.

ACT

To Amend the Law regarding the Landing, Shipment and Removal of Firearms and Ammunition. ⁽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:—

Interpretation of
terms.

1. For the purposes of this Act the following terms shall have the meaning assigned to them by this section unless such meaning be inconsistent with the context:

“Firearms” means guns, pistols and all parts thereof, and any other description of firearms, and all parts thereof, wherein any explosive is capable of being used;

“Ammunition” means any explosive capable of being used in the explosion of firearms, and includes cartridges, cartridge cases, shot, bullets, lead and percussion caps.

Repeal of existing
laws.

2. The second, third, fourth and fifth sections of the Ordinance No. 7 of 1834, being an Ordinance for regulating the trade in gunpowder in this Colony, the second, third, fourth, fifth, sixth and seventh sections and first Schedule of the Ordinance No. 2 of 1853, as perpetuated by Act No. 28 of 1864, and such other provisions in the said Ordinances, or any other law as may be repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

Firearms and
Ammunition, con-
ditions for landing,
shipment and re-
moval.

3. From and after the taking effect of this Act, no firearms or ammunition shall be landed or removed from the landing place, or from any bonding warehouse, or shipped to any boat, craft or vessel, at any port in this Colony without the permission in writing of the Collector or other principal officer of Customs at such port,

¹ Extended by Proclamation No. 205 of 1893, to Port St. John's.

and under such regulations as may be prescribed by the Governor in that behalf: Provided that no firearms or ammunition shall be shipped to, landed or removed from the landing place or any bonding warehouse at Port St. John's or at Walfisch Bay, or at any such port as the Governor may determine and notify by proclamation in the *Gazette*, without the authority of His Excellency the Governor, or some person duly authorised thereto by him; and provided, further, that nothing in this Act contained shall extend to the removal by sea, of lead pipes, or sheet lead for building and such like purposes; nor shall anything in this Act be construed to extend to or affect firearms or ammunition the property of Her Majesty the Queen or the Colonial Government, or any such articles proved, to the satisfaction of the Collector or other officer of Customs to be really and *bonâ fide* intended for the use of mariners or others navigating the ship or vessel on board of which such articles may be shipped or for the personal use of any passenger arriving or proceeding by sea.

No. 18—1892.

4. It shall be lawful for the Governor from time to time to make, alter, amend or revoke rules and regulations for the landing, removal, and shipment of firearms and ammunition at any port in this Colony, and for generally carrying out the provisions of this Act, and all such rules and regulations when made shall be published in the *Gazette*, and when so published shall have the force of law.

Governor may make rules and regulations.

5. Any person who shall contravene any of the provisions of section three of this Act or any regulation made and published as provided for in section four, shall be liable to a fine not exceeding one hundred pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding three years or to both such fine and imprisonment, and all firearms or ammunition, landed, removed, or shipped in contravention of any such section or regulation, and all vehicles and animals made use of in the removal of such firearms or ammunition shall become forfeited to the Colonial Treasury.

Penalties.

6. This Act shall come into operation upon a date to be fixed by the Governor by Proclamation in the *Gazette*, and may be cited as "The Firearms and Ammunition Act of 1892."

Date of taking effect and short title.

No. 18—1892.]

[September 2, 1892.

ACT

To Amend the Act No. 12 of 1890, commonly called "The Brands Registration Act, 1890."

BE it enacted by 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 words "any portion of any boundary of which shall adjoin any portion of any boundary of any district or division in

Repeal of certain words in Section 2 of Brands Registration Act, 1890.

No. 19—1892.

which the Act shall then already be in force” in Clause 2 of Act No. 12 of 1890, commonly called the “Brands Registration Act, 1890,” are hereby repealed, and the said Clause shall be read as if the said words were not inserted therein.

Short title.

2. This Act may be cited as “The Brands Registration Act, 1890, Amendment Act, 1892.”

No. 19—1892.]

[September 2, 1892.]

ACT

To Exempt Public Libraries, Museums, and certain Railway Buildings from the payment of Municipal Rates and Taxes.

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 repugnant laws.

1. So much of any Act regulating any Municipality within the Colony or of any other law as shall be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Public Libraries and Museums to be exempt from municipal taxation.

2. All lands and buildings, or such portions thereof as are exclusively appropriated to the purposes of, and used as, Public Libraries or Museums of Natural History or Fine Arts within the Colony shall be, and the same are hereby, exempted from the payment of municipal rates or taxes.

Section 4 of Act 36 of 1891 amended

3. The words “save and except such rates as may be imposed, and may be payable under the terms of any Act regulating the municipal government of any corporate town,” in section four of Act No. 36 of 1891, shall be expunged, and the said section shall be read as if the said words had not been inserted therein; provided that the term “railway buildings” shall not apply to such buildings as are beneficially occupied by individuals in their private capacity.

Short title.

4. This Act may be cited for all purposes as “The Public Libraries and Museums Relief Act, 1892.”

No. 20—1892.]

[September 2, 1892.]

ACT

To Repeal in respect of certain districts, certain provisions of the law relating to Masters and Servants, contained in the Proclamation No. 14 of 1872, of Griqualand West, and to make other provisions in lieu thereof.

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. The provisions of sections four to twelve inclusive of the Proclamation No. 14 of 1872, of Griqualand West, shall be and are hereby repealed as regards their operation within the districts of Barkly West, Hay, and Herbert, and so much of "The Masters and Servants Act, 1856," as shall have been repealed by the said proclamation is hereby specially re-enacted as regards the said districts.

2. This Act may be cited for all purposes as the "Griqualand West Proclamation No. 14 of 1872 Partial Repeal Act, 1892."

No. 21—1892.

Certain Sections of G. W. Proclamation No. 14 of 1872 repealed as regards certain districts.

Short title.

No. 21—1892.]

[September 2, 1892.

ACT

To provide for the Construction of Certain Additional Public Works.

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. For the purpose of constructing the works set forth in Schedule A to this Act, it shall be lawful for the Governor to apply a Sum of Three Hundred and Twenty Thousand Pounds sterling out of moneys authorised to be raised under the provisions of the "Temporary Loans Act, (1) 1883."

It shall be lawful to borrow under Temporary Loans Act for certain purposes.

2. It shall be lawful for the Governor to apply out of the revenues of the Colony for the works set forth in Schedule B to this Act the Sum of Twenty-nine Thousand Five Hundred and Sixty Pounds sterling.

Revenue charged with the sum of £29,560.

3. As soon as any expenditure on a work authorised by this or any other similar Act to be paid out of moneys raised under the provisions of the "Temporary Loans Act, (1) 1883," is transferred to vote by being charged to any vote for the Working and Maintenance of Railways, the borrowing powers granted by this or such other Act as the case may be shall forthwith be reduced by an amount equal to the amount so transferred.

Sums charged to Working Account of Railways in repayments of amounts borrowed to be deducted from borrowing power.

4. It shall be the duty of the Controller and Auditor-General to lay before Parliament within fourteen days of the commencement of each Session, an account showing at the close of the preceding financial year the amounts authorised by this or any other Act to be raised for the Construction of Public Works under the provisions of the "Temporary Loans Act, 1883," the amounts by which such powers had been reduced under the provisions of the third section hereof, the temporary loans actually raised under such authorities, and the amount of such loans repaid within such preceding financial year.

Controller and Auditor-General to furnish Parliament with an account of sums borrowed for Public Works under authority of the "Temporary Loans Act."

5. This Act may be cited as the "Public Works Loans Act, 1892."

Short title.

¹ No. 20.

SCHEDULE A.

No. 22—1892.
Schedule A.

<i>Railways</i>				
Rolling Stock	...	...	...	£100,000
Additional Fencing	...	...	...	40,000
Workshops and Accommodation for Employes	...	...	...	25,000
Station Extension and Office Accommodation, Cape Town	...	...	...	15,000
Water Supply	...	...	...	8,000
Additional Accommodation, Three Systems	...	...	...	10,000
Bridges and Culverts	...	...	...	4,000
Station and Sidings	...	...	...	15,000
Surveys in Western Districts	...	...	...	3,000
Bloemfontein to Viljoen's Drift, and Temporary Bridge and Station, North of Vaal River	...	...	...	100,000
				£320,000

Schedule B.

SCHEDULE B.

Re-laying existing Lines with heavier Rails	...	...	£25,000
Telegraph Lines sanctioned by Act No, 17 of 1890	...	...	4,560
			£29 560

No. 22—1892.]

[September 2, 1892.

ACT

To Authorise the raising of a Public Loan of One Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port.

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:—

Power to raise loan of £100,000, for improvement of Table Bay Harbour Works, &c.

1. It shall be lawful for the Governor to raise by public loan a sum not exceeding one hundred thousand pounds sterling for the purpose of prosecuting and improving the harbour works of Table Bay, and of effecting improvements at the Docks in respect of the storage of goods and the landing and shipment of cargo.

Application of moneys by Harbour Board.

2. The application of the moneys to be raised as aforesaid for the above purposes 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 law.

Capital and interest of loans chargeable upon Revenues of Table Bay Harbour Board.

3. Save in cases in which it may be expressly provided by law to the contrary, the capital and interest of all loans raised on the guarantee of the Public Revenue, for the purpose of prosecuting and improving the Harbour Works of Table Bay, shall, in the

first instance, be chargeable upon the revenues of the Table Bay Harbour Board, and such Board shall out of such revenues indemnify the Governor for all moneys paid out of the General Revenue of the Colony on account of the capital or interest of such loans.

4. This Act may be cited as "The Table Bay Harbour Loan Act, 1892."

No. 23—1892.

Short title.

No. 23—1892.]

[September 2, 1892.

ACT

To facilitate the Partition of Land Mortgaged under the "Crown Lands Disposal Act, (1) 1887."

BE it enacted by 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 every case of voluntary or compulsory partition between joint owners of land which has been mortgaged to the Government under the provisions of the "Crown Lands Disposal Act, (1) 1887," it shall be lawful for the Treasurer of the Colony to consent to such partition and to the cancellation of the existing bond, and to accept in lieu thereof from every such joint owner a separate bond on his divided share of the said land for such proportionate part of the original bond as the said treasurer shall determine, and subject to the same conditions as regards repayment.

Treasurer may consent to partition of land held by joint owners and accept separate bond from each.

2. (5) All expenses incurred by the Government in carrying out the provisions of the preceding section shall be borne by the parties applying for such partition, including all costs incurred in obtaining a true valuation of the respective shares, which costs, not exceeding twenty-five pounds sterling, shall be paid in advance by the said parties.

Expenses incurred in carrying out the provisions of Section 1 to be borne by parties interested.

3. This Act (4) may be cited as "The Partition Transfer Facilitation Act, 1892," and shall be read as one with the "Transfer Facilitation Act, (2) 1890," and anything contained in the said Act or any other law which may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Short title and effect of Act and repeal of repugnant laws.

No. 24—1892.]

[September 2, 1892.

Act to amend "The Vineyards Protection Act Amendment Act, (3) 1886," and to continue for another year the Fourth Section of this Act.

[Lapsed.]

¹ No. 15.² No. 16.³ No. 6.⁴ Applies to Bechuanaland, Act 18, 1896.⁵ The provisions of § 2 of this Act are applied to transfers of defined part or share of land referred to in Act 16, 1890 (p. 2814) and 40, 1895 (p. 3566) by § 4, Act 3, 1905 (p. 4807).

No. 25—1892.] (1)

[September 27, 1892.]

ACT

To Consolidate the Law relating to Companies.

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 Laws.

1. The laws mentioned in the first schedule of 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, subject to the exception hereinafter in the sixth section contained. But no such repeal shall affect anything duly done, or any right or privilege acquired, or any liability, penalty or forfeiture incurred in respect of any such laws; and where, previously to the taking effect of this Act an order has been made for winding up a company under any Act hereby repealed, or a resolution has been passed for winding up a company voluntarily, such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed; and for the purposes of such winding-up such repealed Act shall be deemed to remain in full force.

Interpretation of terms.

2. In this Act, unless the context clearly otherwise directs, the following expressions in inverted commas shall bear the meaning respectively set opposite them.

“Limited Company.”—A company, the liability of the members of which is by their registered memorandum of association limited to the amount, if any, unpaid in the shares respectively held by them or by the operation of any Act of Parliament.

“Unlimited Company.”—A company formed on the principle of having no limit placed on the liability of its members.

“Court.”—The Supreme Court, the Court of the Eastern Districts, or the High Court of Griqualand West, as the case may be.

“Treasurer.”—The Treasurer of the Colony.

“Registrar.”—The Registrar of Deeds at Cape Town.

“Company.”—Every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without express consent of all the partners; and also any partnership which at its formation or by subsequent admission shall consist, or have at any time consisted, of seven or more than seven members.

“Special Resolution.”—A resolution of the members of a company which has been passed and confirmed in manner required by section one hundred and ten of this Act.

Divisions of Act.

3. This Act is divided into six parts relating to the following matters respectively:

¹ See Act 42, 1895, § 1 (p. 3578). Any company supplying electric power means a company registered under this Act.

Part I. The position of Companies in existence at the date of the taking effect of this Act, sections five to twenty-one.

Part II. The Constitution and Incorporation of Companies and Associations formed after the taking effect of this Act, sections twenty-two to seventy-two.

Part III. The Distribution of Capital and Liability of Members of Companies and Associations under this Act, sections seventy-three to ninety-seven.

Part IV. The management and administration of Companies and Associations under this Act, sections ninety-eight to one hundred and thirty.

Part V. The Winding up of Companies and Associations under this Act, sections one hundred and thirty-one to two hundred and fifteen.

Part VI. The application of this Act to unregistered Companies, sections two hundred and sixteen to two hundred and twenty-one.

Part VII. Miscellaneous provisions, sections two hundred and twenty-two to two hundred and twenty-eight.

4. Subject to the provisions of Part VI hereof nothing in this Act contained shall apply to any joint stock company, partnership, or association incorporated under its own special Ordinance or Act of Parliament, whether in existence at the date of the taking effect hereof, or formed at any future time. But any such company, partnership, or association may at any time hereafter register itself under this Act, with limited or unlimited liability as may be provided by its Ordinance or Act of Incorporation. And no such registration shall be invalid by reason that it has taken place with a view to the company, partnership or association being wound up. In the event of such registration the provisions of this Act shall apply, save in so far as they are inconsistent with the Ordinance or Act of Incorporation aforesaid.

Application of Act.

PART I.

POSITION OF COMPANIES IN EXISTENCE AT THE TAKING EFFECT OF THIS ACT.

Registration of Company.

5. Any company in existence at the taking effect of this Act, and registered with limited liability at the said date, under the "Joint Stock Companies Limited Liability Act, 1861," may at any time hereafter register itself without payment of any fees as a limited company under this Act; and any company in existence at the said date, with unlimited liability and not being such a company as is referred to in section four hereof, may upon payment of the fees prescribed in the second schedule at any time hereafter register itself as an unlimited company under this Act.

Registration under this Act of companies in existence at taking effect of Act.

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Effect of non-registration of such companies.

6. Every company in existence at the taking effect of this Act, and registered with limited liability as mentioned in the last preceding section shall, although it does not register itself under this Act, become and remain subject to the provisions of Part V hereof, and also to the provisions of the ninety-first, ninety-second, ninety-third, ninety-fourth, ninety-fifth, one hundred and sixteenth, one hundred and seventeenth, one hundred and eighteenth, one hundred and nineteenth, one hundred and twentieth, and one hundred and twenty-first sections of this Act, and all the provisions of the last mentioned sections shall also be applicable to all unlimited companies in existence at the taking effect of this Act, even though such companies be not registered under it. With regard to all such first mentioned companies so long as they are not registered under this Act, the provisions of the Joint Stock Companies Limited Liability Act, 1861, save in so far as they are inconsistent with the sections above mentioned shall apply as if the said Act had never been repealed.

Registration subject to assent of majority of members.

7. No company, partnership or association shall register under the fourth and fifth sections of this Act, unless an assent to its so registering is given by a majority of such of its members as may be present personally or by proxy (in cases where proxies are allowed by the regulations of the company) at some general meeting duly summoned for the purpose.

Requisites for registration by companies having a capital divided into shares.

8. Previously to the registration, in pursuance of this part of this Act, of any company having a capital divided into shares, there shall be delivered to the Registrar the following documents:

- (1) A list showing the names, addresses, and occupations of all persons resident in this Colony who on a day named in such list, and not being more than ten clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, and a list showing the same particulars with regard to persons resident outside the Colony who on a day not more than thirty clear days before the day of registration were members of the company.
- (2) A copy of any Act of Parliament, deed of settlement, contract of partnership, or other instrument constituting or regulating the company.
- (3) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars:
 - (a) The nominal capital of the company, and the number of shares into which it is divided:
 - (b) The number of shares taken, and the amount paid on each share:
 - (c) The name of the company, with the addition of the word "limited" as the last word thereof.

9. Previously to the registration, in pursuance of this part of this Act, of any company not having a capital divided into shares, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the company; also a copy of any Act of Parliament, deed of settlement, contract of partnership, or other instrument constituting or regulating the company.

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Requisites for registration by companies not having a capital divided into shares.

10. Where a company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than ten clear days before the day of registration in the case of persons resident in the Colony, and thirty clear days before the said day in the case of persons resident elsewhere.

Power for existing company to register amount of stock instead of shares.

11. The list of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar, shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of the principal officer of the company, made in pursuance of the "Oaths and Declarations Act, 1891."

Authentication of statements of companies.

12. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a company as hereinbefore defined.

Registrar may require evidence as to nature of company.

13. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where previously to its being registered as a limited company the liability of the shareholders was limited by some other Ordinance or Act of Parliament of this Colony.

Exemption of certain companies from payment of fees.

Effect of Registration.

14. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable in terms of this Act, the Registrar shall certify under his hand that the company so applying for registration is incorporated, as a company under this Act, and in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate of registration.

15. Any such certificate shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate, shall be deemed to be the date at which the company is incorporated under this Act.

Certificate to be evidence of compliance with Act.

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Transfer of property to company.

16. All such property, movable and immovable, including all interests and rights in, to, and out of property, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act.

Registration under this part of Act not to affect obligations incurred previously to registration.

17. The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration.

Continuation of existing actions and suits.

18. All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

19. When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of partnership or other instrument constituting or regulating the company, shall be deemed to be conditions and regulations of the company in the same manner, and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following:

- (1) That table A in the third schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof.
- (2) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company.
- (3) That no company shall have power, without the sanction of the Governor, to alter any provision contained in any letters patent or charter relating to the company.
- (4) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law, to pay or contribute to the payment of any such debts or liabilities, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debts or

liabilities; or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any such contributory as last aforesaid, the provisions herein contained with respect to the representatives, heirs, and legatees of deceased contributories, and with reference to the trustees of insolvent contributories, shall apply.

- (5) That nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of partnership, or other instrument constituting or regulating the company as would, if such company had originally been formed under this Act, have been contained in the memorandum of association and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of partnership, or other instrument constituting or regulating the company.

20. The court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this part of this Act, and before making an order for winding-up the company upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the court thinks fit.

Power of Court to restrain further proceedings.

21. Where an order has been made for winding-up a company registered in pursuance of this part of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

Effect of order for winding-up of company.

PART II.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS.

22. No company, association or partnership consisting of more than ten persons, if it be for the purpose of carrying on the business of banking, or consisting of more than twenty persons, if it be for the purpose of carrying on any other business that has

Prohibition of unregistered partnerships exceeding certain number.

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for its object the acquisition of gain to the company, association or partnership, or to the individual members thereof, shall be formed in this Colony after the taking effect of this Act, unless it is registered as a company under this part of this Act, or is formed in pursuance of some other part of this Act, or of some other Act of the Parliament of this Colony, or of letters patent or charter.

Memorandum of Association.

Mode of forming company.

23. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect to registration, form an incorporated company, with or without limited liability.

Limitation of liability of members

24. The liability of the members of a company formed under this Act may, in the memorandum of association, be limited to the amount, if any, unpaid on the shares respectively held by them.

Memorandum of association of limited company.

25. Where a limited company is formed the memorandum of association shall contain the following things:

- (1) The name of the proposed company, with the addition of the word "limited" as the last word in such name:
- (2) The place in this Colony where the registered office of the company is proposed to be situate:
- (3) The objects for which the proposed company is to be established:
- (4) A declaration that the liability of the members is limited:
- (5) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

- (1) That no subscriber shall take less than one share.
- (2) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of unlimited company.

26. When an unlimited company is formed the memorandum of association shall contain the following things:

- (1) The name of the proposed company,
- (2) The place in this Colony where the registered office of the company is proposed to be situate;
- (3) The objects for which the proposed company is to be established.

Signature and effect of memorandum of association.

27. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least: it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

28. A company registered under this Act may, subject to the provisions hereinafter mentioned, by special resolution passed in manner hereinafter provided, alter the provisions of its memorandum of association with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by a court which has jurisdiction to make an order for winding up the company.

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Alteration of memorandum of association.

29. Before confirming any such alteration the court must be satisfied

Confirmation of alteration by court.

- (a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration, and
- (b) That, with respect to every creditor who, in the opinion of the court, is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court.

Provided that the court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

30. An order confirming any such alteration may be made in such terms and subject to such conditions as to the court seems fit, and the court may make such orders as to costs as it deems proper.

Order of confirmation of alteration.

31. The court may confirm, either wholly or in part, any such alteration as aforesaid with regard to the objects of the company if it appears that the alteration is required in order to enable the company

Objects for which alteration may be made.

- (a) To carry on its business more economically or more efficiently; or
- (b) To attain its main purpose by new or improved means; or
- (c) To enlarge or change the local area of its operations; or
- (d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

32. The court shall, in exercising its discretion under the above sections twenty-eight to thirty-one inclusive, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if he thinks fit, adjourn the proceedings in order that an arrangement may be made, to the satisfaction of the court, for the purchase of the interest of dissentient members; and the court may give such directions and make such orders as it may

Court to have regard to interests and rights of members.

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think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

Notice of alteration to be given to Registrar.

33. Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association so altered, shall be delivered by the company to the Registrar within twenty-one days from the date of the order, and the Registrar shall register the same and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration, and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of association of the company.

Penalty for default.

34. If a company make default in delivering to the Registrar any document required by the last preceding section to be delivered to him, the company shall be liable to a penalty not exceeding ten pounds for every day in which it is in default.

Reduction of Capital.

Power of company to reduce capital.

35. Any company under this Act limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the Registrar, as is hereinafter mentioned.

Construction of "capital" and reduction of paid-up capital.

36. The word capital as used in the last preceding section shall include paid-up capital; and the power to reduce capital conferred by the said section shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved.

The company to add "and reduced" to its name, for limited period.

37. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of this Act: provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, it shall not be necessary before the presentation of the petition for confirming the reduction to add, and the court may,

if it thinks competent so to do, dispense altogether with the addition of the said words "and reduced."

38. A company which has passed a special resolution for reducing its capital, may apply to the court, by petition, for an order confirming the reduction, and on the hearing of the petition the court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

39. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction. Provided that when the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the company shall not, unless the court otherwise direct, be entitled to object or required to consent to the reduction.

40. Where a creditor, whose name is entered on the list of creditors and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may, if it thinks fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the court may direct, a sum of such amount as is hereinafter mentioned, that is to say:—

- (1) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.
- (2) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company is willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the court may, if it thinks

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Company to apply to Court for an order confirming reduction.

Creditors may object to reduction and list of objecting creditors to be settled by the Court.

Court may dispense with consent of creditor on security being given for his debt.

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fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the court, and the amount fixed by the court on such enquiry and adjudication shall be set apart and appropriated.

Order of confirmation and minute to be registered.

41. The Registrar, upon the production to him of an order of the court confirming the reduction of the capital of a company and the delivery to him of a copy of the order, and of a minute (approved by the court) showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares into which it is to be divided, and the amount of each share and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with and that the capital of the company is such as stated in the minute.

Minute to form part of memorandum of association.

42. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

43. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable within the meaning of the one hundred and thirty-sixth section of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute, for the payment of such debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the court, on the application of such creditor and on

proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and mature and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

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44. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any company make default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Copy of registered minute.

45. In any case in which the court thinks it fit to do so it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the court may think expedient with a view to the proper information to the public in relation to the reduction of its capital by a company, and, if the court thinks fit, the causes which led to such reductions.

Court may require company to publish reasons for reduction of capital.

46. If any director or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or officer of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director or officer shall be liable to a penalty of not exceeding five hundred pounds.

Penalty on concealment of name of creditor.

47. The powers of making rules concerning winding-up conferred by this Act shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the court to authorise the reduction of capital, and until such rules are made the practice of the court in matters of the same nature shall, so far as the same is applicable, be followed.

Powers to make rules extended to this part of Act.

48. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorised so to do by its regulations as originally framed or as altered by special resolution as to reduce its capital by cancelling any shares, which at the date of the passing of such resolution have not been taken or agreed to be taken by any person; and the provisions of the preceding sections shall not apply to any reduction of capital made in pursuance of this section.

Power to reduce capital by the cancellation of unissued shares.

Change of Name.

49. Any company under this Act, with the sanction of a special resolution of the company and with the approval of the Governor,

Power of companies to change name

No. 25—1892.

may change its name, and upon notice in writing embodying the terms of such resolution being given to him, the Registrar shall enter the new name in its proper place on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall render the liquidation of the company necessary or affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

Subdivision of Shares.

Shares may be divided into shares of smaller amount.

50. Any limited company under this Act may by special resolution so far modify the conditions contained in its memorandum of association (if authorised so to do by its regulations as originally framed or as altered by special resolution), as by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association: Provided that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares for which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

51. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and officer of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

Increase of Capital.

Power of company to increase capital.

52. Any limited company under this Act may by special resolution (if authorised so to do by its regulations as originally framed, or as altered by special resolution) so far modify the conditions contained in its memorandum of association, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but save as in this part of the Act provided, no alteration shall be made by any company in the conditions contained in the memorandum of association.

Articles of Association.

53. The memorandum of association may, in the case of a limited company, and shall, in the case of an unlimited company, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered arithmetically: they may adopt all or any of the provisions contained in the table marked A in the third schedule hereto; they shall, in the case of an unlimited company, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of an unlimited company that has not a capital divided into shares, state the number of members with which the company proposes to be registered. In an unlimited company having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

54. In the case of a limited company under this Act if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations in the table marked A in the third schedule hereto, the last mentioned regulations shall so far as the same are applicable, be deemed to be the regulations of the company, in the same manner, and to the same extent as if they had been inserted in the articles of association, and the articles had been duly registered.

55. The articles of association shall be printed, they shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company.

General Provisions.

56. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar, who shall if they are in order, retain and register the same, and there shall be paid to the Registrar by the company the fees specified in the second schedule hereto.

57. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association, are required by this Act or by the desire of the parties to

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Regulations to be expressed by articles of association.

Application of table A.

Signature and effect of articles of association.

Registration of memorandum and articles of association, with fees according to second schedule.

Effect of registration.

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be registered, the Registrar shall certify under his hand that the company is incorporated, and in case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company, in the event of the same being wound up, as is hereinafter mentioned: a certificate of the incorporation of any company, given by the Registrar, shall be conclusive evidence that all the requisitions of this Act, in respect of registration, have been complied with.

Issue of shares.

58. After the issue of the certificate in the last preceding section mentioned, the shares of a company having a capital divided into shares shall be issued as follows, but subject always to the provisions of section ninety-seven hereof. The first issue shall be made in such manner as the memorandum or articles of association may provide, or in the absence of such provision in such manner as the directors may determine. All subsequent issues of shares shall be offered either by tender, or to such person upon such terms and under such conditions as the directors may decide. If the shares are offered by tender, the highest tender shall have the preference: in case two or more tenders are equal, the tender of a member shall be preferred to that of a non-member, but if the tenders of members should be equal, the shares tendered for shall be allotted in proportion to the existing holdings of the tenderers. Provided that no member shall be allotted more shares than he has tendered for. And provided that in case shares issued after the first issue are offered by the directors to any person who has not publicly tendered for them, then no contract relating to the shares so offered shall be binding upon the company until confirmed by a special resolution of the shareholders.

Inspection of documents kept by registrar.

59. Every person may inspect the documents kept by the Registrar relating to companies under this Act, and may require a certificate of the incorporation of the company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar: and there shall be paid for each such inspection one shilling, and for such certificate of incorporation five shillings, and for such copy or extract such fees as the Governor may from time to time appoint.

Fees.

Copies of memorandum and articles to be given to members.

60. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy: and if any company makes default in forwarding a copy of the memorandum of association and articles of association.

if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound.

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61. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first mentioned company may, with the sanction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall publish a notice of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Prohibition against identity of names in companies.

62. Where any association is about to be formed under this Act as a limited company, if it be proved to the Attorney-General that it is to be formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects and to prohibit the payment of any dividend to the members of the association, the Attorney-General may by licence under his hand direct such association to be registered with limited liability without the addition of the word limited to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed upon limited companies, with the exception that none of the provisions of this Act that require a limited company to use the word limited as part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered. The licence by the Attorney-General may be granted upon such conditions and subject to such regulations as he may think fit to impose; and such conditions and regulations shall be binding upon the association and may be inserted in the memorandum and articles of association, or in both or one of such documents.

Special provisions as to associations formed for purposes not of gain.

Share Warrants to Bearer.

63. In the case of a limited company registered under this Act or under the Act 23 of 1861, the company, if authorised so

Share warrant to bearer.

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to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Effect of share warrant.

64. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Registration of bearer of share warrant in register.

65. The bearer of a share warrant shall, subject to the regulations of the company, be entitled on surrendering such warrant for cancellation to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of a share or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of company may make the bearer of a share warrant a member.

66. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Act, or of the Act 23 of 1861, as the case may be, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued and surrendered.

67. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

- (1) The fact of the issue of the warrant;
- (2) A statement of the shares or stock included in the warrant, distinguishing each share by its number;
- (3) The date of the issue of the warrant;

And on the surrender of a share warrant the company shall enter in the register the following particulars:

- (a) The fact of the surrender of the warrant.
- (b) A statement of the shares or stock included in the surrendered warrant, distinguishing each share by its number.
- (c) The date of the surrender of the warrant.
- (d) The name of the person, if any, claiming to be registered as owner or holder of such shares or stock.

Return according to 4th Schedule.

68. After the issue by any company of any share warrant the directors of such company shall in the months of January and

July, besides the returns required by them under any other section of this Act, or of the Act 23 of 1861, as the case may be, make or cause to be made to the Registrar a return attested by a declaration made by any two of the directors under the "Oaths and Declaration Act, 1891," according to the fourth schedule hereunto annexed and containing the particulars therein set forth. And if within any such period such return be not made, then every director of such company shall be liable to a fine not exceeding twenty pounds sterling.

69. There shall be charged on every share warrant issued in place of shares or stock a stamp duty of an amount equal to twice the amount of the *ad valorem* stamp duty which would be chargeable on the issue of a certificate for the shares or stock specified in such warrant, and on every share warrant issued upon due redelivery of shares or stock already issued a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable in a transfer of the share or shares or stock specified in the warrant.

Stamps on share warrants.

70. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any share or interest of or in any company, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall upon being convicted be liable to be imprisoned for any term not exceeding five years, with or without hard labour.

Penalties on persons forging share warrants or coupons.

71. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall on conviction be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Penalties for falsely personating owner of shares.

72. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone or other material for the making or printing any such share warrant or coupon, or any such blank share warrant or coupon or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or

Penalties on persons engraving plates, etc.

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other material, shall on conviction be liable to be imprisoned for any term not exceeding five years, with or without hard labour.

PART III.

THE DISTRIBUTION OF CAPITAL AND THE LIABILITY OF DIRECTORS AND MEMBERS OF COMPANIES AND ASSOCIATIONS.

Distribution of Capital.

Nature of interest in company.

73. The shares or other interest of any member in a company under this Act shall be capable of being transferred in manner provided by the regulations of the company; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Definition of member.

74. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Transfer by personal representative.

75. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

76. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:

- (1) The names and addresses of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number; and of the amount paid or agreed, subject to the provisions of this Act, to be considered as paid, on the shares of each member.
- (2) The date at which the name of any person was entered in the register as a member.
- (3) The date at which any person ceased to be a member.

Every company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues; and every director or manager who knowingly and wilfully authorises or permits such contravention shall incur the like penalty.

Annual list of members.

77. Every company under this Act having a capital divided into shares, shall make, once at least in every year a list of all persons

who on the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings—is held, are members of the company; and such list shall state the names and addresses of all the members therein mentioned, and the number of shares held by each of them and shall contain a summary, specifying the following particulars:

- (1) The amount of the capital of the company, and the number of shares into which it is divided.
- (2) The number of shares taken from the commencement of the company up to the date of the summary.
- (3) The amount of calls made on each share.
- (4) The total amount of calls received.
- (5) The total amount of calls unpaid.
- (6) The total amount of shares forfeited.
- (7) The names and addresses of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and a copy shall be forwarded to the Registrar within seven days from the date of such meeting.

78. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Penalty for not forwarding list to Registrar.

79. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar, of such consolidation, division, or conversion, specifying the shares so consolidated, divided or converted.

Company to give notice of consolidation or of conversion of capital into stock.

80. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Effect of conversion of shares into stock.

81. No notice of any trust, expressed or implied, shall be entered on the register, or be receivable by the Registrar, in the case of companies under this Act nor shall any minor be registered as a

No entry of trust on register nor of minor or insolvent as member.

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shareholder, nor any person whose estate having been surrendered or sequestrated has not been released from the operation of the Insolvent Law of this Colony.

Certificate of shares or stock.

82. A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

83. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned: Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: If upon a written demand such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and officer of the company who shall knowingly authorise or permit such refusal shall incur the like penalty; and in addition to the above penalty, any judge sitting in chambers may by order compel an immediate inspection of the register.

Power to close register.

84. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole sixty days in each year.

Notice of increase of capital and of members to be given to Registrar.

85. Where a company under this Act, has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members; if such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and

officer of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

86. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, by motion in the court or by application to a judge sitting in chambers, apply for an order of the court that the register may be rectified, and the court or judge may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained; the court may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; and the court may direct an issue to be tried, in which any question of law may be raised.

87. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the Registrar, the court shall, by order, direct that due notice of such rectification be given to the Registrar.

88. The register of members shall be its *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Directors and Liability of Directors.

89. No person shall be capable of being appointed, or of continuing to hold office as a director in any company under this Act unless he is and remains duly registered as a shareholder of the company, and unless he is and remains the registered owner of the lowest number of shares required by the articles of association to qualify for the office of a director. Every such director shall, after his election and before taking his seat, lodge with the principal officer, at the registered office of the company, the number of shares necessary to qualify as aforesaid. Such shares shall be kept by the company during the tenure of office of such director, and any such director withdrawing or receiving the said shares shall be held to have *ipso facto* vacated his seat as a director.

90. Every prospectus of a company and every notice inviting persons to subscribe for shares in any company shall specify the dates of and the names of the parties to any contract entered into

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Remedy for improper entry, or omission of entry in register.

Notice to Registrar of rectification of register.

Register to be evidence.

Directors of company.

Prospectus, &c., to specify dates and names of parties to any contract

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made prior to issue
of such prospectus,
&c.

by the company or the promoters, directors or trustees thereof, before the issue of such prospectus or notice whether subject to adoption by the directors or otherwise, and the nature or tenure of such contract; and any prospectus or notice not specifying the above particulars shall be deemed fraudulent on the part of the promoters, directors and officers of the company, knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus unless he has had notice of such contract: Provided, however, that the terms of this section shall only apply to contracts

- (a) Which are binding upon the company, or may be adopted or ratified by it, and
- (b) Which would influence a reasonable person in determining whether or not he would become a shareholder in the company.

Liability of directors for false statement in prospectus.

91. Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who, having authorised such naming of him, is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved

- (a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures or debenture stock, as the case may be, believe, that the statement was true; and
- (b) With respect to every such untrue statement, purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided always that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, person named,

promoter or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid, if it be proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

- (c) With respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of such statement or copy of or extract from such document;

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

92. The word "promoter" in the last two preceding sections means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; the word "expert" includes any person whose profession gives authority to a statement made by him.

Meaning of "promoter."

93. Where any company which has issued shares or debentures shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

Further prospectus of company, directors' liability for.

94. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges

Consequences of prospectus containing name as director of person not director.

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and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice or in defending himself against any action or legal proceedings brought against him in every respect thereof.

Recovery of contribution to penalty, or payment by director.

95. Every person who by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment.

Liability of Members.

Liability of present and past members of company.

96. In the event of a company under this Act being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following:

- (1) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to commencement of the winding-up.
- (2) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.
- (3) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
- (4) The date when a shareholder who has parted with his shares shall cease to be a member of the company shall be the date when such shares are transferred from the name of such shareholder to the name of the transferee in the register of the company.
- (5) In the case of a limited company, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.
- (6) Nothing in this Act contained shall invalidate any provision contained in any contract whereby the liability of individual members upon any such contract is restricted, or whereby the funds of the company are alone made liable in respect of such contract.
- (7) No sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise,

shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

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97. Every share in any company under this Act shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such share, and further unless such share in terms of such contract be issued in exchange for a consideration of valuable services rendered to the company in furtherance of its objects, or in exchange for or in consideration of valuable property rights or privileges acquired by the company in furtherance of its objects, in which case, though not actually fully paid up, such share shall be considered to be fully paid up, and shall entail no further responsibility or liability upon the members to whom it has been or shall be issued, or upon subsequent holders, than would have been entailed upon them if the share had been actually fully paid up in money. Every director or other person who signs or issues or connives at the signing or issue of any document, entitling or purporting to entitle any person to a fully paid-up share in any company under this Act, when, as a fact, the whole amount of such share has not been paid in cash, shall be liable to make good to the *bonâ fide* holder of such share any damage which he may suffer by reason of the said share not having been fully paid up, and shall, in addition, be liable to a fine not exceeding one thousand pounds sterling, or to imprisonment with or without hard labour for any period not exceeding two years or to both such fine and such imprisonment, unless

Share to be deemed to be fully paid up.

- (a) Such share was issued in terms of a contract duly made and filed as in this section provided, and
- (b) Such share was issued in consideration of valuable services rendered to the company in furtherance of its objects or in exchange for, or in consideration of valuable property, rights or privileges, acquired by the company in furtherance of its objects.

Provided that every share certificate shall state in words the sum which has been paid up in respect of each of the shares to which such certificate refers, and shall also state the nominal capital of the company and the number and nominal value of the shares into which such capital is divided; and every director or other person who shall issue or sign a certificate which does not accurately set forth the said information shall be liable to a fine not exceeding one hundred pounds, in respect of each certificate so issued or signed.

PART IV.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

Registered office of company.

98. Every company under this Act shall have a registered office, to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of situation of registered company.

99. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him; until such notice is given the company shall not be deemed to have complied with the provisions of this Act, with respect to having a registered office.

Publication of name by a limited company.

100. Every limited company under this Act shall paint or affix and shall keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous place and in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Penalties on non-publication of name.

101. If any limited company under this Act does not paint or affix and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for every day during which such name is not so kept painted or affixed, and every director or officer of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director or officer of such company or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement or other official publication of such company, or signs or authorises to be signed on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Register of mortgages.

102. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the

company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge; if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds; the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director or officer of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, any judge sitting in chambers may by order compel an immediate inspection of the register.

103. Every company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses of its directors or managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

List of directors to be sent to Registrar.

104. If any company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

Penalty on company not keeping register of directors

105. A promissory note, bill of exchange or other negotiable document, shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of company, by any person acting under the authority of the company, or if made, accepted, or endorsed by, or on behalf of or on account of, the company, by any person acting under the authority of the company.

Promissory notes and bills of exchange.

106. If an company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of

Prohibition against carrying on business with less than seven members.

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the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

First general meeting of company.

107. Every company under this Act shall hold a general meeting within six months after its memorandum of association is registered, and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such six months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default, shall be liable to the same penalty.

Provisions for Protection of Members.

Annual general meeting.

108. A general meeting of every company under this Act shall be held once at least in every year.

Powers to alter regulations by special resolution.

109. Subject to the provisions of this Act, and the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked A in the third schedule, where such table is applicable to the company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company, of the same validity as if they had been originally contained in the articles of association, and shall be subject, in like manner, to be altered or modified by any subsequent special resolution.

Definition of special resolution.

110. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote, as may be present, in person or by proxy (in cases where, by the regulations of the company, proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote, as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than two months, from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is immediately demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purpose of this section, be deemed to be duly given, and the meeting to be duly

held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

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111. In default of any regulations as to voting, every member shall have one vote; and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days notice in writing has been served on every member, in manner in which notices are required to be served by the table marked A in the third schedule hereto; and in default of any regulations as to the person to summon meetings, five members shall be competent to summon the same; and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Provisions where
no regulation as to
voting and as to
meetings.

112. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar and be recorded by him. If such copy is not so forwarded within twenty-one days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such twenty-one days, during which such copy is omitted to be forwarded; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default, shall incur the like penalty.

Registry of special
resolutions.

113. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur a like penalty.

Copies of special
resolutions.

114. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place not situate in the Colony, and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Execution of
deeds abroad.

115. No dividend shall be payable to the shareholders of any company under this Act except out of the profits arising or accu-

Dividend payable
only out of profits.

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mulated from the business of such company. If any director of a company shall wilfully pay or permit to be paid any dividend other than out of such profits, he shall be liable to a penalty of not less than one hundred pounds, or exceeding five hundred pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for a period of not less than three, nor exceeding six months, and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively, to the extent that the dividend so paid shall have exceeded the profits, and such amount may be recovered by the creditors, or the liquidators suing on behalf of the creditors. If the whole be recovered from one director, he may recover contribution against any other director who shall have also made or permitted such payment.

Examination of affairs of company by inspectors.

116. The Government may appoint one or more competent inspectors to examine into the affairs of any company and to report thereon, in such manner as the Governor may direct, upon the applications following:

- (1) In the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fourth part of the whole shares of the company for the time being issued:
- (2) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fourth of the whole number of persons for the time being entered on the register of the company as members.

Application for inspection to be supported by evidence.

117. The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Governor may also require the applicants to give security for payment of the costs of the enquiry before appointing any inspector or inspectors.

Inspection of books.

118. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly: if any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Result of examination, how dealt with.

119. Upon the conclusion of the examination the inspectors shall report their opinion to the Governor: such report shall be written or printed, as he directs: a copy shall be forwarded by direction of the Governor to the registered office of the company, and a further copy shall, at the request of the members upon

whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor shall direct the same to be paid out of the assets of the company.

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120. Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor with this exception, that, instead of making their report to the Governor they shall make the same in such manner and to such persons as the company in general meeting direct; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor.

Power of company to appoint inspectors.

121. A duly authenticated copy of the report of any inspectors appointed under this Act, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Report of inspectors to be evidence.

Notices.

122. Any notice, order, or other document required to be served upon the company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.

Service of notices on companies.

123. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put up as a prepaid letter into the post office.

Rules as to notices by letters.

124. Any notice, order, or proceeding requiring authentication by the company, may be signed by any director or officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Authentication of notices of company.

Legal Proceedings.

125. All offences under this Act made punishable by any penalty may be prosecuted at the instance of the Treasurer or any person interested before any Resident Magistrate having jurisdiction over the person accused, or before the court, or before any circuit court within their respective jurisdictions; but no Resident Magistrate shall have power to impose for any such offence, any fine or any term of imprisonment beyond the limit of fine or imprisonment allowed under his ordinary jurisdiction.

Recovery of penalties.

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Application of penalties.

Evidence of proceedings at meetings.

Provision as to costs in actions brought by certain limited companies.

Declaration in actions against members.

Forms in fifth schedule. Treasurer may alter forms.

126. The whole or any part of any penalty imposed under this Act may be applied in or towards payment of the costs of the proceedings or in or towards the rewarding the person upon whose information or at whose instance such penalty has been recovered.

127. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held or convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

128. Where a limited company is plaintiff in any action, suit or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

129. In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company.

Alteration of Forms.

130. The forms set forth in the fifth schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer: The Treasurer may from time to time make such alterations in or additions to the tables or forms in the third, fourth or fifth schedules, as he deems requisite: any such table or form, when altered, shall be published in the *Gazette* and thereupon such table or form shall have the same force as if it were included in the schedules to this Act, but no alterations made by the Treasurer in the table marked A contained in the third schedule shall affect any company registered prior to the

date of such alteration, or repeal, as respects such company, any portion of such table.

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PART V.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

131. The term "contributory" shall mean every person liable to contribute to the assets of a company in the event of the same being wound up under this Act: it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Meaning of "contributory."

132. The liability of any person to contribute to the assets of a company, in the event of the same being wound up under this Act, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Nature of liability of contributory.

133. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and legatees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory to the extent of the net amount of the assets of the deceased contributory which have come into their hands, and such personal representatives, heirs and legatees shall be deemed to be contributories accordingly.

Contributories in case of death.

134. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his trustees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound-up.

Contributories in case of insolvency.

Winding-up by Court.

135. A company may be wound up by the court under this part of the Act under the following circumstances:

Circumstances under which company may be wound up by court.

- (1) Whenever the company has passed a special resolution requiring the company to be wound up by the court.
- (2) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year.

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(3) Whenever the members are reduced in number to less than seven

(4) Whenever the company is unable to pay its debts.

(5) Whenever the court is of opinion that it is just and equitable that the company should be wound up.

Company, when deemed unable to pay its debts.

136. A company under this Act shall be deemed to be unable to pay its debts,

(1) Whenever any person shall have obtained any judgment, decree, or order of any court of competent jurisdiction for the payment of money against the company, or any person representing the company, and such judgment, decree or order shall remain unpaid or unsecured for a space of thirty days without the consent of the creditor.

(2) Whenever execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part.

(3) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

Application for winding up to be made by petition.

137. Any application to the court for the winding-up of a company under this Act shall be by petition; it may be presented by the company, or by any one or more creditors or contributories of the company, or by all or any of the above parties, together or separately; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Commencement of winding up by court.

138. A winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for winding-up on which any order for winding-up shall be made.

Court may grant injunction.

139. The court may, at any time after the presentation of a petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit; the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint a provisional liquidator of the estate and effects of the company, with all or such of the powers of a general official liquidator as the court may order.

Course to be pursued by court on hearing petition.

140. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally, or unconditionally, and may make any interim order, or any other order that it deems just.

Actions and suits to be stayed after order for winding up.

141. When an order has been made for winding-up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the

leave of the court, and subject to such terms as the court may impose.

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142. When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the Registrar who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to Registrar.

143. The court shall at any time after an order has been made for winding-up a company, upon the application by motion of any liquidator, creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Power of court to stay proceedings.

144. The court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may regard the votes of such creditors and contributories, and may, if it thinks it expedient, direct meetings of the creditors and contributories to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Court may have regard to wishes of creditors or contributories.

145. Where the court makes an order for winding up a company under this Act, it may if it thinks fit direct all or any subsequent proceedings for winding up the same to be had before the Master of the Supreme Court or any insolvency commissioner duly appointed; and upon such order being made the person therein named shall have the same jurisdiction and exercise the same powers with respect of winding-up such company as the court by which the order is made.

Winding up may be referred to Master.

Official Liquidators.

146. For the purpose of conducting the proceedings in winding up a company and assisting the court therein, the court may appoint a person or persons to be called an official liquidator or official liquidators; and the court may appoint such person or persons, for any time, and subject to any conditions which shall seem right. In all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in

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the custody of the court; and in any indictment for theft thereof, under such circumstances or for any similar purpose, the property may be laid in the Master of the Supreme Court.

Resignations, removals, filling up vacancies and compensation.

147. Any official liquidator may resign or be removed by the court on due cause shown: and any vacancy in the office of an official liquidator appointed by the court shall be filled by the court: there shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportion as the court directs.

Style and duty of official liquidators.

148. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he or they shall be appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the court.

Power of official liquidator.

149. The official liquidator shall have power, with the sanction of the court, to do the following things:

- (1) To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company:
- (2) To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:
- (3) To sell the movable and immovable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:
- (4) To do all acts, and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal:
- (5) To prove, rank, claim and draw a dividend in the matter of the insolvency or sequestration of any debtor or contributory, for any balance against the estate of such debtor or contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency as a separate debt due from such insolvent, and rateably with the other separate creditors: or with preference as the case may be.
- (6) To draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on

behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof:

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- (7) To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself:
- (8) To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

150. The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Discretion of official liquidator.

151. The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties.

Appointment of solicitor to official liquidator.

152. The official liquidator may, from time to time, summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it shall be his duty to summon such meetings whenever requested in writing to do so by one-twentieth in value of the creditors or contributories, as the case may be.

Official liquidator may summon general meeting of creditors or contributories.

153. Subject to the provisions of this Act, the official liquidator shall, in the collection and administration of the property of the company, and in the distribution thereof among its creditors, and in applying for the sanction of the court to any compromise under and by virtue of section two hundred and three of this Act, take into consideration any directions that may be given by resolution of the creditors or of the contributories at any general meeting. If he does not act upon such directions he shall, from time to time, bring such directions to the notice of the court, and shall specially report to the court his reason for not acting upon them.

Official liquidator shall consider directions given at general meetings of creditors or contributories.

Public Examination after Report of Liquidator.

154. (1) Where the court has made an order for winding up a company, the official liquidator shall, as soon as practicable

Reports of liquidators and public examination after reports.

after receipt of the statement of the company's affairs, submit a preliminary report to the court:

- (a) As to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and
 - (b) If the company has failed, as to the causes of the failure; and
 - (c) Whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.
- (2) The official liquidator shall also make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.
 - (3) The court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his dealings as director or officer of the company. And if any such person refuses to come the court may, subject to the conditions detailed in the one hundred and seventy-third section of this Act, cause such person to be apprehended and brought before it for examination.
 - (4) The official liquidator and any creditor or contributory of the company may take part in the examination, either personally or by attorney, with or without counsel.
 - (5) The court may put such questions to the person examined as to the court may seem expedient.
 - (6) The person examined shall be examined on oath, and it shall be his duty to answer to all such questions as the court may put or allow to be put to him. He shall, prior to such examination, be furnished with a copy of the official liquidator's report, and shall, also at his own cost, be entitled to employ at such examination an attorney with or without counsel, who shall be at liberty to put such questions to the person examined as the court may deem just, for the purpose of enabling that person to explain or qualify any answers given by him: Provided always that if such person is, in the opinion of the court, exempted from any charges made or suggested against him, the court may allow him such costs as the court in its discretion may deem fit. Notes of the examination shall be taken down in writing and shall

be read over to or by and signed by the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

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- (7) The court may, if it think fit, adjourn the examination from time to time.
- (8) A public examination under this section may, if the court so directs, and subject to general rules, be held before any Judge of the Supreme Court or before the Master of the Supreme Court or any person appointed by the court, or commissioner, for the purpose; and the powers of the court under sub-sections five, six and seven of this section may (except as to costs) be exercised by the person before whom the examination is held.

155. The provisions of the last preceding section shall apply in the winding-up of any company under this Act whether the same is being wound up by the court or is being wound up voluntarily, and notwithstanding that the conduct or action in regard to which the person examined may be questioned, may be such as to entail criminal consequences.

To apply to winding up, whether by the court or voluntary.

156. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by the court, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Person aggrieved by act of liquidator may apply to court.

Ordinary Powers of Court.

157. As soon as may be, after making an order for winding-up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

Collection and application of assets.

158. In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or legatees of such contributory, nevertheless such heirs or legatees may be added, as and when the court thinks fit.

Provision as to representative contributories.

159. The court may, at any time, after making an order for winding up a company, require any contributory, for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects, which happen to be in his hands

Power of court to require delivery of property.

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for the time being and to which the company is *primâ facie* entitled.

Power of court to order payment of debts by contributory.

160. The court may, at any time after making an order for the winding-up of the company, make an order on any contributory, for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute, by virtue of any call made, or to be made, by the court in pursuance of this part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off, any moneys due to him or the estate which he represents from the company, on any independent dealing or contract with the company, but not any moneys due to him as a member of the company, in respect of any dividend or profit.

Provided that, when all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever, to any contributory from the company, may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

161. The court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and shall, in making any call, consider the rights of such contributories among themselves, and so make such call as to conduce to the ultimate adjustment of such rights, without prejudice to the paramount rights of creditors and others, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made, may partly or wholly fail to pay their respective portions of the same.

Power of court to order payment into bank.

162. The court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into some bank to be named by the court, to the account of the official liquidator, instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator, and the liquidator may, in like manner, be ordered to pay into the like bank any sum or sums of money in his hands, or to come into his hands, on behalf of the company to the like account.

Regulation of account with court.

163. All moneys, bills, notes, and other securities, paid and delivered into such bank as aforesaid, in the event of a company being wound up by the court, shall be subject to such order and

regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same, as the court may direct.

164. If any person made a contributory as representative of a deceased contributory makes default in paying any sum ordered to be paid by him, the official liquidator shall be entitled to claim as a creditor in the estate of such deceased contributory in respect of the sum so ordered to be paid, and shall be entitled to take proceedings as creditor for the recovery of such sum.

165. Any order made by the court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are *primâ facie* to be taken to be truly stated as against all persons and in all proceedings whatsoever.

166. The court may fix a certain day or days on or within which creditors of the company are to prove their debts or claims or be excluded from the benefit of any distribution made before such debts are proved.

167. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

168. The court may, in the event of the assets being insufficient to satisfy the liabilities, make such order as to the priority and payment out of the estate of the company, of the costs, charges, and expenses incurred in winding-up any company as it thinks just.

169. When the affairs of the company have been completely wound up, the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

170. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

171. If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound up by the court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

172. Every order so made shall be published in the *Gazette* and in such newspapers as the court may direct, within twenty-one days after the making of such order.

Extraordinary Powers of Court.

173. The court may, after it has made an order for winding-up the company, summon before it any officer of the company or any person known or suspected to have in his possession any of the

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Provision in case of representative contributory not paying money ordered.

Order, conclusive evidence.

Court may exclude creditors not proving within certain time.

Court to adjust rights of contributories.

Powers of court in event of assets being insufficient.

Dissolution of company.

Registrar to make minute of dissolution of company.

Penalty on official liquidator for not reporting dissolution of company.

Publication of order of dissolution.

Power of court to summon persons before it suspected of having property of company.

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estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and the court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended, and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Examination of parties by court.

174. The court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid or whom it may be desired to examine concerning the affairs, dealings, estate or effects of the company, and may cause to be reduced into writing the answers of every such person, and require him to subscribe the same.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

175. The court may at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the court may order, and may give such directions and make such order for the release of such contributory from custody, and of his books, papers, money, securities, goods and chattels from seizure upon his entering into bail or depositing security as to the court may seem fit.

Powers of court cumulative.

176. Any powers by this Act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting at law of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Court may appoint Commissioners for taking evidence.

177. The court may appoint commissioners for the purpose of taking evidence under this Act in cases where any company is wound up by the court, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this Act to any person so appointed commissioner; and every such

commissioner shall have, in the matter so referred to him, all the same powers of summoning and examining witnesses and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court has; and the examination so taken shall be returned or reported to the court in such manner as it directs.

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Voluntary Winding-up of Company.

178. A company under this Act may be wound up voluntarily—

- (1) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:
- (2) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily:
- (3) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

Circumstances under which company may be wound up voluntarily.

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

179. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up.

Commencement of voluntary winding-up.

180. Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof: and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void, but its corporate state, and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

Effect of voluntary winding up on status of Company.

181. Notice of any special resolution, or extraordinary resolution, passed for winding-up a company voluntarily shall be given by advertisement in the *Gazette*.

Notice of resolution to wind up voluntarily.

182. The following consequences shall ensue upon the voluntary winding-up of a company:—

Consequences of voluntary winding up.

- (1) The property of the company shall be applied in satisfaction of its liabilities, in the legal order of their preference, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst

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the members, according to their rights and interests in the company.

- (2) Liquidators shall be appointed for the purpose of winding up the affairs of the company, and distributing the property.
- (3) The company, in general meeting, shall appoint such person or persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them.
- (4) If one person only is appointed, all the provisions herein contained, in reference to several liquidators, shall apply to him.
- (5) Upon the appointment of liquidators all the powers of the directors shall cease, except in so far as the company, in general meeting, or the liquidators, may sanction the continuance of such powers.
- (6) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two.
- (7) The liquidators may, without the sanction of the court, exercise all powers by this Act given to the official liquidator.
- (8) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories :
- (9) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same :
- (10) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

183. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner

Power of company to delegate authority to appoint liquidators.

in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

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184. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by a majority in number and by three-fourths in value of the creditors, subject to such right of appeal as is herein-after mentioned.

Arrangement between company and creditors when binding on creditors.

185. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary or confirm the same.

Power of creditor or contributory to appeal.

186. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the court to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court; and the court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the court thinks fit, or it may make such other order or decree on such application as the court thinks just.

Power for liquidators or contributories in voluntary winding up to apply to the Court.

187. Where a company is being wound up voluntarily the liquidators may from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

Power of liquidators to call general meeting.

188. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company,

Power to fill up vacancy in liquidators.

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or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

Power of Court to appoint liquidators.

189. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory, appoint a liquidator or liquidators. The court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding up to make up an account.

190. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published in the *Gazette* one month at least previously to the meeting.

Liquidators to report meeting to Registrar.

191. The liquidators shall make a return to the Registrar of such meeting having been held; and of the date at which the same was held; and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Costs of voluntary liquidation.

192. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Saving of rights of creditors.

193. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Power of court to adopt proceedings of voluntary winding up.

194. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Supplemental Provisions.

Reviews and appeals.

195. Reviews of, and appeals from any order or decision made or given in the matter of the winding up of a company by the court, may be had in the same manner and subject to the same conditions in and subject to which reviews and appeals may be had respectively from any order or decision of the same court in cases within its ordinary jurisdiction.

196. Where any company is being wound up by the court, all dispositions of the property, effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up, shall, unless the court otherwise orders, be void.

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Dispositions of property, etc., during winding-up void.

197. Where any company is being wound up all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Books of company to be evidence.

198. Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way: that is to say, where the company has been wound up by the court, in such way as the court directs; and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or anyone to whom the custody of such books, accounts and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

Disposal of books, accounts and documents of company

199. Where an order has been made for winding-up a company by the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories, in conformity with the order of the court, but not further or otherwise.

Inspection of books.

200. In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Debts of all descriptions to be proved.

201. In the proof or claim of debts against any company, or in the payment of debts by the liquidator of any company in course of being wound up under this Act, the principles regulating the proof, claim, and payment of debts in case of the judicial insolvency of any individual shall, save where it is herein otherwise provided, be followed and observed, so far as may be.

Principles regulating proof of claim of debts against company.

202. The liquidator may, with the sanction of the court, where the company is being wound up by the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement

Power of liquidators to compromise with creditors or pay in full.

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as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Power of liquidators to compromise with debtors.

203. The liquidators may, with the sanction of the court, where the company is being wound up by the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Court may order meeting of creditors to consider compromise.

204. Where any compromise or arrangement shall be proposed between a company which is at the time of the passing of this Act or afterwards in the course of being wound up voluntarily, and the creditors of such company or any class of such creditors, it shall be lawful for the court in addition to any other of its powers on the application in a summary way of any creditor or the liquidator to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy, at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Power of liquidators to accept shares, etc. as a consideration for sale of property of company.

205. Where any company is proposed to be or is in the course of being wound up voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation, or part compensation, for such transfer or sale, shares, policies or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound

up, may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made, or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing, addressed to the liquidators or one of them, and left at the registered office of the company not later than twenty-one days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by the court, such resolution shall not be of any validity unless it is sanctioned by the court.

206. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Lands and Arbitrations (Clauses Act, (1) 1882," shall *mutatis mutandis* apply.

Mode of determining price.

207. Where any company is being wound up by the court any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Certain attachments, etc., to be void.

208. Any alienation, transfer, cession, delivery, mortgage, or pledge of any goods and effects, movable or immovable, personal or real, and any payment of money, which would, if made or done by or against any private person, in the event of his insolvency, be deemed to have been made or done by way of undue preference, under and by virtue of Ordinance No. 6 of 1843, shall, if made or done by, or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue preference of the creditors of such company,

Undue preference.

¹ No. 6.

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and shall be invalid accordingly; and for the purpose of this section, the presentation of a petition for winding-up a company shall be deemed to correspond with the order for the sequestration of the estate of a private person according to law. And any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of its creditors shall be void to all intents.

Power of court to assess damages against delinquent directors and officers.

209. Where, in the course of the winding-up of any company under this Act, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such promoter, director, manager, liquidator, or other officer, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the court thinks just.

Penalty on falsification of books.

210. If any director, officer, or contributory of any company wound up or in course of being wound up under this Act destroys, mutilates, alters or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall upon being convicted be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, etc., in the case of winding up by court.

211. Where any order is made for winding-up a company by the court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, etc., in case of voluntary winding up.

212. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be the

duty of the liquidators, with the previous sanction of the court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

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213. If any person, upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Penalty for perjury.

214. In the course of any winding-up by the court under this Act, the court may direct that meetings shall be held, either of the creditors or contributories, or of both, and may direct that votes shall be taken either in person or by proxy, or in both ways, and may order that the majority be estimated either by number or value, or by both; and may generally direct what shall be submitted to any such meeting, and how the proceedings thereof shall be carried on, and who shall preside thereat; but shall not be bound by any such resolution of any such meeting.

Court may order meetings to be held.

Power of Court to make Rules.

215. The Judges of the Supreme Court may as often as circumstances require make such rules concerning the mode of proceeding to be had for the winding-up of a company, as may from time to time seem necessary, and may provide by such rules for the performance of such functions of the court, and the exercise of the jurisdiction of the court in such cases, and for such purposes under this Act by the court in chambers or by a judge in chambers as to such judges shall seem just and convenient.

Power of judges of Supreme Court to make rules.

PART VI.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

216. Subject to what is hereinafter mentioned, any partnership or association consisting of more than seven members, and not registered under this Act, or under the Act 23 of 1861, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions:

Winding up of unregistered companies.

- (1) The principal place of business of an unregistered company shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company.
- (2) No unregistered company shall be wound up under this Act voluntarily.
- (3) The circumstances under which an unregistered company may be wound up are as follows (that is to say),

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- (a) When the company has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) When the company is unable to pay its debts;
 - (c) When the court is of opinion that it is just and equitable that the company should be wound up.
- (4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts,
- (a) Whenever any person shall have obtained any judgment, decree or order of any court of competent jurisdiction for the payment of money against the company, or any person representing the company, and such judgment, decree or order shall remain unpaid or unsecured for a space of thirty days without the consent of the creditor.
 - (b) When any action, suit or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of such notice paid, secured or compounded for such debt or demand, or procured such action, suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same.
 - (c) When execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor in any proceeding instituted by such creditor against the company, or against any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied.
 - (d) When it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

Who deemed contributory in event of unregistered company being wound up.

217. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable at law to pay or contribute to the payment of any debt or liability of the company, or pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, and every

such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid; but in the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and legatees of a deceased contributory, and to the trustees of an insolvent contributory, shall apply.

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218. The court may, at any time after the presentation of a petition for winding-up an unregistered company, and before making an order for winding-up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the court thinks fit.

Power of court to restrain further proceedings.

219. Where an order has been made for winding-up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Act, it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

Effect of order for winding up company.

220. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the order made for winding-up such company, or by any subsequent order, direct that all such property, movable and immovable, including all interest, claims, and rights into and out of property, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

Provision in case of unregistered company having no power to sue or be sued in a common name.

221. The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained in respect to winding-up companies by the court, and the court or official liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies under Part V. of this Act.

Provisions in this part of Act cumulative.

MISCELLANEOUS PROVISIONS.

Application of Act where inconsistent with "Bank Act, 1891," and "Life Assurance Act, 1891."

222. In the case of any company subject to this Act and formed for the purpose of carrying on the business of banking or the business of life assurance, the provisions of this Act shall not apply in any case in which they would be inconsistent with the provisions of "The Bank Act, (1) 1891," or "The Life Assurance Act, (2) 1891," as the case may be. And in any law where reference is made to the provisions of the "Winding-up Act, (3) 1868," such reference shall be read as referring to Part V of this Act.

Forms to be filed in duplicate.

223. In the case of any company under this Act whose registered office is within the jurisdiction either of the Registrar of Deeds at Kimberley, or of the Registrar of Deeds at King William's Town, any return, copy of resolution, or other document required by the terms of this Act to be filed with the Registrar, shall by such company be filed in duplicate; and in every such case the Registrar shall transmit one copy of such return, resolution, or document to the Registrar of Deeds at Kimberley or King William's Town as the case may be, to be by him filed for purposes of reference.

Wages of servants of company.]

224. Notwithstanding anything hereinbefore contained it shall be lawful for the liquidators of any company to pay in full out of such assets as come to their hands arrears of salary or wages due to any servant of such company for a period not exceeding six months preceding the winding-up of such company.

To be paid in full unless assets insufficient and rank equally.

225. The debts in the last preceding section mentioned shall rank equally among themselves and shall be paid in full unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

To be discharged forthwith.

226. Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidators shall discharge the debts mentioned in the two hundred and twenty-fourth section forthwith so far as the assets of the company are and will be sufficient to meet them as and when such assets come into the hands of such liquidators.

Sections 68, 77, 78 and 81, not to apply to company when shares are fully paid up.

227. The provisions of the sections of this Act numbered respectively sixty-eight, seventy-seven, seventy-eight and eighty-one shall not extend or apply to any limited company wherein the shares are fully paid up.

Short title.

228. This Act may be cited for all purposes as "The Companies Act, 1892."

¹ No. 6 (p. 2830).

² No. 13 (p. 2852).

³ No. 12.

FIRST SCHEDULE.

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First Schedule.

LAWS REPEALED.

Number and year.	Title.	Extent of Repeal.
Act 23 of 1861 ...	“ The Joint Stock Companies Limited Liability Act, 1861 ” ...	The whole.
Act 12 of 1868 ...	“ Winding-up Act, 1868 ” ...	The whole.
Act 11 of 1879 ...	“ The Joint Stock Banking Companies Limited Liability Act, 1879 ” ...	So much as has not already been repealed.
Act 13 of 1888 ...	“ The Joint Stock Companies Act, 1888 ” ...	The whole, with the exception of section one.

SECOND SCHEDULE.

Second Schedule.

TABLE OF FEES TO BE PAID TO THE REGISTRAR UPON THE REGISTRATION OF COMPANIES UNDER THIS ACT.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £2,000, a fee of ...	...	2	0
For registration of a company whose nominal capital exceeds £2,000, the above fee of £2, with the following additional fees regulated according to the amount of nominal capital ; (that is to say)—			
For every £1,000 of nominal capital, or part of £1,000, after the first £2,000, up to £5,000 ...	1	0	0
For every £1,000 of nominal capital, or part of £1,000, after the first £5,000, up to £100,000 ...	0	5	0
For every £1,000 of nominal capital, or part of £1,000, after the first £100,000 ...	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per £1,000, or part of a £1,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital, on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.			

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Such other fees in respect of any services to be performed by the Registrar under this Act as the Governor may from time to time appoint, and all such fees shall be payable in stamps.

Third Schedule.

THIRD SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

3. If such certificate is worn out or is proved to the satisfaction of the directors to have been lost, it may be renewed, on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

4. The directors may, from time to time, make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfer of Shares.

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the company shall be transferred in the following or some other analagous form:—I, A.B., of _____, hereby transfer to C.D. the share [or shares], numbered _____, standing in my name in the books of the _____ company, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; the _____ day of _____. (Signed).

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

12. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share in consequence of the death or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person, to be named by him, registered as a transferee of such share.

15. The person, so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors of that effect.

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20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

22. A declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

26. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

28. The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine.

29. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

30. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

31. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

32. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

33. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

34. Seven days' notice at the least specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

35. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

36. No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

37. If within one hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

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38. The chairman of the board of directors shall preside as chairman at every general meeting of the company.

39. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

40. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

41. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

42. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

43. Every member shall have one vote for every share up to ten : he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

44. If any member is a lunatic or idiot he may vote by his curator *bonis*, or other legal curator.

45. If two or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

46. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

47. Votes may be given either personally or by proxy.

48. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses ; no person shall be appointed a proxy who is not a member of the company.

49. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

50. Any instrument appointing a proxy shall be substantially in the following form :—

Company Limited.

I, _____ of _____ being a member of the
 Company Limited, and entitled to _____ vote *or*
 votes, hereby appoint _____ of _____ as my proxy, to vote for me
 and on my behalf at the [ordinary *or* extraordinary, *as the case may*
be] general meeting of the company to be held on the _____ day of _____
 , and at any adjournment thereof [*or*, at any meeting of the
 company that may be held in the year].
 As witness my hand, this _____ day of _____
 Signed by the said _____ in the presence of _____

Directors.

51. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

52. Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.

53. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

54. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting ; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

55. The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

56. The office of director shall be vacated—

If he holds any other office or place of profit under the company :

If he becomes insolvent or compounds with his creditors :

If he is concerned in or participates in the profits of any contract with the company ;

But the above rules shall be subject to the following exceptions :
 That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and if he does so vote his vote shall not be counted.

Rotation of Directors.

57. At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office ; and at

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the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

58. The one-third or the nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot : in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

59. A retiring director shall be eligible for re-election.

60. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

61. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place ; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

62. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

63. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

64. The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead : the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

65. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business : questions arising at any meeting shall be decided by a majority of votes : in case of an equality of votes the chairman shall have a second or casting vote : a director may at any time summon a meeting of the directors.

66. The directors may elect a chairman at their meetings, and determine the period for which he is to hold office ; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

67. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

68. A committee may elect a chairman of their meetings; if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

69. A committee may meet and adjourn as they think proper; questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

70. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

71. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

72. No dividend shall be payable except out of the profits arising from the business of the company.

73. The directors may, before recommending any dividend set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

74. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

75. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.

76. No dividend shall bear interest as against the company.

Accounts.

77. The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place: and

Of the credits and liabilities of the company:

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

78. Once at least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

No. 25—1892.

79. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expense of the establishment salaries, and other like matters: every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

80. A balance-sheet shall be made out in every year and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

81. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served (*d*).

Audit.

82. Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

83. The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the company in general meeting.

84. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

85. The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

86. The election of auditors shall be made by the company at their ordinary meeting in each year.

87. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

88. Any auditor shall be re-eligible on his quitting office.

89. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

90. If no election of auditors is made in manner aforesaid the Governor may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

91. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

92. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to

the books and accounts of the company : he may at the expense of the company employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

93. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory ; and such report shall be read together with the report of the directors, at the ordinary meeting.

Notices.

94. A notice may be served by the company upon any member either personally, or by sending through the post in a prepaid letter addressed to such member at his registered place of abode.

95. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members ; and notice so given shall be sufficient notice to all the holders of such share.

96. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post ; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post-office.

CAPITAL AND LIABILITIES.				PROPERTY AND ASSETS.						
		£	s. d.	£	s. d.					
		Showing :				Showing :				
I. CAPITAL ...	1	The Number of Shares ...		III. PROPERTY held by the Company	7	Immovable Property, distinguishing—	£	s. d.	£	s. d.
	2	The Amount paid per Share ...				(a) Freehold Land ...				
	3	If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters ...				(b) " Buildings ...				
	4	The particulars of any forfeited Shares ...				(c) Leasehold " ...				
II. DEBTS AND LIABILITIES of the Company...		Showing :				8	Movable Property, distinguishing—			
	5	The Amount of Loans on Mortgages or Debenture Bonds				(d) Stock in Trade ...				
	6	The Amount of Debts owing by the Company, distinguishing—		IV. DEBTS owing to the Company	9	Debts considered good for which the Company hold Bills or other securities ...				
		(a) Debts for which acceptances have been given			10	Debts considered good for which the Company hold no security				
		(b) Debts to Tradesmen for Supplies of Stock in Trade or other Articles			11	Debts considered doubtful and bad ...				
		(c) Debts for Law Expenses				Any Debt due from a Director or other officer of the Company to be separately stated ...				
		(d) Debts for Interest on Debentures or other Loans		V. CASH AND INVESTMENTS	12	The Nature of Investment and Rate of Interest ...				
		(e) Unclaimed Dividends ...			13	The Amount of Cash, where lodged, and if bearing Interest ...				
		(f) Debts not enumerated above ...								
VI. RESERVE FUND		Showing :								
		The Amount set aside from Profits to meet Contingencies ...								
VII. PROFIT AND LOSS ...		Showing :								
		The disposable Balance for Payment of Dividend, &c. ...								
CONTINGENT LIABILITIES ...		Claims against the company not acknowledged as Debts ...								
		Monies for which the Company is contingently liable ...								

(e) See clauses 81 and 82 of the foregoing Table A.

FOURTH SCHEDULE.

No. 25—1892.

Fourth Schedule.

Name of Company.	Business or Purpose.	Head Office.	Total amount of Shares or Stock for which Share Warrants are outstanding at the date of the return.	Names and places of abode of persons to whom Share Warrants have been issued since the preceding half-yearly return.	Distinctive numbers of Shares or Stock in respect of which Share Warrants have been issued since the preceding half-yearly return.
Dates of the issue of the several Share Warrants.	Total amount of Share Warrants which have been surrendered since the preceding half-yearly return.	Names and abodes of the persons who have surrendered Share Warrants since the preceding half-yearly return.	Distinctive numbers of the Shares or Stock in respect of which Share Warrants have been surrendered since the preceding half-yearly return.	Dates of the surrender of the several Share Warrants.	

Fifth Schedule.

FIFTH SCHEDULE.

FORM A.

MEMORANDUM OF ASSOCIATION OF A LIMITED COMPANY.

1st. The name of the company is "The Cape Steam Packet Company, Limited."

2nd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

No. 25—1892.

Names, Addresses and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
" 1. John Jones of	Merchant	...	200
" 2. John Smith of	"	...	25
" 3. Thomas Green of	"	...	30
" 4. John Thompson of	"	...	40
" 5. Caleb White of	"	...	15
" 6. Andrew Brown of	"	...	5
" 7. Cæsar White of	"	...	10
Total Shares taken			325

Dated the day of 18
 Witness to the above signatures,
 A.B., No. , Adderley-street, Cape Town.

FORM B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED
 COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The objects for which the company are established are, "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Cape Town, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

" 1. John Jones of	Merchant.
" 2. John Smith of	"
" 3. Thomas Green of	"
" 4. John Thomson of	"
" 5. Caleb White of	"
" 6. Andrew Brown of	"
" 7. Abel Brown of	"

Dated ——— day of ———, 18——.

Witness to the above signatures.

A.B., No. 20, Adderley-street, Cape Town.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.			Number of Shares taken by Subscribers.
" 1. John Jones of	Merchant	...	1
" 2. John Smith of	"	...	5
" 3. Thomas Green of	"	...	2
" 4. John Thompson of	"	...	2
" 5. Caleb White of	"	...	3
" 6. Andrew Brown of	"	...	4
" 7. Abel Brown of	"	...	1
Total Shares taken			18

Dated the day of , 18

Witness to the above signatures,
A.B., No. 20, Adderley-street, Cape Town.

FORM C.

(As required by of this Act.)

Summary of Capital and Shares of the Company made up to the day of

Nominal Capital £ divided into share of £ each.

Number of shares taken up to the day of

There has been called up on each share £

Total amount of calls received £

Total amount of calls unpaid £

List of persons holding shares in the Company on the day of

and of persons who have held shares therein at any time during the year immediately preceding the said day of , showing their names and addresses and an account of the shares so held.

Folio in Register Ledger containing Particulars.	Names, Addresses and Occupations.				ACCOUNT OF SHARES.				
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing members on the day of	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.	
						Num-ber.	Date of Trans-fer.	Num-ber.	Date of Trans-fer.

No. 26—1892.]

[31st August, 1892.

ACT (i)

To Regulate the holding of Exhibitions in this Colony.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Interpretation of terms.

1. In this Act the term "Exhibition" shall mean any Industrial or Art Exhibition which may be declared by the Governor, as hereinafter mentioned, to be an Exhibition to which this Act shall apply; the term "Committee" shall mean the General Executive Committee for the time being of the Exhibition, and the term "Trustees" shall mean the persons who shall be trustees for the time being of the Exhibition, and who shall be two in number, one to be appointed by the Governor and the other by the Committee.

Appointment of Exhibition Commissioners.

2. It shall be lawful for the Governor from time to time to approve of the holding of an Exhibition at such place within the Colony as he may think fit, and to appoint two persons to be Exhibition Commissioners, who shall be *ex officio* members of the Committee of the Exhibition, and from time to time to remove such persons and appoint others in their stead.

Legal proceedings.

3. All proceedings at law instituted on behalf of or against the Exhibition, or wherein the Exhibition may be concerned, shall be instituted by or against the Trustees by name, and in all indictments and informations it shall be sufficient to state the property of the Exhibition as being the property of the Trustees, and any offence committed with intent to injure or defraud the Exhibition may, in any prosecution for the same, be stated or laid to have been committed with intent to injure or defraud the said Trustees, 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 Trustees or any of them, 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 Trustee.

Appointment of Trustee.

4. Upon the election or appointment of any person to be Trustee, notice of such election or appointment shall be forthwith given in the *Gazette*, and such notice shall be sufficient proof of such election or appointment.

Effect of Judgment against Trustees.

5. Every judgment and every decree or order which shall be at any time obtained against the Trustees, on behalf of the Exhibition, shall take effect and be enforced, and execution thereon be issued against the property and effects of the Exhibition.

Powers of Trustees.

6. It shall be lawful for the Trustees, for the time being, to purchase or to lease on behalf of the Exhibition any lands or buildings which may be required for the purposes of the Exhibi-

¹ This Act was repealed by Act 5, 1893, but is re-enacted by Act 11, 1898. Printed as amended by latter Act (p. 3874).

tion, 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 Trustees on behalf of the said Exhibition.

No. 26—1892.

7. (1) The members of the committee, or a majority of them, at any general meeting assembled, shall have power from time to time to make, repeal, or alter such bye-laws as they may think fit for the purpose of regulating:

Committee may make bye-laws.

- (1) The conduct of their own proceedings;
- (2) The due management of the affairs of the Exhibition in its several departments;
- (3) The temporary admission or exclusion of the public or any individual to and from the Exhibition, or buildings, or grounds, or any part thereof, and the behaviour to be observed therein;
- (4) The sum to be demanded and paid for admission to the Exhibition or buildings or grounds or any part thereof;
- (5) The purposes of public instruction, enjoyment or entertainment for which any buildings or grounds or any part thereof may be used and applied.

8. All bye-laws made under the authority of this Act shall be signed by the Trustees and submitted for the approval of the Governor, and if approved, they shall be published in the *Gazette*, and upon such publication such bye-laws shall have the same force and effect as if they had been inserted in this Act.

Force and effect of bye-laws.

9. The Governor may at any time by proclamation in the *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 may be continued as if no such repeal had taken place.

Bye-laws repealed by proclamation.

¹ Printed as amended by Act 11, 1898 (p. 3874).

No. 26—1892

Proof of existence
of bye-law.

10. The production of a copy of the *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 posted at en-
trance to Exhibi-
tion grounds.

11. A copy of all bye-laws made under this Act for the time being in force shall be posted at or near the principal entrance to the said Exhibition grounds and also in a conspicuous place at or adjacent to the main building on the said grounds 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 posted in manner aforesaid.

Bye-laws when
published binding
on all persons.

12. Such bye-laws when so published as aforesaid shall be binding upon and be observed by all persons; 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 posted in manner by this Act directed.

Penalty for con-
travention of bye-
laws.

13. Any person contravening any bye-law made under this Act shall be liable on conviction before the Resident Magistrate of the district to a fine not exceeding ten pounds, and in default of payment to imprisonment with or without hard labour for any term not exceeding three months, and if the infraction or non-observance of any 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 Exhibition or to the public in the lawful use of the said Exhibition, it shall be lawful for the committee or any member, officer, or servant thereof, summarily to interfere to remove such danger, annoyance or hindrance, and that without prejudice to the infliction of any penalty incurred by the infraction of any such bye-laws.

Penalty for ob-
struction of com-
mittee and officers
and trespass or in-
jury to property.

14. 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 or in the lawful occupation of the Exhibition 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 Resident Magistrate, be liable to a penalty of not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for any term not exceeding three months.

Officer of com-
mittee may seize
offender.

15. Any member, officer or servant of the committee 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 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.

16. 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.

No. 26—1892.

Liability under this Act shall not relieve from any other liability.

17. The Trustees may let for any particular class of show or for any other amusement or sport any portion of the land or buildings owned or leased as in this Act mentioned, 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.

Trustees may lease any portion of land.

18. Notwithstanding anything to the contrary contained in any of the Acts regulating the sale of intoxicating liquors, upon production of a certificate signed by the Trustees, the Resident Magistrate of the district shall grant to the applicant producing such certificate a licence to be called a "Retail Exhibition Licence," and thereupon the person applying shall be authorised between such hours, not being earlier than eleven a.m. or later than eleven p.m. on any day other than Sunday, and during the period specified in such certificate, not being longer than three months, to sell intoxicating liquors at such places within the buildings and grounds of the Exhibition as the licence may specify.

Retail Exhibition Licence.

Provided that every certificate shall specify and set forth :

- (1) The name of the applicant.
- (2) That the applicant is in the opinion of the Trustees a fit and proper person to receive and hold the licence required.
- (3) The period during which the licence is recommended to be granted and the hours during which liquors may be sold.

Provided further that every licence issued under this section shall require the holder thereof between the hours specified, to keep on sale non-intoxicating drinks, under such regulations as shall be set forth in the said licence.

19. Any such retail Exhibition licence may at any time be cancelled by the Governor.

May be cancelled by Governor.

20. Any such retail Exhibition licence granted under this Act shall be issued by the distributors of stamps respectively in the several districts of the Colony on payment for every such licence of a sum calculated at the rate of one pound sterling for each and every week during the period for which the same shall be granted.

Licence, how issued.

21. A retail Exhibition licence and the holder thereof shall be subject to the provisions of all Acts now in force regulating the sale of intoxicating liquors under a retail licence except in so far as the same may be inconsistent with the provisions of this Act.

Provisions of Liquor Laws to apply to holder of such licence when not inconsistent with this Act.

22. This Act shall apply only to such Exhibition as the Governor may, by notice in the *Gazette* under the hand of the Colonial Secretary, declare to be an Exhibition to which this Act shall apply.

Act only to apply to Exhibitions proclaimed as such.

23. This Act may be cited as the "Exhibition Act, 1892."

Short title.

No. 27—1892.]

[September 2, 1892.

ACT

To make provision for the Permissive Adoption of taking Votes by Ballot at Elections of Members of Divisional Councils, Municipal, Borough, and Town Councils, and Village Management Boards.

Preamble.

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:—

Governor to proclaim provisional Ballot Regulations.

1. It shall be lawful for the Governor to frame and issue by Proclamation in the *Gazette*, provisional Regulations by which Elections of Members of Divisional Councils, Municipal, Borough and Town Councils, and Village Management Boards may respectively be regulated under the provisions of this Act, notwithstanding anything to the contrary contained in the Divisional Councils Act, (1) 1889, the Municipal Act, (2) 1882, or the Village Management Board Act, (3) 1881, or the provisions of any law.

Regulations to correspond *mutatis mutandis* with Ballot provisions of Franchise and Ballot Act.

2. The regulations issued under the provisions of the preceding section shall correspond substantially, as far as is practicable and *mutatis mutandis*, with the provisions of sections thirty-five to eighty-one inclusive of the Franchise and Ballot Act, 1892, and of the regulations made under the provisions of the said Act for the carrying out of the said provisions with regard to Parliamentary Elections.

Mayor or chairman on receiving petition of majority of voters to convene meeting to consider adoption of provisional Ballot Regulations.

3. It shall be the duty of the Mayor or Chairman of any Municipal, Borough or Town Council, or Village Management Board, upon the receipt of a written petition thereto signed by (4) twenty-five registered voters qualified to vote at elections of members of such Council or Board, to cause a meeting to be convened by public advertisement during at least three weeks, of all persons registered as qualified to vote at elections of members of such Council or Board for the purpose of deciding whether the elections of members of such Council or Board shall thereafter be conducted in accordance with the provisional regulations with regard to such elections issued by proclamation under authority of the first section of this Act.

¹ No. 40.

² No. 45.

³ No. 29.

⁴ Printed as Amended by Act 18, 1899. Extended by Proclamation 166, 1904, to all Native Territories.

4. If at a meeting convened in the manner provided in the last preceding section a majority of the registered voters aforesaid then present resolve that the elections for members shall thereafter be conducted in accordance with the aforesaid proclaimed provisional regulations for such elections, it shall be the duty of the Mayor or Chairman to forward the requisition and the resolution of the meeting to the Colonial Secretary for submission to the Governor.

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Any decision of meeting in favour to be submitted to Governor.

5. It shall be lawful for the Governor on receipt of the requisition and resolution aforesaid to proclaim that the aforesaid provisional regulations shall thereafter be in force with regard to elections of such Council or Board members.

Governor thereupon to proclaim such regulations in force.

6. It shall be the duty of the Civil Commissioner or other chairman of any Divisional Council, on receipt for presentation at any monthly meeting of such Council of a petition or memorial or petitions or memorials thereto signed by ⁽¹⁾ twenty-five voters registered as qualified to vote at elections of members of the said Council, to give notice at such meeting that at the following monthly meeting of the said Council the question shall be submitted whether application shall be made to the Governor that the provisional regulations issued by proclamation under authority of the first section of this Act shall be proclaimed in force with regard to such elections thereafter of members of such Divisional Council. And thereupon he shall submit the said question at such following monthly meeting, and if it be agreed to by a majority of the members then present he shall forthwith forward a copy of the resolution of the Council, with the petitions or memorials aforesaid, to the Colonial Secretary for submission to the Governor.

Civil Commissioner receiving petitions of majority of divisional council voters to give notice of consideration next meeting, and upon resolution for ballot this to be submitted to Governor.

7. It shall be lawful for the Governor, on receipt of such resolution, to proclaim that the aforesaid regulations shall thereafter be in force with regard to elections of members of such Divisional Council.

Governor thereupon to proclaim ballot regulations for divisional council elections in force.

8. Any person who shall contravene any of the regulations made and proclaimed in force in pursuance of this Act shall be liable to the penalty provided by the said Franchise and Ballot Act for the contravention of the corresponding provision of the said Act or of the corresponding provision of the regulations issued under the said Act as the case may be.

Persons contravening regulations liable to penalties provided by Franchise and Ballot Act.

9. This Act shall come into force from and after the promulgation thereof.

When to come in force.

10. This Act may be cited as the "Divisional and Municipal Councils Permissive Ballot Act, 1892."

Short title.

¹ Printed as amended by Act 18, 1899 (p. 4101).

No. 28—1892.]

[September 2, 1892.

ACT

To Release certain Land vested in the London Missionary Society and forming portion of the Estate, commonly called the "Hankey Estate," from the operation of the last proviso of section three of the "London Missionary Society's Institutions Act, 1873," in consideration of the registration of a servitude of free outspan against the title of certain other neighbouring property also vested in the said Society.

Preamble.

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:—

Release by proclamation of 300 morgen of land from outspan servitude under last proviso of section 3 of Act No. 12 of 1873.

1. It shall be lawful for the Governor, by proclamation, in accordance with the provisions of this Act, to release from the operation of the last proviso of section three of the Act No. 12 of 1873, commonly called the "London Missionary Society's Institutions Act, 1873," and from the servitude or burden of free public outspan thereby established, three hundred morgen in all, being portion of the land therein referred to as theretofore used as commonage, and of the estate commonly called the Hankey Estate, vested in the said society and now held by title deed, issued to the agent of the said society on the 16th day of July, 1890, in accordance with the provisions of the Act No. 9 of 1879, and from and after the date of any such proclamation the land therein referred to shall be released from the servitude aforesaid.

What the 300 morgen shall comprise.

2. The said three hundred morgen of land shall comprise:

- (a) Certain 247 morgen 319 square roods and 51½ square feet, already duly surveyed and shown by way of deduction, bounded by yellow lines upon the diagram annexed to the aforesaid title deed, dated the 16th day of July, 1890, and also upon a certain plan framed by the Surveyor, H. L. Spindler, bearing date the 17th day of February, 1892, and filed in the office of the Surveyor-General, on which plan it is bounded by green lines; and
- (b) Such land in one or more lots as may be selected and duly surveyed and defined in accordance with the next succeeding section of this Act to complete the area aforesaid of three hundred morgen.

Land to be properly described; no proclamation before survey, erection of beacons, etc.

3. Every such proclamation as aforesaid shall sufficiently indicate and describe the land therein referred to, and no such proclamation shall be published unless the land to which it relates shall have been selected by and duly surveyed on behalf of the said society, and unless such land shall have been defined by proper beacons and a deduction thereof duly shown for the purposes of this Act upon the plan or diagram of the said property forming the Hankey Estate filed in the office of the Surveyor-

General, as well as upon the diagram annexed to the aforesaid title deed, dated the 16th day of July, 1890.

4. The said society shall not be entitled to require that any such proclamation shall be issued under the provisions of this Act unless and until there shall have been duly registered by the Registrar of Deeds against certain neighbouring land vested in the said society, and set forth in the schedule to this Act, in extent five hundred morgen or thereabouts, a servitude of public outspan free of charge, which servitude shall be registered in the said office against the respective title deeds of the land comprised in the said five hundred morgen so soon as the portion of the land referred to in paragraph (4) of the schedule shall have been duly surveyed to the satisfaction of the Surveyor-General, and defined by proper beacons and a deduction thereof shown for the purposes of this Act upon the diagram annexed to the title deed of the lot No. 2,632 known as "Boschbok Hoek," and referred to in the said paragraph (4) of the schedule.

No. 28—1892.

No proclamation until society have duly registered outspan servitude against 500 morgen of land set forth in schedule.

5. This Act may be cited as the "Hankey Outspan Act, 1892."

Short title.

SCHEDULE.

Schedule.

Setting forth the areas comprising the 500 morgen of land to be subjected to a servitude of public outspan free of charge in consideration of the release from the operation of the last proviso of section 3 of the Act No. 12 of 1873, of 300 morgen forming part of the Hankey Estate, and heretofore subject to such operation.

(1) Certain portion of sub-division B of the farm Gamtoos River Wagen Drift, transferred to the Agent of the London Missionary Society on the 4th December, 1888, measuring according to title 94 morgen 380·5 square roods, but according to true area as stated in the diagram thereof	morgen.	square roods.
...	105	564·50
(2) Certain portion of the divided quitrent place, "Gamtoos River Wagen Drift," transferred to the Agent of the said Society on the 3rd April, 1888, measuring	255	81·04
(3) Certain other portion of the said divided quitrent farm, "Gamtoos River Wagen Drift," transferred to the Agent of the said Society on the 16th October, 1888	15	230·76
(4) Portion of a certain piece of perpetual quitrent land, being Lot No. 2632, known as "Boschbok Hoek," transferred to the Agent of the said Society on the 15th March, 1888, the whole measuring 578 morgen and 238 square roods, the portion measuring	123	323·70
...	500	...

No. 30—1892.

No. 29—1892.]

[August 30, 1892.

Act to apply a Sum of Money for the Service of the Year ending the 30th day of June, 1893.

[Spent.]

No. 30—1892.]

[September 2, 1892.

ACT (1)

To Amend the Law relating to the admission of Advocates and Attorneys of the Supreme Court.

Preamble.

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:—

Admission of advocates.

1. In addition to the persons who may by the seventeenth section of the Charter of Justice, the second section of Act 12 of 1858, and the twenty-first section of Act 16 of 1873, be admitted and enrolled as Advocates of the Supreme Court of this Colony, it shall be lawful for the said Supreme Court to enrol and to admit to practise as an Advocate therein, any person who shall produce proof

- (a) That he has been admitted as an Advocate in the Supreme or High Court, as the case may be, of Natal, the (2) South African Republic, the Orange Free State, or such other State or Territory in Africa as the Governor may from time to time proclaim as included under the provisions of this section, and that at the date of his application for admission in this Colony, his name remains enrolled as an Advocate of such Supreme or High Court respectively;
- (b) That he has passed an examination in Law which at the date of his application for admission is covered by a proclamation issued in terms of sub-section (a) of section four of this Act.

Provided that no person shall be enrolled or admitted to practise as an Advocate of the Supreme Court of this Colony, or after having been so enrolled or admitted shall continue to practise as aforesaid, who shall either himself be carrying on, directly or indirectly, the business of an Attorney, or be directly or indirectly interested in the business of any Attorney or firm of Attorneys practising within the borders of this Colony, or of any of the States or Territories aforesaid.

Admission of attorneys.

2. In addition to the persons who may under the provisions of any existing Law be admitted and enrolled as attorneys in the

¹ See footnote to Act 12, 1858 (p. 704). See also Acts 14, 1899 (p. 4093); 27, 1883 (p. 2111); 11, 1903 (p. 4591).

² Proclamation No. 355, 1904, dated 10th November, 1904, declares the following examination to be equivalent to the C.G.H. University examination for degree of Bachelor of Laws, viz., the examination for the First Class Certificate in Law and Jurisprudence of the late South African Republic. Proclamation No. 2, 1903, dated 3rd January, 1903, declares the following examination to be equivalent to the C.G.H. University examination in Law and Jurisprudence, viz., the examination heretofore required of persons seeking to be admitted to practise as Attorneys of the late High Court of the South African Republic, viz., "Examen in de Rechtsgeleerdheid. Tweede Klas."

Supreme Court of this Colony, it shall be lawful for the said Supreme Court to enrol and to admit to practise as an Attorney therein any person who shall produce proof;

- (a) That he has been admitted as an Attorney in the Supreme or High Court of any of the territories in the last preceding section mentioned, and that at the date of his application for admission in this Colony his name remains enrolled as an Attorney of such Supreme or High Court as the case may be;
- (b) That he has passed an examination in Law which at the date of his application for admission is covered by a proclamation issued in terms of sub-section (b) of section four of this Act;
- (c) That for a period of three years immediately preceding the date of his admission or enrolment as an Attorney in the Supreme or High Court of one of the said territories he had been articulated to serve and had served as a clerk to some enrolled Attorney in the said territory;
- (d) That he has passed such an examination in the Statute Law of the Cape of Good Hope as the Governor shall from time to time specify. ⁽¹⁾

3. No person applying to be admitted as an Attorney in the Supreme Court of this Colony, under the provisions of the last preceding section shall be subject to the terms of the fourteenth section of Act 27 of 1883. But every such person shall produce to, and register with the Council of the Law Society of the Cape of Good Hope, sufficient proof of the matters referred to in sub-sections (a) (b) (c) and (d) of the last preceding section, and shall upon payment of the fee provided for in the sixteenth section of the Act 27 of 1883, obtain a certificate from the said Council of his having complied with the terms of this section, and shall lodge such certificate with the Registrar of the Supreme Court in manner directed by the fifteenth section of the Act aforesaid.

The lodging of every such certificate shall be deemed to be in all respects a compliance with the terms of the fifteenth section aforesaid.

4. Subject to the provisions of section five of this Act it shall be lawful for the Governor, after having consulted with and obtained the unanimous approval of the judges of the Supreme Court in Cape Town, and in case the proposed proclamation be one under sub-section (b), after consultation with the President of the Cape Law Society also, from time to time to notify by proclamation in the *Gazette*:

- (a) That any ⁽²⁾ examination in Law, specified in such proclamation, is to be deemed, for the purposes of this Act, equivalent to the examination for the degree of Bachelor of Laws in the University of the Cape of Good Hope;

Attorney applying for admission to obtain certificate from Council of Law Society.

Governor may by Proclamation notify certain Law examinations equivalent for purposes of this Act to certain University examinations.

¹ An additional requirement is passing matriculation examination of C.G.H. University, or some equivalent examination. Act 14, 1899.

² See footnote 2 on page 3106.

No. 31—1892.

(b) That any⁽¹⁾ examination in Law specified as aforesaid is to be deemed, for the purposes of this Act, equivalent to the examination in law and jurisprudence of the University of the Cape of Good Hope referred to in the nineteenth section of the Act 16 of 1873.

Repeal of Proclamation and condition on which Proclamation to issue with regard to examinations in other States or Territories.

5. The Governor may, after like consultation and approval, repeal any such proclamation, and no such proclamation shall issue with regard to any examination in any of the States or Territories mentioned in the first section of this Act, unless by the law of such State or Territory, Advocates and Attorneys of the Supreme Court of this Colony are without further examination, other than, in the case of Attorneys only, an examination in the local Statute Law of the said State or Territory, admitted to practise as Advocates and Attorneys respectively, in the Courts of the said State or Territory. Every such proclamation may refer in its terms to a date from which the examination dealt with by it is to be considered so equivalent as aforesaid.

Service under articles in British Bechuanaland.

6. For the purposes of the third and fifth sections of Act 12 of 1858, and any other law regulating the admission of attorneys or notaries by the Supreme Court, service under articles with any attorney of the said Supreme Court or with any notary duly admitted by the said Supreme Court in the Territory of British Bechuanaland, shall be deemed to be equivalent to service with an attorney or a notary of the said Court in this Colony as the case may be. But the provisions of the fourteenth and fifteenth sections of the Act 27 of 1883 shall apply to all such articles.

Candidates for law certificate who have University degree, or passed Law examination in Scotland.

7. It shall be competent for the Council of the University of the Cape of Good Hope to admit as a candidate for a certificate of proficiency in law and jurisprudence, any person who shall have obtained or been admitted to any degree in the said University, or who shall have passed the examination prescribed by the Imperial Act 36 and 37 Vict., c. 63, for law agents practising in Scotland, anything in the 19th section of the University Incorporation Act No. 16 of 1873 to the contrary notwithstanding.

Short title.

8. This Act may be cited for all purposes as the Legal Practitioners Act, 1892.

No. 31—1892.]

[September 2, 1892.

ACT

To prevent the Sale or Exhibition of Indecent or Obscene Books, Pictures, Prints and other Articles.

BE it enacted by 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 "publication."

1. For the purposes of this Act the word "publication" shall include any book, newspaper, pamphlet, magazine, periodical, letterpress, writing, print, picture, engraving, lithograph, photograph, drawing or other similar representation.

¹ See footnote 2 on page 3106.

2. Every person who shall sell or distribute, or offer for sale or distribution, or who shall wilfully expose or cause to be exposed to public view any indecent or obscene publication, shall be guilty of a contravention of this section, and shall be liable on conviction to a penalty not exceeding ten pounds sterling, and in default of payment, to be imprisoned with or without hard labour for any period not exceeding three months, or to both such fine and such imprisonment.

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Penalty for selling distributing or exposing indecent or obscene publications.

3. It shall be lawful for any Resident Magistrate—If

Search of suspected premises for indecent and obscene publications.

(a) A complaint has been made before him upon oath that the complainant has reason to believe and does believe that any indecent or obscene publications are kept in any house, shop, room or other place within the limits of the jurisdiction of such Magistrate for the purpose of sale or distribution, or for exhibition for purposes of gain, lending upon hire, or publication in any other manner for purposes of gain; and

(b) The complainant also states upon oath that one or more publications of the like character have been sold or distributed, exhibited, lent, or otherwise published as aforesaid, at or in connection with such place; and

(c) The Magistrate is satisfied that the belief of the complainant is well founded, and that any of the publications so kept for any of the purposes aforesaid are of such a character and description that the sale, distribution or exposure of them would be an offence under the provisions of this Act and proper to be prosecuted as such,

to give authority by special warrant to any constable or police officer to enter in the daytime into such house, shop, room or other place, with such assistance as may be necessary, and if necessary to use force by breaking open doors or otherwise, and to search for and seize all such indecent and obscene publications as aforesaid found in any such house, shop, room or other place, and to carry all the articles so seized before the Resident Magistrate issuing the said warrant or some other Resident Magistrate exercising the same jurisdiction, and such Resident Magistrate shall thereupon cause a summons to issue calling upon the occupier of the house or other place which may have been so entered by virtue of the said warrant to appear within seven days before any Resident Magistrate to show cause why the articles so seized should not be destroyed; and if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid, or shall appear, and such Resident Magistrate shall be satisfied that such articles or any of them are of the character stated in the warrant, and that such articles or any of them have been kept for any of the purposes aforesaid, it shall be lawful for the said Resident Magistrate, and he is hereby required, to order the articles so seized, or any of them, to be destroyed at the expiration of the time allowed by law for lodging an appeal against the

No. 31—1892.

decision of such Resident Magistrate, unless notice of appeal be given within such time, in which case all such articles shall be impounded pending the result of such appeal; and if such Resident Magistrate shall be satisfied that the articles seized are not of the character stated in the warrant or have not been kept for any of the purposes aforesaid, he shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized.

Penalty on occupier of house, owner of indecent and obscene publications, and other persons concerned.

4. Every such occupier of any house, shop, room, or other place wherein such publications shall have been seized, every owner and every person who in the opinion of the Resident Magistrate adjudicating thereon, appears to be the owner of such publications, and every person printing, photographing, lithographing, drawing, making, selling, publishing, distributing or exhibiting such obscene publications, or assisting therein, shall be liable on conviction for a first offence to a penalty not exceeding twenty pounds or imprisonment with or without hard labour not exceeding six months, and for any second or subsequent offence to a penalty not exceeding fifty pounds or to imprisonment with or without hard labour not exceeding twelve months.

Tender of amends by person committing irregularity in execution of this Act.

5. No person shall recover in any action for any irregularity, trespass or other wrongful proceeding made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the person who shall have committed such irregularity, trespass, or other wrongful proceeding before such action brought, and in case no tender shall have been made, it shall be lawful for the defendant in any such action by leave of the Court where such action shall depend at any time before issue joined to pay into Court such sum of money as he shall think fit, whereupon such proceeding, order or adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

Limitation of actions.

6. No action, suit or information, or any other proceeding of what nature soever shall be brought against any person for anything done or omitted to be done in pursuance of this Act or in the execution of the authorities under this Act, unless notice in writing shall be given by the party intending to prosecute such action, suit, information or other proceeding to the intended defendant one calendar month at least before prosecuting the same, nor unless such action, suit, information or other proceeding shall be brought or commenced within three calendar months next after the act of omission complained of, or in case there shall be a continuation of damage, then within three calendar months next after the doing such damage shall have ceased.

Penalty for sending indecent or obscene publication through the post.

7. Any person who shall send by post any indecent or obscene publication or post card, or any other indecent or obscene article, or any letter, publication, packet, or post card, having thereon, or on the covers thereof, any word, mark, or design of an indecent

or obscene character, shall on conviction be liable to a penalty not exceeding twenty pounds sterling, and in default of payment to be imprisoned with or without hard labour for any period not exceeding six months, or to both such fine and such imprisonment.

8. This Act may be cited for all purposes as "The Obscene Publications Act, 1892."

No. 32—1892.

Short title.

No. 32—1892.]

[September 2, 1892.

ACT

To Consolidate and Amend the Law relating to Colonial Forces. (1)

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. Subject to the exceptions hereinafter contained, the Laws mentioned in the first Schedule of this Act, together with 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. But such repeal shall not invalidate anything lawfully done before the taking effect of this Act under the said Laws or any regulations duly framed thereunder, which regulations shall be in all respects as valid as if they had been framed under this Act; and shall not discharge any person enrolled under the provisions of any of the said Laws from any service which he may be liable to fulfil under such Laws respectively, nor shall such repeal infringe upon any rights acquired under the said Laws.

Repeal of laws.

2. In this Act, unless the context clearly otherwise denotes, the following expressions shall bear the meaning respectively set opposite them:—

Interpretation of terms.

"Governor."—The Governor in Council.

"Minister."—The responsible Minister to whose department the Governor may from time to time assign the working of this Act; or any member of the Cabinet who may be acting for such Minister.

"Colonial Forces."—Shall include the Permanent Forces, as hereinafter defined, any Volunteer Corps, any Colonial Commissariat or Transport force, attached to a field force, any corps of native levies, and any other corps raised and enrolled under the provisions of this Act.

"Permanent Forces." Officers and men of the Cape Mounted Riflemen, and any other officers and men who by the terms of their commission, appointment or enrolment, and from the date thereof, are liable to render continuous military service under this Act.

¹ Amended by Acts 4, 1893 (p. 3148), and 16, 1895 (p. 3453). Extended by Proclamations No. 445 of 1893 and 33 of 1897 to all the Native Territories.

- “Volunteers.”—Officers and men of any Volunteer Corps enrolled under this Act or the “Volunteer Act, 1882.”
- “Officer.”—A commissioned officer in the Colonial Forces.
- “Non-commissioned Officer.”—Includes an acting non-commissioned officer.
- “Superior Officer.”—When used in relation to any member of the Colonial Forces who is not an officer, includes a non-commissioned officer as above defined.
- “Active Service.”—Any portion of the Colonial Forces shall be deemed to be on Active Service when
- (1) It has been called out under this Act, for service against an enemy, or for service in a country or place wholly or partly occupied by an enemy.
 - (2) It is in military occupation of any place outside this Colony.
 - (3) A proclamation has been issued by the Governor, under the powers conferred on him by the eighty-fifth section of this Act, declaring that the whole or such portion of the Colonial Forces shall be deemed to be on Active Service, for the period mentioned in such proclamation.
- Military Service.”—(a) The Permanent Forces will be considered to be on Military Service during the whole period of their commission or enrolment;
- (b) Volunteers shall be considered to be in Military Service—
- (i) When being trained or exercised with any portion of Her Majesty’s regular forces, or of the permanent forces.
 - (ii) When assembled in a camp of training or instruction.
 - (iii) When called out to aid the civil power in the protection of life and property by proclamation of the Governor, under the powers conferred on him by the eighty-fifth section of this Act.
- “Corps.”—Any military body, or any portion of the Colonial Forces which may be declared by regulation to be a corps for the purposes of this Act.
- “Enemy.”—The subject of any State at war with the Colony and offering armed opposition to its forces, and also any armed mutineer, armed rebel or armed rioter, and any pirate.
- “Regulations.”—Regulations made under the provisions of this Act.
- “Prescribed.”—Prescribed by this Act or the regulations.
- “Military Custody.”—Arrest or confinement in manner prescribed by the regulations.

“Superior Court.”—The Supreme Court, the Eastern Districts Court, the High Court of Griqualand West, and any Circuit Court.

“Magistrate.”—The Resident Magistrate of any district in this Colony.

3. This Act is divided into three parts, relating to the following matters respectively:—

Divisions of Act.

PART I.

Enrolment, sections four to forty-three.

PART II.

Discipline, sections forty-four to eighty-four.

PART III.

General Provisions, sections eighty-five to one hundred and six.

PART I.

ENROLMENT.

Permanent Forces.

Cape Mounted Riflemen.

4. The Governor shall cause such a sufficient number of men as Parliament shall from year to year make provision for, to be embodied to serve as an armed and mounted force, and to be called “The Cape Mounted Riflemen.”

Cape Mounted Riflemen.

5. The members of the said force shall be sworn before a Justice of the Peace to act as a Police Force throughout the Colony, and also as a Military Force for the defence of the Colony, and the Governor may direct the employment and distribution of the said force either within or without the Colonial boundary as to him shall seem meet.

To be police force and military force.

6. All members of the “Cape Mounted Riflemen” who shall

- (a) Be enrolled after the taking effect of this Act;
- (b) Accept promotion in the force after the taking effect of this Act, or re-engage for a further term of service;
- (c) Consent in writing to come under the operation of this Act;

Certain members of the C.M.R. to be deemed enrolled under this Act.

shall be deemed to have been enrolled under this Act, and shall in all respects, be subject to its provisions.

7. All members of the said force who were enrolled before the taking effect of this Act, and who have not accepted promotion, re-engaged, or consented, as in the last section provided, shall not come under the operation of this Act, but shall remain, subject to the provisions of Act 9 of 1878, as if this Act had not been passed.

Certain members to remain subject to Act 9 of 1878.

8. The Governor may constitute the said force one division under the command of a Field Officer to be styled Colonel or (1) Lieutenant-Colonel, and other officers to be styled Major, Captain and Lieutenant respectively, or two divisions each under the com-

Governor may constitute force one or two divisions.

¹ Printed as amended by Act 16, 1895 (p. 3453).

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—
Senior officer of Colonial Forces.
- Governor to appoint officers.
- Examination to be passed before promotion.
- Duties of officers.
- Powers and duties of members of force.
- Governor to make regulations.
- Governor may accept services of "Volunteer Corps."
- Volunteer Corps under "Volunteer Act, 1882."
- mand of a Colonel or Lieutenant-Colonel and such other officers as he may from time to time determine.
9. All such officers shall be under the orders and subject to the command of such officer as shall for the time being be, or be by the Governor appointed to act as, Senior Officer of the Colonial Forces.
10. The Governor shall, by warrant under his hand, appoint the Field Officer or Officers in the eighth section mentioned, and such other officers as he may deem expedient for the management of the said force ⁽¹⁾ and for the staff of the permanent forces; and may from time to time remove such officers and appoint others in their place, as to him shall seem meet.
11. No officer in the force shall be promoted to any higher grade than that to which he was first nominated, without passing a satisfactory examination in such subject, and before such examiners, as the Governor may from time to time appoint and nominate respectively.
12. It shall be the duty of the Field and other officers of the said force to suppress all tumults, riots, affrays, or breaches of the peace, in any part of the Colony where they may be on duty, and to assist in the defence of the Colony, and to discharge military duties in connection therewith, when called upon so to do.
13. The members of the said force shall, subject to the provisions of this Act, have all the powers and privileges, and be liable to all the duties and responsibilities, which any police officers or constables may by law enjoy or be liable to; and they shall obey all lawful directions which they may from time to time receive from their officers.
14. The Governor shall from time to time make such regulations respecting the power of the Commanding Officer to dismiss any member of the corps, the training, arms and accoutrements, clothing and equipment of the said force, and respecting all other matters connected therewith as may be required for promoting the discipline and efficiency thereof; and may further make such regulations for the performance of such duties by the Senior Officer of the Colonial Forces, and for the furnishing of reports and returns by the Senior Officer aforesaid, or by other officers to him, as may be deemed necessary; and any regulations under this section may by the Governor be, from time to time repealed, altered, or amended.
- Volunteers.*
15. The Governor may accept the services of any persons desiring to be formed under this Act into a Volunteer Corps, whether naval or military. And on such acceptance, the proposed corps shall be deemed to be lawfully formed into a Volunteer Corps under this Act.
16. Every Volunteer Corps whose services have been accepted under "The Volunteer Act, 1882," shall continue in existence as a

¹ Printed as amended by Act 16, 1895 (p. 3454).

corps under the provisions of this Act, in the same manner as if it had been formed under this Act, subject only to such conditions as to area of service as may have been specified in terms of section four of the first mentioned Act.

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17. There shall be a muster roll for every Volunteer Corps, in which the name of every person who joins or withdraws, or is discharged or dismissed therefrom, and also the date of such joining, withdrawal, discharge or dismissal, shall be inserted. And every officer on appointment, and every man on joining, shall take an oath or declaration of allegiance, either before a Justice of the Peace or any Officer of the Corps if he has previously taken the oath or declaration before a Justice of the Peace.

Muster Roll for every Volunteer Corps.

18. Every Volunteer Corps whose services are accepted after the taking effect of this Act, shall be liable to serve, subject to the provisions of this Act, for and during any period, and wherever the interest of the Colony may require, within the Colony or beyond its borders.

Liability to service. SECTION.

19. The Governor may at any time discontinue the services of any Volunteer Corps, and cause the same to be disbanded; and he may dispense with the services of, or dismiss any member of any such corps.

Corps may be disbanded by Governor.

20. Any Volunteer Corps which has been called out for active or military service, or has been proclaimed to be in the position of being in active service shall assemble at any time notified, either in the proclamation calling out the said corps or in any Government Notice subsequently issued by the Minister, and shall be liable to march or embark on board ship and to render the active or military service required of it as the case may be; and every such corps so called out or proclaimed shall, so long as their services may be lawfully required by the Governor, be subject to all the provisions of Part II. of this Act.

Effect of Volunteer Corps being called out for active service.

21. Whenever any Volunteer Corps is on active or military service, or is undergoing inspection, or is voluntarily doing any military duty, the Governor may place it under the command of such officer of the Imperial or Colonial Forces as he may appoint, provided that the officer so appointed shall be senior in rank to every officer of the corps so placed under his command, and that such corps shall be led by its own officers under such command as aforesaid.

Command when on active service.

22. Every Volunteer Corps shall be officered by persons appointed and commissioned by the Governor; and all persons so appointed may be required to pass an examination as to their fitness before such examiners as may from time to time be appointed by the Governor.

Officers of Volunteer Corps.

23. All volunteers while on active service against an enemy, or in military service for the protection of life or property, shall be entitled to pay, at such rates, according to their respective ranks, as the Governor may determine.

Payment when on active service.

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 ——— of
 Volunteer Corps
 Staff.

24. The Governor may from time to time constitute for any Volunteer Corps a permanent staff consisting of an Adjutant commissioned by the Governor, and of so many Sergeant-Instructors as may seem fit. For these purposes all such Adjutants shall be deemed officers of the respective corps, and all such Sergeant-Instructors shall be deemed to belong to the respective corps on the permanent staff whereof they serve; and shall be deemed respectively officers and non-commissioned officers of the Volunteer Permanent Staff, but nothing shall be taken to exempt any officer or non-commissioned officer of the permanent staff of a Volunteer Corps from being subject to the orders of the officers of the corps, according to their rank and the laws and usages of the Colonial Forces.

Conditions on
 which Volunteer
 enrolled before
 taking effect of Act
 may quit corps.

25. Any volunteer enrolled before the taking effect of this Act may, at any time before the issue of any such proclamation as is in the eighty-fifth section mentioned, quit the corps upon compliance with the following conditions:—

- (1) If he shall give to the Commanding Officer of his corps one month's notice, in writing, of his intention to quit the corps:
- (2) If he shall deliver up in good order and condition, fair wear and tear only excepted, all arms, clothing and accoutrements, being the property of the Government or of the corps, issued to him or placed under his charge.
- (3) If he shall pay all money due or becoming due by him under any regulations of the force, or rules of the corps, either before or at the time of, or by reason of his quitting the corps.

Conditions on
 which Volunteer
 enrolled under this
 Act may quit corps.

26. Every volunteer enrolled after the taking effect of this Act shall be enrolled for a minimum period of one year; and every such volunteer may, at any time before the issue of any such proclamation as aforesaid, quit the corps upon compliance with the following conditions:—

- (1) If he shall have served for a period of at least one year from the date of his enrolment; or
- (2) If, before he has served such period, he shall produce proof to the satisfaction of the Commanding Officer of his corps that he is about to remove from the district in which the headquarters of his corps is situated, or that he is prevented by ill-health from continuing to serve; or
- (3) If, before he has served such period, he shall pay to the Commanding Officer for the benefit of the funds of the corps such sum of money by way of penalty as the Governor may by regulation determine; and in any case,
- (4) If he shall also comply with the conditions set forth in subsections one, two and three of the last preceding section.

Appeal from
 Commanding
 Officer to Resident
 Magistrate.

27. If any volunteer gives such notice, and the Commanding Officer refuses to strike him out of the muster roll, and the volunteer considers himself aggrieved thereby, the volunteer may appeal

to the Resident Magistrate of the district in which the headquarters of the corps are situate, who shall hear and determine the appeal, and may for the purpose thereof administer oaths and summon and examine any person as a witness, and if it appears to such Resident Magistrate that the arms, clothing, and accoutrements issued to the volunteer, being public property, or property of his corps, have been delivered up in good order (fair wear and tear only excepted), or that he has paid, or is ready to pay sufficient compensation for any damage that such articles may have sustained, and that all money due or becoming due by him under the rules of his corps, either before or at the time, or by reason of his quitting it, has been paid, such Magistrate may order the Commanding Officer forthwith to strike such volunteer out of the muster roll of his corps, and his determination shall be binding on all persons.

28. The Governor may from time to time make regulations for all or any of the matters or things following, and may vary, alter, or repeal such regulations:—

Governor to make regulations.

- (1) The mode of enrolment of volunteers and the disbandment of any volunteer corps.
- (2) The appointment, promotion, and rank of volunteer officers.
- (3) The appointment of non-commissioned officers.
- (4) The relative rank of volunteer officers, with those of any Colonial forces, existing or ⁽¹⁾ hereafter to be created.
- (5) The requisites necessary to deem a volunteer an effective.
- (6) The constitution, assembling, and mode of procedure of courts of inquiry to receive and examine evidence relating to, and report upon any matter connected with the government or discipline of any Volunteer Corps, or on any charge brought against any officer or member of any such corps.
- (7) The power of arrest and maintenance of discipline, when not on active or military service.
- (8) The power of a Commanding Officer to dismiss any member of the Corps.
- (9) The payment and recovery of subscriptions, fines, and penalties.
- (10) The general government and management of Volunteer Corps.

And all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days after the commencement of the next Session.

29. Every volunteer who has been dismissed by the Governor or by the Commanding Officer of his corps shall nevertheless be bound to deliver up in good order, fair wear and tear only excepted, all arms, clothing, and appointments which are public property, or the property of the corps and which have been issued to him

Liabilities of Volunteer after dismissal.

¹ Printed as amended by Act 16, 1895.

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and he shall be liable to pay all money due or becoming due by him, under the rules of his corps, either before, or at the time, or by reason of his dismissal.

Penalty for contravention of regulations.

30. Every volunteer who shall be guilty of contravening any of the regulations or orders made by the Governor shall upon conviction be liable to a penalty not exceeding ten pounds, which penalty may be recovered before any Court of Resident Magistrate having jurisdiction, at the instance of any officer of the corps to which the offender belongs.

Misconduct whilst on duty or in uniform.

31. If any volunteer, while under arms, or on march or duty, or while engaged in any military exercise or drill with his corps or any portion of it, or while wearing his uniform, and going to or returning from any place of exercise or assembly of his corps, disobeys any lawful order of any officer under whose command he then is, or is guilty of misconduct, the officer in command of his corps, or any superior officer under whose command the corps then is, may order the offender, if an officer, into arrest, and if not an officer, into the custody of any member of his corps, or of any volunteer non-commissioned officer: Provided that such arrest or custody shall not continue any longer than the time during which the corps or portion of a corps to which the offender belongs remains under arms, or on the march or duty; or continues to be engaged in the military exercise or drill as aforesaid.

Money &c., of corps vested in commanding officer.

32. All moneys and other property belonging to or used by any Volunteer Corps, not being the property of Government, or of any individual, shall be vested in the Commanding Officer for the time being of such corps, for the purpose of all legal proceedings, whether civil or criminal, either before or after the disbanding of any such corps.

Temporary Corps.

Temporary corps.

33. The Governor may in case of emergency enrol such number of men as he may deem necessary to render military service in defence of the Colony; such men may by the Governor be formed into any number of corps, either mounted or not mounted, or partly mounted and partly not mounted, as may seem expedient.

Officers appointed by Governor.

34. Every such corps so enrolled shall be officered by persons appointed by the Governor, and the officers and men shall, during their period of service, be entitled to pay at such rates, according to their respective ranks, as the Governor may determine.

Corps subject to provisions of Part II of Act.

35. Every such Corps shall be subject in all respects to the provisions of Part II. of this Act; and it shall be disbanded so soon as, in the opinion of the Governor, the interests of Colonial Defence will permit.

Rifle Clubs.

Governor may sanction organization of Rifle Clubs.

36. The Governor may sanction the organisation from time to time of mounted rifle clubs or associations for purposes of drill, under such conditions as may be prescribed, and may, under similar conditions, provide arms and ammunition for them.

37. Every member of such club or association shall provide his own horse, saddle and bridle.

38. The Governor may from time to time frame regulations for the discipline and efficiency of such rifle clubs or associations; such regulations may prescribe penalties for the breach of any regulation; such penalties shall not exceed in amount, and shall be recoverable in the same manner as, penalties imposed under any Volunteer Regulations framed under this Act.

39. A sufficient number of officers and non-commissioned officers may be appointed by the Governor for every such rifle club or association, and shall be subject to removal in the same manner, and shall have the same relative rank, as officers and non-commissioned officers of the Volunteer Force; but shall always be reckoned as junior to officers of the Volunteers Force of the same rank.

40. The regulations may prescribe a standard of efficiency for the members of any such rifle club or association different from the standard prescribed for Volunteers.

41. All such regulations as aforesaid shall be laid before Parliament in the same manner and within the same time as regulations framed under this Act in regard to Volunteer Corps.

42. The management of the civil affairs of any such rifle club or association may be regulated by the rules adopted in the formation thereof, or subsequently amended in the prescribed manner. Such rules or amendments shall not have force unless and until approved by the Governor.

43. Every such rifle club or association may be called out for military or active service, in the same manner and under the same circumstances as if it were a Volunteer Corps under this Act. And when so called out, every such club or association shall, in all respects, be subject to the provisions of Part II. of this Act: Provided that every such club or association, when so called out for active service, may at its request be supplied with such distinctive uniform or badge as the Governor may from time to time by regulation direct. ⁽¹⁾

PART II.

DISCIPLINE.

44. This part of the Act shall apply to the following persons:

- (a) The Permanent Forces, subject to the exception in section seven of this Act contained, and the officers and men of any temporary corps.
- (b) Volunteers when on active or military service;
- (c) Any portion of the Police Force of the Colony which is proclaimed under this Act as in section eighty-eight provided,

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Members of Rifle Clubs.
Governor may frame regulations.

Officers and non-commissioned officers may be appointed.

Standard of efficiency may be prescribed.

Regulations to be laid before Parliament.

Rules for management of civil affairs of club.

Club may be called out for active service.

Application of this part of Act.

¹ Printed as amended by Act 4, 1893, § 1 (p. 3148).

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- (d) Persons who are followers of, or who accompany any portions of the Forces of the Colony when employed on active service.

Offences Tribunal and Punishment.

Liability to punishment for offences.

45. Every person subject to Part II. of this Act who is guilty of any of the offences specified in the second Schedule of this Act, shall be liable, upon conviction in manner hereinafter set forth, to be punished for the extent herein provided.

Tribunals.

46. Every person subject to Part II. of this Act may, subject to the provisions hereinafter contained, be tried and punished for offences under this Act—

(a) By a military tribunal as follows:

- (1) The Commanding Officer of the offender.
- (2) An ordinary Court of Officers constituted as hereinafter provided.
- (3) A special Court of Officers constituted as hereinafter provided.

(b) By a Civil Tribunal as follows:

- (4) The Magistrate of the district in which the offence has been committed.
- (5) Any Superior Court having jurisdiction at the place where the offence was committed.

Jurisdiction of tribunals.

47. The tribunals in the last section mentioned shall have power to sentence and award punishment within the following limits:—

Commanding Officer.

- (1) A Commanding Officer, whether the offender be on active service or on military service, may
 - (a) Award imprisonment with or without hard labour for any period not exceeding seven days;
 - (b) For the offence of drunkenness, order the offender to pay a fine not exceeding £1, either in addition to, or without imprisonment, with or without hard labour;
 - (c) In addition to, or without any other punishment, order the offender to suffer any deduction from his ordinary pay, to an amount not exceeding five days' pay: Provided always that an offender ordered by his Commanding Officer to suffer imprisonment or pay a fine, or to suffer any deduction from his ordinary pay shall, if he so request, have a right to be tried by an ordinary Court instead of submitting to such imprisonment, fine or deduction.
 - (d) In the case of a non-commissioned officer or private, instead of punishment under (a), (b), (c), sentence the offender to be reduced to any lower grade or to the ranks.
 - (e) In the case of a person subject to this Act not in receipt of ordinary military pay, the Commanding

Officer may inflict a fine not exceeding two pounds, or in default of payment, imprisonment with or without hard labour for a period not exceeding seven days.

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- (2) An ordinary Court of Officers may, whether the offender is on active service or on military service,
- (a) Inflict a fine not exceeding fifteen pounds, with the alternative of imprisonment, with or without hard labour, for any period not exceeding three months, if such fine be not paid, or
- (b) Award imprisonment, with or without hard labour, for any period not exceeding six months;
- (c) In the case of a non-commissioned officer or private, in addition to, or instead of punishment under (a) and (b), sentence the offender to be dismissed the service or to be reduced to any lower grade or to the ranks.
- (3) A special Court of Officers may in the case of an offender who is on military service
- (a) Inflict a fine not exceeding twenty-five pounds, with the alternative of imprisonment, with or without hard labour, for any period not exceeding six months, if such fine be not paid; or
- (b) Award imprisonment, with or without hard labour, for any period not exceeding one year;
- (c) In the case of a non-commissioned officer or private in addition to, or instead of punishment under (a) and (b), sentence the offender to be dismissed the service, or to be reduced to any lower grade or to the ranks;
- (d) In the case of an officer, in addition to, or instead of punishment under (a) and (b), sentence the offender to be dismissed the service, or to forfeit his seniority in the Colonial Forces, or in his own corps, or in both.
- And in the case of an offender who is on active service may
- (e) Sentence the offender to death, or
- (f) Award imprisonment, with or without hard labour, for any period not exceeding fifteen years; and also
- (g) Award the punishment set forth in (a), (c), and (d) of this sub-section, under the conditions therein provided.
- (4) A Resident Magistrate may, upon conviction, sentence the offender, whether he be on active service or on military service,
- (a) To be imprisoned, with or without hard labour, for any period not exceeding one year; or
- (b) To pay a fine not exceeding twenty-five pounds, or in default of payment to be imprisoned, with or without hard labour, for six months; or
- (c) To both such fine and such imprisonment.
- (5) A Superior Court may sentence the offender if on military service to such punishment by way of fine or imprisonment,

Ordinary Court
of Officers.Special Court of
Officers.Resident Magis-
trate.

Superior Court.

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 Proviso.
- or both, as to the said Court shall seem meet; and if on active service to death, or to such punishment as aforesaid.
- (6) Provided always that no officer or man of the Colonial Forces shall be sentenced to death by any military tribunal, except for mutiny, desertion to the enemy, traitorously delivering up to the enemy any garrison, fortress, post or guard, or for traitorous correspondence with the enemy.
- Effect of imprisonment of Officer.
- (7) Every officer imprisoned in terms of this section shall be deemed to have been dismissed and shall at once cease to be a member of the Colonial Forces.
- Effect of imprisonment of Non-commissioned Officer.
- (8) Every non-commissioned officer imprisoned or dismissed the service under this section shall be deemed to have been reduced to the ranks.

Arrest and Investigation.

- Offender taken into military custody.
48. Every person subject to Part II. of this Act may, when charged with an offence under this Act, be taken into military custody.
- Who may order into military custody.
49. An officer of Colonial Forces may order into military custody any officer of the said forces of inferior rank, or any member who is not an officer, and any non-commissioned officer of the said forces may order into military custody any member who is not an officer. And an officer of the said forces may order into military custody any other such officer (though he be of higher rank) engaged in a quarrel, fray or disorder. And any such order shall be obeyed notwithstanding the person giving the order, and the person in respect of whom the order is given, do not belong to the same corps, or the same branch of the Colonial Forces.
- Investigation of charge.
50. The charge made against every person taken into military custody under this Act shall, without unnecessary delay, be investigated by the proper authority; and, as soon as possible, either proceedings shall be taken for trying the accused and punishing the offence or such person shall be discharged from custody.
- Duty of Commanding Officer in investigating charge.
51. When any person subject to Part II. of this Act has been ordered into military custody as hereinbefore provided, or has been charged with the commission of an offence under this Act, it shall be the duty of the Commanding Officer of such person to investigate, with as little delay as possible, the charge against him, and upon such investigation such Commanding Officer shall
- (a) Dismiss the charge; or
- (b) in case the accused is not an officer ⁽¹⁾ deal with the charge summarily, under the powers conferred upon him by section forty-seven of this Act; or
- (c) Direct in writing that the charge be investigated and dealt with by an ordinary Court of Officers and take the prescribed steps to convene the said Court.

¹ Printed as amended by Act 16, 1895.

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(d) If the charge is in his opinion too serious to be dealt with under his summary jurisdiction or by an ordinary Court of Officers, report the matter with a summary of the facts to superior authority.

52. Any such superior authority as aforesaid to whom such report is made shall, having regard to the nature and gravity of the charge, direct in writing

Duty of superior authority upon report of Commanding Officer.

(a) That the accused be released and the charge dismissed, or

(b) That the charge be remitted to be investigated and dealt with by an ordinary Court of Officers; or

(c) That the accused be brought to trial before the Resident Magistrate of the district in which the offence is alleged to have been committed, and take or cause to be taken the necessary steps according to law to bring the accused to trial; or

(d) That the charge be investigated and dealt with by a special Court of Officers, and take the prescribed steps to convene the said Court; or

(e) If the charge is in his opinion too serious to be dealt with by a special Court of Officers, or by a Resident Magistrate, he shall report the matter with a summary of facts received by him and with his own remarks thereon to the Officer Commanding the Colonial Forces, or in the absence of such appointment, the senior officer of such forces.

53. The Officer Commanding the Colonial Forces or in the absence of such appointment, the senior officer of such forces, when any case has been submitted to him under section fifty-two of this Act, shall, after perusing the summary of facts and report, and considering the nature of the charge, direct in writing

Duty of Officer Commanding Colonial Forces, upon report of superior authority,

(a) That the accused be released, and the discharge dismissed; or

(b) That the charge be remitted to be investigated and dealt with by an ordinary or by a special Court of Officers or by the Magistrate of the District in which the offence is alleged to have been committed; or

(c) That the accused be brought to trial before any superior Court having jurisdiction at the place where the offence is alleged to have been committed, and take the necessary steps to bring the accused to trial.

54. It shall be the duty of every Commanding Officer to see that no person under his command, when charged with an offence under this Act, is detained in military custody for a longer period than forty-eight hours, without the charge against such person being duly investigated, unless such investigation is impracticable, due regard being had for the public service. Every case of detention beyond the said period, and the reason for such longer detention, shall be reported by the Commanding Officer to the Officer Commanding the district, garrison or station, as the case may be, where the accused is serving.

Time within which investigation must take place.

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Power of Commanding Officer to award minor punishments, reserved.

55. Nothing in this Act shall prejudice the power of a Commanding Officer to award such minor punishments as he may be authorised by regulation to inflict.

Courts.

Composition of ordinary Court.

56. An ordinary Court may be convened by any Commanding Officer or by any officer authorised in pursuance of this Act to convene a special Court, and with regard to it the following provision shall apply:—

- (1) It shall consist of not less than three officers.
- (2) The President of the Court shall be appointed by the convening officer, and he shall not be under the rank of Captain, unless in the opinion of the convening officer, such opinion to be expressed in the order convening the Court, and to be conclusive, a Captain is not, with due regard to the public service, available, in which case an officer of any rank may be President.
- (3) An ordinary court shall not try an officer.

Composition of special court.

57. A special Court may be convened by the Governor or by some officer authorised by warrant issued by the Governor to convene a special Court, and with regard to it the following provisions shall apply:—

- (1) It shall consist of not less than five officers, unless the officer convening the Court is of opinion that five officers are not available, having due regard to the public service, in which case the Court may consist of three officers.
- (2) The President shall be appointed by the convening officer, and he shall not be under the rank of a Field Officer, unless in the opinion of the convening officer, to be expressed in the order convening the Court, and to be conclusive, a Field Officer is not, with due regard to the public service, available, in which case an officer not below the rank of Captain may be President.
- (3) If the special Court be convened for the trial of an officer, the members of the Court shall not be of a rank inferior to that officer, unless in the opinion of the convening officer, to be stated in the order convening the Court, and to be conclusive, officers of the required rank are not, with due regard to the public service, available, but in no case shall an officer below the rank of Captain be a member of a special Court for the trial of a Field Officer.

One member of Court to belong to same branch as prisoner.

58. With regard to all Courts, unless the convening officer states in the order convening the Court that in his opinion it is not, having due regard to the public service, practicable, one member at least of the Court shall belong to the same branch of the Colonial Forces to which the prisoner belongs.

59. The following officers shall not, except where otherwise provided, form one of the Court for the trial of any prisoner:—

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Disqualifications
as members of
court.

(1) The convening officer, except on active service.

(2) The prosecutor.

(3) A material witness for the prosecution.

(4) An officer having a personal interest in the case.

60. A prisoner about to be tried by any Court may object for any reasonable cause to any member of the Court, including the President, whether appointed to serve thereon originally, or to fill a vacancy caused by the retirement of an officer objected to.

Prisoner may ob-
ject to member of
court, for cause.

61. With regard to objections under the last preceding section, the following provisions shall apply:—

Mode of dealing
with such objec-
tions.

(1) The names of the officers appointed to form the Court shall be read out in the hearing of the prisoner on their first assembling, and he shall be asked whether he objects to any such officers; and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

(2) Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the Court.

(3) If an objection be allowed by one-half or more of the votes of the officers entitled to vote, then the officer objected to shall retire, and his vacancy shall be filled by another officer in the prescribed manner.

62. An oath shall be administered by the prescribed person, and in the prescribed form, to every member of every Court, before the commencement of the trial, and the proceedings at any trial by any Court shall be recorded in writing by the President or a member of the Court in such manner as may be prescribed.

Oath to be taken
by members of
Court.

63. A Court shall deliberate on its finding and sentence in closed Court, and the opinion of each member of the Court shall be taken separately on each finding.

Court to deliber-
ate in closed court.

64. The decision of a majority of the members of a Court, including the President, shall be the decision of the Court. In the case of an equality of votes on the finding, the prisoner shall be acquitted; but in the case of an equality of votes on the sentence, or any question arising after the commencement of the trial, except the finding, the President shall have a second or casting vote.

Majority's deci-
sion to hold good.

65. If the finding on the whole of the charges against a prisoner is "not guilty," the President shall date and sign the proceedings, and the findings shall be announced in open Court, and the prisoner shall be released in respect of these charges; and the proceedings shall be transmitted in like manner as is directed in the case where the findings and sentence require confirmation.

Finding of "not
guilty."

66. If the finding on any charge is "guilty" then the Court may, before deliberating on its sentence, take and record evidence of the prisoner's character, age, service and rank, previous convic-

Finding of
"guilty."

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tions, and the length of time he has been under arrest or in confinement.

Sentence.

67. Upon the Court awarding the sentence, the President shall date and sign the sentence; and such signature shall authenticate the whole of the proceedings; and the proceedings shall be at once transmitted for confirmation to the confirming authority as hereinafter defined.

Witnesses to be examined on oath.

68. Every witness before a Court shall be examined on oath, which the President shall administer in the prescribed form.

Summons to give evidence.

69. Every person who may be required to give or produce evidence in any case pending before any ordinary or special Court may be summoned in writing by any officer of the Colonial Forces with which the offender shall be then serving, and all witnesses so duly summoned who shall not attend, or attending shall refuse to be sworn, or being sworn shall refuse to give evidence, or to produce the documents under their control required to be produced, or to answer all lawful questions, shall be liable to be dealt with by such Court 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.

Confirmation of Proceedings.

Finding of acquittal not subject to review.

70. The finding of acquittal, whether on all or some of the offences with which the prisoner is charged, shall not require confirmation, or be subject to be revised.

Otherwise, finding requires confirmation.

71. Subject to the provisions of the last preceding section, the finding and sentence of a Court of Officers shall not be valid, except in so far as they may be confirmed by an authority authorised to confirm the same.

Authorities having power to confirm sentences.

72. The following authorities shall have power to confirm the findings and sentences of Courts, that is to say:—

- (1) In the case of an ordinary Court, an officer authorised to convene the same or a special Court.
- (2) In the case of a special Court, the Governor, or some officer authorised by warrant issued by the Governor, to confirm such Courts.

President of Court to transmit proceedings to confirming authority.

73. As often as any ordinary or special Court shall sentence any offender under this Act, the President shall, after signing the proceedings as hereinbefore provided, transmit the original, together with such remarks, if any, as he may desire to append, to the confirming authority, who shall have power to confirm the same, or to send back the finding and sentence, or either of them, once, but not more than once, for revision.

Duty of confirming authority.

74. In confirming or refusing confirmation the confirming authority may add any remarks in the case which he may think fit; and such confirmation, refusal and remarks shall be entered in and form part of the proceedings, and such proceedings shall be promulgated in such manner as may be prescribed, and after

promulgation, shall be forwarded to the officer in command of the Colonial Forces.

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75. When the finding or sentence of any Court has been sent back for revision it shall not be lawful for the Court to receive any additional evidence. Where the finding only is sent back for revision the Court shall have power to revise the sentence also. But in no case shall the confirming authority recommend the increase of a sentence, nor shall the Court in revisal have any power to increase the sentence.

Where finding or sentence sent back to Court for revision.

76. The confirming authority may, while confirming the sentence of any Court, mitigate or remit the punishment awarded, or substitute for the punishment any less punishment or punishments, which under this Act the Court would have had power to award.

Confirming authority may mitigate or remit punishment.

77. After a sentence passed by a Court has been confirmed, the Governor shall have full power, at any time, to mitigate or remit the punishment thereby awarded.

Governor may at any time mitigate or remit punishment.

Imprisonment.

78. All offenders arrested for any offence under this Act, or sentenced to imprisonment by any Commanding Officer or Court as aforesaid, may be imprisoned in any building, tent or enclosure set apart by any Commanding Officer as a guard room or prison. But if found desirable such sentenced person may be removed to the nearest convenient public gaol under warrant signed by his Commanding Officer, there to undergo his 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.

Imprisonment of offenders.

79. So long as any person shall be imprisoned in any guard room or prison in terms of this Act, the same shall, so far as he is concerned, be deemed to be a public prison, and such man shall be deemed to be a prisoner confined therein within the meaning of any law regulating the management and condition of prisons and prisoners.

Effect of imprisonment.

80. Any Commanding Officer may by writing under his hand specially appoint any officer under his command to be visiting officer for any guard room or prison set apart as such by himself under this Act, and every officer so appointed shall have the same jurisdiction and powers with regard to such guard room or prison, and the persons confined therein, as a Visiting Magistrate would have in regard to any prisoner or prisoners within his jurisdiction, with the exception of infliction of corporal punishment.

Visiting officer.

81. Nothing in this Act contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Act in all cases in which he would by law, without this Act, be liable to such prosecution; but no member of any of the said forces acquitted or convicted of any crime or offence under the provisions of this Act, shall be liable to be again tried for the same crime or offence: Provided that nothing herein contained shall

Reservation of liability to prosecution otherwise than under this Act.

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prevent a member of any of the said forces who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

Enforcement of orders, &c., in places beyond borders of Colony.

82. Whenever it shall be necessary to enforce enactments, provisions and regulations in this Act mentioned, in any place situate beyond the borders of this Colony, the sentences, fines, and penalties which shall be pronounced and inflicted for the purpose of such enforcement, shall be as valid and effectual, and shall be carried into effect in the same manner as if the same had been pronounced or inflicted within this Colony.

Mode of procedure in regard to certain offences committed beyond borders of Colony.

83. If any member of the Colonial Forces is charged with having committed an offence under this Act at some place situate beyond the borders of this Colony, which offence is in the opinion of the officer commanding the Colonial Forces of too serious a nature to be dealt with either by an ordinary or by a special Court of Officers, it shall be competent for the said officer to direct that the Commanding Officer of the said member shall take evidence upon oath as to the said charge, and shall transmit the said evidence to the Attorney-General. When such evidence has been so transmitted, the said Commanding Officer may by warrant under his hand direct the removal of the person so charged, to the nearest convenient prison inside the borders of the Colony, there to await the decision of the Attorney-General with regard to the said evidence. And in every such case the Attorney-General may deal with the matter in every respect as if the offence had been charged within the Colony, and as if the taking of the said evidence had all the legal effect of a preliminary examination. And the Attorney-General may direct that the said member shall be either discharged or brought to trial before some superior Court, which Court shall have in all respects the same authority to try the said case as if the said offence had been charged at some place within the area of jurisdiction of the said Court.

Commencement of term of imprisonment.

84. Any term of imprisonment awarded under this Act shall begin on the day of award, and a term of imprisonment similarly awarded for a certain number of hours shall begin at the hour when the prisoner is received at the prison to which he is committed.

PART III.

GENERAL PROVISIONS.

Proclamation by Governor.

85. The Governor may, whenever in his opinion the interests of the Colony require it, issue a Proclamation

- (a) Calling out any one or more Volunteer Corps for active service against an enemy; or
- (b) Declaring that by reason of the imminence of active service against an enemy, it is necessary for the public safety that the whole or any portion of the Colonial Forces shall be subject to the provisions of Part II. of this Act, as if on active service, or

(c) Calling out any one or more Volunteer Corps to aid the Civil Power in the protection of life and property.

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86. Any General or Field Officer of Her Majesty's Regular Forces placed in command of any of the Colonial Forces by the Governor shall, while holding such command, have the same power to deal with all matters under this Act, as if he had been an officer of Colonial Forces of the same rank.

Status of General of regular Forces under this Act.

87. Officers of the Permanent Colonial Forces shall rank ⁽¹⁾ according to the rank and date of their respective commissions, and officers of the Volunteer and other Forces herein mentioned shall, when serving with the ⁽¹⁾ officers of the Permanent Colonial Forces rank as juniors of their respective ranks.

Precedence of officers.

88. The members of any portion of the Police Force of the Colony while employed, in terms of the Act under which they are enrolled in rendering military or active service, shall be deemed to be portion of the Colonial Forces, and as such subject in all respects to the provisions of Part II. of this Act.

Police Force on active service to be portion of Colonial Forces.

Pensions and Gratuities.

89. It shall be lawful for the Governor, and under the conditions hereinafter mentioned, to order that any member of the Permanent Forces, of whatever rank, shall be superannuated, and thereupon to authorise and direct that such member shall receive from and out of the public revenue of this Colony a gratuity or yearly pension as follows, that is to say, if such member shall have served for a period less than fifteen years, a gratuity equal to one month's pay for each year's service, the pay being taken to be that received by such member at the time of his superannuation, and if such member shall have served for a period of fifteen years, an annual pension equal to fifteen-fiftieths of the yearly pay of such member, which pay shall be taken to be the average of his yearly pay for the three years next preceeding his superannuation, and an additional one-fiftieth of such yearly pay for each year such member shall have served beyond the said period of fifteen years; but no such member shall receive a pension equal to more than thirty-fiftieths of his yearly pay as aforesaid, unless in the cases hereafter mentioned; and provided that no member of the said Forces who shall be under the age of fifty years shall be capable of receiving any such gratuity or pension, unless it shall be certified in writing by the surgeon of the said Forces, or some other competent medical officer, to be appointed by the Governor for the purpose, that such member from infirmity of mind or body is incapable of discharging the duties of his situation, and that such infirmity is likely to be a permanent one.

Pensions and gratuities.

90. If any member of the Permanent Forces in receipt of a pension under this Act shall wilfully or knowingly have made, or caused to be made, any false statement or representation, in order

Penalty for false statement in order to obtain pension.

¹ Printed as amended by Act 4, 1893, § 1, sub-§ (b) (p. 3148).

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to obtain such pension, he shall forfeit all right and claim to such pension, and no pension shall be claimable by any pensioner during the time he may be undergoing punishment for any crime.

91. [Repealed by Act 16, 1895.]

Pension for disabled member of Colonial Forces.

92. In case any member of the Colonial Forces shall be disabled for the performance of his duty by reason of any wound or injury received by him when in the field and engaged with an enemy, or in the actual execution of his duty, or any member of the said Force shall, in the opinion of the Governor, have merited the same, it shall be lawful for the Governor to award to such member, whatever may be his age or time of service, such gratuity or such yearly pension as to him may seem fit, but in the case of a member of the Permanent Forces, such gratuity shall not exceed an amount equal to three years' pay, and such pension shall not exceed the full pay of such member, and in the case of any other member of the Colonial Forces such pension shall not exceed one hundred pounds per annum: Provided that the reasons for giving any such gratuity or pension shall be set forth in the warrant or authority granting the same, and a return showing the amounts and particulars of any payments under this section shall be laid on the table of both Houses of Parliament at the then next ensuing session of Parliament.

Pension not transferable.

93. No pension payable under this Act shall be assignable or transferable, nor shall the same be attached, arrested, or levied upon, for or in respect of any debt or claim due by the recipient thereof, or his wife.

Pension not matter of right.

94. Nothing in this Act contained shall be construed so as to entitle any member of the Colonial Forces to claim as a matter of right any gratuity or pension as aforesaid.

Reward for diligence, and compensation for injuries.

95. It shall be lawful for the Governor to award to any of the men belonging to the said force, such sum of money as to him shall seem meet, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, or as a gratuity for meritorious service, for distinguished conduct and for long service and good conduct. (1)

Widows or family of Volunteers, pension to.

96. It shall be lawful for the Governor, subject to the approval of Parliament, to assign to the widow or family of any volunteer who may be killed in action or in active service a pension or allowance of not exceeding seventy pounds per annum.

Privileges.

Exemption from payment of toll.

97. Every Officer and man of the Colonial Forces 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 here-

¹ Printed as Amended by Act 16, 1895

after 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.

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98. If any person duly authorised to collect tolls in respect of any ferry shall wilfully subject any officer or man of the said forces 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.

Detention at ferries.

99. If any person, not being an officer or man of the said forces, shall wilfully personate such officer or man, or if any such officer or man of the force, not then being on duty, shall falsely represent himself to be such an officer or man on duty, with the intent to evade the payment of any toll legally payable by him, such person shall, on conviction, be liable to a penalty of not exceeding five pounds sterling, or in default thereof, to imprisonment for a period not exceeding one calendar month, unless such fine be sooner paid.

Penalty for impersonation.

100. Every member of the Colonial Forces shall be exempt, while he remains such member, from service in the Burgher Forces or Levies.

Exemption from service in Burgher forces or levies.

101. If any person shall, in consequence of the sale, pledge, or other disposition of any horse, arms, ammunition, accoutrements or equipment made by any member of the Colonial Forces in contravention of the regulations, knowingly receive or have any animal, article, matter, or thing in the said section mentioned, such person shall incur and be liable to a fine not exceeding twenty pounds, and, in default of payment thereof, shall be liable to be imprisoned and kept at hard labour for any period not exceeding three months, unless such fine be sooner paid.

Penalty for receiving arms, &c., from members of force contrary to regulations.

102. No animal, article, matter, or thing mentioned in the last paragraph, and forbidden by the regulations to be sold, pledged, or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution 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.

Freedom from attachment of such animal, arms, &c.

103. For the protection of persons acting in the execution of this Act, all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within four calendar months after the cause of action shall have arisen, or offence be committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month, at least, before the commencement of the action; and if a verdict shall be given for the defendant, or the plaintiff be non-suited, or discontinued any such action after issue joined, or if, upon exception, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client.

Commencement of actions.

104. If any licensed or unlicensed dealer in wines and spirits or any intoxicating liquors shall knowingly harbour or entertain

Penalty for liquor dealers entertain-

No. 32—1892.
ing members of
force when on
duty.

any man belonging to the Colonial Forces, or permit such man to abide or remain in his house, shop, room, or other place during any part of the time appointed for his being on duty elsewhere, every such dealer shall, for a first offence, forfeit and pay any sum not exceeding ten pounds, to be recovered in a summary way; and for a second or subsequent offence shall be liable, besides such penalty, to imprisonment for any period not exceeding one month, with or without hard labour.

Governor may
make Regulations
for billeting of
Colonial forces
when on active ser-
vice.

105. The Governor may make regulations for the billeting and cantoning the Colonial Forces when on active service, for the furnishing of railway cars, engines, carriages, horses, boats and other conveyances for their transport and use ⁽¹⁾, and for the requisition from those who possess them of such buildings, wagons, horses, oxen and gear, together with such provisions, forage and other necessaries as shall be needed for the service of such forces, and for adequate compensation therefor; and may by such regulations impose fines not exceeding five pounds for breach thereof, and imprisonment in cases of default of payment of such fines. And all contraventions of any such regulations may be prosecuted before the Court of the Resident Magistrate in whose district the said contraventions have been committed.

Wilful obstruc-
tion of Forces on
march or parade.

106. Any person who shall wilfully obstruct or impede any Corps or Detachment of Colonial Forces while on the march or upon parade, shall upon conviction before a Magistrate be liable to a penalty not exceeding five pounds, or in default to imprisonment for any period not exceeding one month, with or without hard labour.

Short title.

107. This Act may be cited for all purposes as "The Colonial Forces Act, 1892."

FIRST SCHEDULE.

LAWS REPEALED.

Laws repealed.

Number and Year.	Title.	Extent of Repeal.
Act 9 of 1878	"Cape Mounted Riflemen Act, 1878" ...	The whole.
Act 16 of 1878	"Volunteer and Yeomanry Pension Act, 1878"	The whole.
Act 11 of 1880	"Colonial Forces Discipline Act, 1880" ...	The whole.
Act 10 of 1882	"Volunteer Act, 1882""	The whole.
Act 24 of 1883	"Colonial Forces Command Act, 1883" ...	The whole.
Act 18 of 1885	"Cape Mounted and Infantry Forces Amend- ment Act, 1885"	The whole.

¹ Printed as amended by Act 4, 1893, § 1, sub-§ (c). (p 3148).

SECOND SCHEDULE.

No. 32—1892.

OFFENCES UNDER THE ACT.

Offences under
Act.

-
- | | |
|----|---|
| 1 | Misbehaving or inducing others to misbehave before the enemy. |
| 2 | Treacherously holding correspondence with or giving intelligence to the enemy. |
| 3 | Leaving his Commanding Officer to go in search of plunder. |
| 4 | Without orders from his superior officer leaving his Guard, Piquet, Patrol or Post. |
| 5 | Forcing a safe-guard, guard, post or sentry. |
| 6 | Doing violence to any person bringing provisions or supplies to the forces or committing any offence against the property or person of an inhabitant of or resident in the country in which he is serving. |
| 7 | Sleeping or being drunk on his post when acting as a sentinel. |
| 8 | Causing or conspiring with any person to cause any mutiny in any of the Colonial Forces. |
| 9 | Striking, using or offering violence to his superior officer. |
| 10 | Wilfully disobeying the lawful command of his superior officer. |
| 11 | Deserting or attempting to desert, or persuading or assisting any other person subject to this Act to desert, from the Colonial Forces. |
| 12 | Without due authority holding correspondence with or giving intelligence to the enemy. |
| 13 | Using threatening or insubordinate language to his superior officer. |
| 14 | Without orders wilfully destroying or damaging any property. |
| 15 | Stealing or embezzling or receiving, knowing them to be stolen or embezzled, any money or goods the property of a comrade or of an Officer or of any Regimental Institution, or any public money or goods, or conniving at or being concerned in such crimes. |
| 16 | Being guilty of any offence of a fraudulent nature or any disgraceful conduct of a cruel, indecent, or unnatural kind. |
| 17 | Being concerned in any quarrel or disorder, refusing to obey any officer (though of inferior rank) who orders him in arrears, or offering any violence to such officer. |
| 18 | Absenting himself without leave. |
| 19 | Being drunk whether on duty or not on duty. |
| 20 | Making away with, losing by neglect, or wilfully injuring his military equipment or that of any other person subject to this Act, or ill-treating a horse used in the Public Service. |
| 21 | Resisting or offering violence to any persons, whether subject to this Act or not, in whose custody he is placed, or resisting an escort whose duty it is to apprehend him or have him in charge. |
| 22 | Escaping or attempting to escape from Military custody. |
| 23 | Releasing or permitting to escape from Military custody any person over whom it is his duty to keep a guard. |
| 24 | In any report or return which it is his duty to make, knowingly making or being privy to the making of any false or fraudulent statement or of any omission with intent to defraud. |
| 25 | Being guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline. |
-

No. 33—1892.]

[September 2, 1892.

ACT

To Amend the Law with regard to Native Locations.

[Repealed by Act 30, 1899. Pages 3134—3136.]

No. 34—1892.]

[September 2, 1892.

Act to amend the "Civil Service Act, 1885," and the "Civil Service and Pension Fund Acts Amendment Act, 1888."

[Repealed by Act 32, 1895.]

No. 35—1892.]

[September 13, 1892.

ACT

To amend the "Post Office Act, (1) 1882," and to repeal the "Post Office Act Amendment Act, (2) 1886."

BE it enacted by 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 last twelve lines of section five of the Post Office Act, 1882, commencing with the word "Provided," so much of the second schedule to that Act as has not heretofore been repealed, and the whole of the Post Office Act Amendment Act, 1886, are hereby repealed, and in lieu of the rates of postage specified therein there shall be levied the rates of postage set forth in the first schedule to this Act.

2. The fourth schedule to the Post Office Act, 1882, is hereby repealed, and in lieu of the form of declaration therein set forth, the form of declaration in the second schedule to this Act shall be taken and subscribed before a Justice of the Peace by every Postmaster and other officer of the Post Office before the exercise of the duties of his office, as required by the provisions of the forty-fourth section of the Post Office Act, 1882.

3. This Act shall come into operation on a date to be named by the Governor by (3) proclamation in the *Gazette* and shall be

Preamble.

Postage rates on letters forwarded by private ship and inland packets, etc., altered.

Post Office Declaration amended.

Commencement and effect of Act, and short title.

¹ No. 4, 1882 (p. 1811).

² No. 3, 1886.

³ To come into force on 26th September, 1892. See Proclamation 281, 1892, dated 10th September, 1892. Extended to Native Territories by Proclamations 32, 1897, and 183, 1896.

read as one with "The Post Office Act, 1882," and may be cited for all purposes as the "Post Office Act Amendment Act, 1892."

SCHEDULES.

Schedule 1.

FIRST SCHEDULE.

<i>Letters.</i>		
Inland.	Posted for delivery within the Colony ...	One Penny.
Ship.	To be forwarded by private ship, vessel of war, or other ship (not being a mail packet, direct to any foreign country or British possession with which a convention for the exchange of such mail matter has not been concluded ...	} For every half ounce or fraction of half an ounce.
Shippers and Consignees.	For owners, charterers, or consignees of vessels arriving in any part of the Colony by such vessel ...	
<i>Newspapers.</i>		
Inland.	For each newspaper not exceeding four ounces in weight ...	One Halfpenny.
Ship.	For each newspaper not exceeding four ounces in weight ...	One Penny.
<i>Postal Cards.</i>		
Inland.	On each postal card ...	One Halfpenny.
<i>Book Packets.</i>		
Inland.	For every two ounces or fraction of two ounces ...	One Halfpenny.
<i>Sample Packets.</i>		
Inland.	For the first four ounces or fraction thereof ...	One Penny.
	For every additional two ounces or fraction thereof ...	One Halfpenny.
<i>Packets.</i>		
Ship.	To be forwarded by private ship, vessel of war, or other ship (not being a mail packet), direct to any foreign country or British possession with which a convention for the exchange of mail matter has not been concluded. For the first four ounces or fraction thereof ...	One Penny.
	For every additional two ounces or fraction thereof ...	One Halfpenny.

FIRST SCHEDULE—Continued.

No. 35—1892.

	<i>Parcel Post.</i>	
Inland.	Each parcel not exceeding eight ounces...	Fourpence.
	For each additional four ounces or fraction thereof	Twopence.
	<i>Registration.</i>	
	For the registration of every separate article	Fourpence.

SECOND SCHEDULE.

Schedule 2.

DECLARATION

(Made pursuant to the provisions of the forty-fourth section of the Post Office Act, 1882.)

I,....., do solemnly and sincerely declare that I will not wittingly, or willingly open or delay, or cause, or suffer to be opened or delayed, contrary to my duty, any letter or any thing sent by the post which shall come into my hands, or custody, by reason of my employment relating to the Post Office, except by the consent of the person or persons to whom the same shall be directed, or except in such case where the party or parties to whom such letter or any thing sent by the Post shall be directed, and who is, or are, chargeable with the payment of the postage thereof, shall refuse or neglect to pay the same; and except such letters or any thing sent by the Post as shall be returned for want of true directions, or when the party or parties to whom the same shall be directed cannot be found; and that I will not in any way embezzle any such letter or any thing sent by the Post as aforesaid, and I make this solemn declaration conscientiously intending to fulfil and obey the same, and by virtue of the provisions of the "Oaths and Declarations Act, 1891."

Signature.....

This Declaration was made before me, }
 at.....in the Division }
 of.....the day }
 of.....189

.....
 Justice of the Peace.

No. 36—1892.]

[September 2, 1892.

ACT

For Enabling the Municipal Council of Woodstock to borrow a Further Sum of Money, not exceeding £25,000, in Debentures or otherwise, on the Credit of the Municipality, and to appropriate the same for a General Drainage Scheme, and further for enabling the said Council to effectually carry out the said Drainage Scheme.

Preamble.

WHEREAS it is expedient to provide the inhabitants of the Municipality of Woodstock with a general Drainage Scheme :

And whereas at a public meeting of ratepayers, specially convened for the purpose, held on the 28th day of March, 1892, it was unanimously resolved that the Municipal Council of Woodstock be authorised to introduce into Parliament a Private Bill enabling them to raise a further loan of not exceeding the sum of £25,000 on Debentures or otherwise, on the credit of the rates of said Municipality, and to appropriate the said money or so much thereof as shall be required for the purpose of a general Drainage Scheme :

And whereas at a special meeting of ratepayers of the said Municipality, held on the 29th day of July, 1892, it was further unanimously resolved to apply to Parliament for powers to carry out such Drainage Scheme :

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 :—

Lawful for Council to borrow money.

1. It shall be lawful for the Council for the time being of the Municipality of Woodstock to borrow from time to time such sum or sums of money as may necessarily be required for the purposes of a general drainage scheme, but not to exceed in the whole the sum of £25,000.

And to impose a tax.

2. It shall be lawful for the Council of the said Municipality to impose, if necessary, for the purpose of providing for the repayment of the capital and of the payment of the annual or half-yearly interest thereon, a certain rate or tax upon all present and future rateable property within the said Municipality, and every rate so imposed shall be of the same force and effect, and be levied in the same manner as rates or taxes are now imposed or levied under the provisions of Act No. 45 of 1882.

Payment out of other funds.

Provided that it shall be lawful for the said Council to apply to the payment of capital and interest, or either, any funds or moneys owing to the said Council from any source whatever and not specially appropriated for any other object.

3. The Council shall grant to the party or parties, or company, society or co-partnership from whom they shall borrow such moneys as aforesaid, a debenture or written acknowledgment of or for the moneys borrowed by them for the purposes aforesaid, not exceeding in the whole the said sum of £25,000, which debenture or acknowledgment shall be as near as may be in the form in the Schedule annexed to this Act; and shall be signed by two of the councillors for the time being appointed for that purpose by a resolution of the Council of the said Municipality.

No. 36—1892.
Debentures or
acknowledgments.

4. The said Council shall cause to be kept a separate account of all moneys borrowed under this Act and of the interest paid thereon, and of the expenditure of such moneys, and shall at their annual meetings under the Act 45 of 1882, exhibit for the inspection of the ratepayers an account showing the particulars aforesaid, and give such other information as it shall be reasonable or expedient to impart.

Separate accounts
to be kept.

5. It shall be lawful for the Council from time to time to cause such sewers, drains and pipes to be made, laid, altered, deepened, covered over and maintained within the Municipality as shall be necessary for the effectual draining of the Municipality or any portion thereof and from time to time to cause to be made and maintained all such reservoirs, sluices, engines and other works as shall be necessary for cleansing and ventilating such sewers, drains and pipes, and if needful they may carry such sewers, drains and pipes through and across private lands or beneath private buildings, making compensation for any damage done, which compensation shall, if not mutually agreed upon, be settled by arbitration; and the Council or any persons duly authorised by them shall have right of access for maintenance of such sewers and drains.

Drainage

6. The Council may also from time to time make, alter, revoke or amend rules and regulations for all or any of the following purposes:—

Regulations may
be made, altered or
revoked.

- (1) For regulating with regard to the level, width, direction and construction of new streets made by the Council or owners of private property and the sewerage or drainage thereof;
- (2) For regulating with respect to the drainage and sewerage of buildings and for compelling the connection at the owner's expense of private drains with public drains, sewers, or pipes;
- (3) For regulating with respect to water-closets, earth-closets, privies, ash-pits and cesspools in connection with buildings, and to prohibit the use of such of them as the Council consider ought not to be allowed to continue.

7. It shall be lawful for the Council to pay the necessary expenses for obtaining this Act, and carrying the provisions thereof into effect, out of the present general revenue of the Municipality.

Expenses of this
Act.

No. 38—1892.
Short title.

8. This Act may be cited for all purposes as the "Municipality of Woodstock Loan and Drainage Act, 1892."

Schedule.

SCHEDULE.

We, the undersigned Councillors of the Municipality of Woodstock, duly authorised thereto by the Council of the said Municipality, do hereby acknowledge that the said Council is indebted to

in the sum of _____ for so much money borrowed by the said Councillors for the purposes set forth in "The Municipality of Woodstock Loan Act, 1892," and certify that the said sum is secured by the said Act in such 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 :—

Given under our hands at Woodstock, this _____ day of 189

WITNESSES :

No. 37—1892.] _____ [September 2, 1892.

Act to Amend and Add to the Law regulating the Municipal Corporation and Government of Cape Town.
[Repealed by Act 26, 1893.]

No. 38—1892.] _____ [September 2, 1892.

ACT

To Provide for assisting certain Divisional Councils in Maintaining and Repairing certain Roads and Passes.

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 :—

—Grant by Governor in aid of maintenance of certain roads and passes.

1. The provisions of any law to the contrary notwithstanding, it shall be lawful for the Governor to grant, from and out of the general revenue, such aid in maintaining the roads and passes in Schedule A to this Act mentioned, as may from time to time become due, under the conditions hereinafter set forth, to the Divisional Councils of the respective divisions in which the said roads and passes respectively fall.

Council to receive amounts actually and necessarily expended.

2. The Divisional Council of any division in which any portion of the roads or passes aforesaid is situated shall be entitled to receive during the year ending 30th June, 1893, from the general revenue the sum of money set forth in the first column of Schedule A hereto annexed, and thereafter, annually, such sum or sums of money as shall, during the year then past, have been expended by such Council in the maintenance and repair of any portion of such

road or pass as aforesaid: Provided that the total amount paid in any subsequent year in respect of any such road or pass shall not exceed the amount allocated in the second column of Schedule A to this Act for such road or pass: and further, provided that such Divisional Council shall have levied a rate of not less than one halfpenny in the pound on all the immovable property rateable within such division.

No. 38-1892.

3. No such payment as in the preceding section mentioned shall be made to any Divisional Council until such Council shall prove to the satisfaction of the Minister by proper vouchers and duly certified accounts that the amount for which payment is sought has been actually expended upon such road or pass or portion thereof as the case may be, and until the Minister shall have been satisfied from the report of the Inspecting Officer to be appointed by him for the purpose, that the work has been duly and satisfactorily performed.

Minister to be satisfied of actual expenditure and due and satisfactory performance of the work.

4. The Divisional Council of every such division as aforesaid shall cause an exact and particular account to be kept of all moneys expended upon the maintenance and repair of the road or pass, or portion thereof, in its division, in respect of which aid may be given under this Act, and such account shall be kept in such manner as to show separately and correctly the expenditure really and *bonâ fide* made by such Council upon such road or pass, or portion thereof, as the case may be.

Council to keep account of expenditure on such roads and passes.

5. Notwithstanding anything to the contrary in "The Road Act, (1) 1864," or any other law, the several contributions payable and receivable by certain Divisional Councils in consideration of the maintenance of mountain passes, as set forth in Schedule B to this Act, shall, from and after the taking effect of this Act, cease and determine; but every right and liability in respect of such contributions, which was in existence at the said date, shall be judged of in all respects as if this Act had not been passed.

Certain contributions for maintenance of mountain passes determined.

6. Nothing contained in this Act shall be taken or construed so as to relieve any Divisional Council of the responsibility now resting upon it for the maintenance and repair of any road or pass in its division, nor shall the Colonial Government be held responsible in respect of any such road or pass by reason of anything contained in this Act.

Responsibility of Divisional Councils for maintenance and repair of roads and passes.

7. In this Act the word "Minister" shall mean the responsible Minister to whom the Governor shall from time to time assign the working of this Act.

Definition of word Minister.

8. This Act may be cited for all purposes as "The Roads and Passes Maintenance Act, 1892."

Short title.

¹ No. 10 (p. 925).

No. 38—1892.

Schedule A.

SCHEDULE A.

Name of Pass.	Estimate for Repair and Maintenance, 1892-93.	Annual Contribution for subsequent Maintenance.	Division.
	£	£	
Bain's Pass ...	250	200	Paarl and Worcester.
Great Zwarteberg Pass	400	400	Oudtshoorn and Prince Albert.
Mitchell's Pass ...	300	300	Ceres and Tulbagh.
Montagu Pass ...	300	300	George.
Sir Lovry Pass ...	250	250	Stellenbosch and Caledon.
George to Storms River	1,000	850	George, Knysna and Humansdorp.
Garcia's Pass ...	1,500	250	Riversdale.
Southey's Pass ...	500	225	Swellendam.
Robinson's Pass ...	250	225	Mossel Bay and Oudtshoorn.
Prince Alfred's Pass ...	1,500	450	Knysna and Uniondale
Meiring's Poort ...	250	250	Oudtshoorn and Prince Albert.
Barkly Pass...	200	200	Barkly East.
Katberg Pass ...	100	100	Queen's Town.
Katberg Pass ...	100	100	Stockenström.
Zuurberg Pass ...	200	200	Alexandria.
Penhoek Pass ...	400	200	Wodehouse.
Pakhuis Pass ...	300	250	Clanwilliam and Calvinia.
Grey's Pass ...	300	250	Piquetberg and Clanwilliam.
	8,100	5,000	

Schedule B.

SCHEDULE B.

ROAD MAINTENANCE CONTRIBUTIONS.

Payable by the Divisional Council of	Receivable by the Divisional Council of	Amount.
1. Prince Albert	Beaufort West ...	(1) £100
2. Victoria West		(2) £100
3. Oudtshoorn		(3) £100
Fraserburg ...	Ceres ...	£75
Caledon ...	Stellenbosch ...	£150
Port Elizabeth ...	Alexandria ...	£200
Bredasdorp ...	Caledon ...	£60

No. 39—1892.]

[September 2, 1892.

ACT

To further amend in certain respects the "Imvani and Indwe Railway and Coal Mines Act," No. 3 of 1882.

[Not printed. See note to Act 3, 1882, page 1805.]

No. 40—1892.]

[December 6, 1892.

(1) ACT

To Amend the Law relating to Marriage.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repugnant laws repealed.

1. So much of any law as may be repugnant to or inconsistent with the provisions of this Act is hereby repealed.

Marriage with deceased wife's sister lawful.

2. It shall be lawful for any widower to marry the sister of his deceased wife, provided such sister be not the widow of a deceased brother of such widower, or to marry any female related to him in any more remote degree of affinity than the sister of his deceased wife, save and except any ancestor of or descendant from such deceased wife.

Such marriages already contracted, valid, if not declared dissolved or invalid by court.

3. Any marriage contracted between persons both of whom shall now be living which would be void, or voidable, by reason of any law by this Act repealed, shall be deemed to be as valid as if duly solemnized after the taking effect hereof; provided such marriage shall not have been dissolved or declared invalid by the decree of of any competent court.

Marriage with sister of wife divorced prohibited.

4. Nothing in this Act contained shall be deemed to legalise or render valid the marriage of a man with the sister of a wife from whom he has been divorced.

Short title.

5. This Act may be cited for all purposes as "The Marriage Law Amendment Act, 1892."

No. 1—1893.]

[June 29, 1893.

Act to apply a Further Sum not exceeding One Hundred and Thirty-six Thousand and Eighty-one Pounds Sterling for the Service of the year ending the 30th June, 1893.

[Spent.]

No. 2—1893.]

[June 29, 1893.

Act to apply a Sum not exceeding Six Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1894.

[Spent.]

No. 3—1893.]

[July 12, 1893.

ACT

To Provide for Prevention of the Spread of the Disease known as Rabies.

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 the House of Assembly thereof, as follows:—

Governor may proclaim area under operation of this Act.

1. It shall be lawful for the Governor, whenever it shall be shown to him to be expedient so to do, to declare, by proclamation to be

¹ Extended by Proclamations 161 and 241, 1902, to all Native territories.

published in the *Gazette*, any district in this Colony, or any portion of such district, to be an area coming under the operation of this Act; and the Governor may, in and by such proclamation, issue rules and regulations to be of force and effect in the area proclaimed as aforesaid for preventing the spread of the disease known as Rabies, and may from time to time repeal, alter or amend any such proclamation, rule or regulation.

No. 3—1893.

2. The rules and regulations issued by virtue of the last preceding section may provide for all or any of the following matters:

Rules and regulations under the Act

- (a) The appointment, control and duties of officers for carrying out the provisions of this Act.
- (b) The mode of destruction of all dogs whose destruction may be necessary under this Act, and the disposition of the carcases of dogs so destroyed.
- (c) The removal of any dogs from or their introduction into any such area.
- (d) The muzzling, control, detention or custody of dogs which it shall not be deemed necessary to destroy.
- (e) Generally for carrying out the provisions of the Act and preventing the spread of Rabies.

3. Whenever in any municipality, borough or village, there shall be in force any local bye-laws, rules or regulations regarding the muzzling or destruction of dogs, the Governor may by proclamation suspend the operation of such bye-laws, rules or regulations for the period during which rules and regulations made under this Act shall be in force in such municipality, borough or village, but such suspension shall not affect anything done or any proceedings pending under the suspended bye-laws, rules or regulations at the time of the promulgation of such proclamation.

Local regulations.

4. The word "dog" shall, for the purposes of this Act, be taken to include female as well as male dogs, and shall also include any other animal subject to the disease known as Rabies which the Governor may specify under the rules and regulations issued under this Act.

Meaning of word "dog."

5. Any person contravening any of the provisions of any proclamation, rule or regulation made under this Act, or wilfully obstructing any authorised person in the due execution of any of the said provisions, shall be deemed guilty of an offence against this Act, and shall, upon conviction thereof before the court of the Resident Magistrate of the district in which the offence shall have been committed, be liable to penalties to be provided by such regulations, which penalties shall not be greater than a fine not exceeding fifty pounds sterling, and in default of payment imprisonment, with or without hard labour, for any period not exceeding three months, unless such fine be sooner paid.

Penalty clause.

6. This Act may be cited for all purposes as "The Rabies Act, 1893."

Short title.

No. 4—1893.]

[August 18, 1893.

ACT

To amend "The Colonial Forces Act, 1892." (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 Colonial Forces Act, (2) 1892," is hereby amended as follows:

- (a) In the forty-third section, at the end thereof, shall be inserted the following proviso: "Provided that every such club or association when so called out for active service may at its request be supplied with such distinctive uniform or badge as the Governor may from time to time by regulation direct."
- (b) In the eighty-seventh section, the words "with officers of Her Majesty's regular forces" and the words "officers of Her Majesty's regular and" shall be expunged.
- (c) In the one hundred and fifth section, after the word "use," shall be inserted the words "and for the requisition from those who possess them of such buildings, wagons, horses, oxen and gear, together with such provisions, forage and other necessities as shall be needed for the service of such forces."

2. Whenever Her Majesty's regular and colonial forces are associated together under one command, every act committed by members of the colonial forces which would be an offence under "The Colonial Forces Act, 1892," if directed against the officers, men, or institutions of the colonial forces, shall, if directed against the officers, men, or institutions of Her Majesty's regular forces, be deemed to be such offence, and shall involve the penalties prescribed for such offence by the said Act; provided that such member of the colonial forces shall be tried for such offence by the same court as if the offence had been committed against a member of the said colonial forces.

3. This Act shall be read as one with "The Colonial Forces Act, 1892," and may be cited as "The Colonial Forces Act Amendment Act, 1893."

Amendments in
Colonial Forces
Act, 1892.

Offences by mem-
bers of colonial
forces against
members of regu-
lar forces.

Short title and
effect of Act.

¹ See also Act 16, 1895 (p. 3453).

² No. 32 (p. 3111).

No. 5—1893.]

[August 18, 1893.]

ACT

To Repeal "The Exhibition Act, 1892."

[Repealed by Act 11, 1898, the Act 26 of 1892 being re-enacted.]

No. 6—1893.]

[August 18, 1893.]

ACT (3)

To Exempt Transfer of Certain Lands for School Purposes from Transfer Duty, Stamp Duty, and Fees of 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:—

1. As often as the Superintendent-General of Education shall, by writing under his hand, certify his desire that any land with or without buildings, used or to be used exclusively for the purposes of any Undenominational Government Aided School, or of any Aided Boarding Establishment or Teachers' Dwelling House in connection with such school, shall be transferred to trustees, no transfer duty, stamp duty, or fees of office, shall be paid or be leviable in respect of any such transfer, anything in "The Transfer Duty Consolidation and Amendment Act, (1) 1884," "The Stamp and Office Fees Act, (2) 1884," or any other law to the contrary notwithstanding.

Transfers of school property to trustees exempt from transfer duty, stamp duty and fees of office.

No. 7—1893.]

[August 15, 1893.]

Act to Apply a Sum not exceeding Four Hundred Thousand Pounds Sterling towards the Service of the Year ending the 30th day of June, 1894.

[Spent.]

¹ No. 5 (p. 2159).² No. 20 (p. 2204).³ See also Act 46, 1902 (p. 4530).

No. 8—1893.]

[August 18, 1893.

ACT

Preamble. To Amend the "Fiscal Divisions Extensions Act, 1888."

Repeal of section 6, Act 30, 1888. 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:—

Maintenance of main roads. 1. The sixth section of Act No. 30 of 1888, commonly called the "Fiscal Divisions Extension Act, 1888," is hereby repealed.

Short title.

2. From and after the 1st day of July, 1893, each of the two divisions referred to in section five of the said Act shall be bound to maintain at its own expense the sections of all main roads situate within the limits of each division.

3. This Act may be cited as the "Fiscal Divisions Amendment Act, 1893."

 No. 9—1893.]

[August 29, 1893.

ACT

To Amend in certain respects the Act No. 22 of 1872, intituled "Table Bay Docks and Breakwater Management Act."

[Repealed by Act 36, 1896.]

 No. 10—1893.]

[August 29, 1893.

ACT (1)

To Amend the provisions under which Loans for Irrigation purposes are redeemed.

Preamble. 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:—

Annual payment in respect of loans for irrigation purposes. 1. In lieu of the annual rent charge prescribed by section sixty-five of "The Irrigation Act, 1877," and by the "Irrigation Act Amendment Act, 1880," for the redemption of loans granted under the provisions of those Acts and of "The Municipalities

¹ See Act 24, 1897, provisions of which apply to all loans under this Act (p. 3771).

Irrigation Works Loan Act, 1879," there shall be payable in respect of all such loans the amount set forth in the Schedule to "Local Works Loans Act, 1882."

No. 11—1893.

2. The provisions of this Act shall extend and apply to all amounts remaining unpaid on account of loans already issued under the said Irrigation Acts No. 8 of 1877, 28 of 1879, and 7 of 1880.

Act to apply to amounts remaining unpaid on account of loans issued under the Irrigation Acts.

3. This Act may be cited for all purposes as "The Irrigation Act Amendment Act, 1893."

Short title.

No. 11—1893.]

[August 29, 1893.]

ACT (5)

To Exempt private land in respect of which there shall be Registered Servitudes of Outspan, from the provisions of certain 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:—

1. So much of "The Divisional Councils Act, (1) 1889," "The Fencing Act, (2) 1883," "The Fencing Law Amendment Act, (3) 1891," "The Pounds Act, (4) 1892," or of any other Law as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Repeal of repugnant laws.

2. For the purposes of this Act the term "occupier" shall mean any person, company, or co-partnership in actual occupation, or entitled as owner, to occupy any land alienated from the Crown.

Meaning of occupier.

3. It shall not be lawful for any Divisional Council to let or lease any portion of any private land which shall be subject to a registered servitude of outspan.

No lease of public outspan subject to servitude.

4. The powers of impounding conferred by section fifty of "The Pounds Act, (4) 1892," shall not extend to any animals belonging to or in the lawful custody or possession of the occupier of any land which is subject to a registered servitude of outspan.

Impounding of animals belonging to occupier of land subject to servitude of outspan.

5. Nothing in the "Fencing Law Amendment Act, (3) 1891," contained shall be deemed to entitle any Divisional Council to require any occupier to join in or submit to the fencing of land in respect of which a servitude of outspan is registered.

Fencing of land in respect of which a servitude of outspan is registered.

6. This Act may be cited as "The Public Outspans Act, 1893."

Short title.

¹ No. 40 (p. 2781).

² No. 30 (p. 2142).

³ No. 15 (p. 2859).

⁴ No. 15 (p. 3018).

⁵ See also Act 41, 1902 (p. 4518).

No. 12—1893.]

[August 29, 1893.]

ACT

To Give Municipal, Borough and Town Councils, and Village Management Boards further Power to make Bye-laws and Regulations. (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:—

Power to Municipalities and other local bodies to make regulations.

1. Notwithstanding anything to the contrary contained in any law, it shall be lawful for any Board or Council of any Municipality, Borough or Town, or for any Village Management Board to frame bye-laws, or regulations for all or any of the following purposes:

(a) For suppressing or preventing, or restricting and regulating the making, buying, selling, dealing in, conveying or delivering of the article known as Kaffir beer within such Municipality, Borough, Town or Village, as the case may be, or any part or parts thereof.

(b) For prohibiting or restricting and regulating the carrying, use and possession by natives, being Kaffirs, Fingoes, Basutos, Hottentots, Bushmen, and the like, save such as are entitled to the privileges conferred upon registered voters by the Act No. 39 of 1887, of knobkerries, cudgels, bludgeons or other weapons of any description within such Municipality, Borough, Town or Village as the case may be, or any part or parts thereof, and for the seizure and forfeiture of any such knobkerries, cudgels, bludgeons or other weapons carried, used or possessed contrary to the provisions of any such bye-law or regulation.

Right of search.

2. Every Board or Council aforesaid acting pursuant to such regulations by their servants or agents, and every police constable or officer of excise may upon reasonable suspicion that there is in any house or hut any Kaffir beer, in violation of such regulations, enter and search for such beer, and if any such beer be found the occupier of such house or hut shall be deemed *prima facie* to have contravened such regulations. Any beer found may be seized, and on conviction of such occupier may be declared forfeited and be destroyed.

Beer forfeited.

Powers of location inspectors.

3. The Inspector of any Native Location within such Municipality, Borough, Town, or Village shall have the powers in the last section conferred upon police constables.

Penalties for breach of regulations duly approved and published.

4. Every bye-law or regulation duly made under the provisions of this Act shall, when approved of by the Governor, be published

¹ Extended by Proclamation No. 193 of 1894 to East Griqualand, Tembuland, and Transkei, and Port St. Johns.

in the *Gazette*, and any person who shall be convicted of a contravention of any such bye-law or regulation so approved of and published, and any person who shall interfere with or resist any duly appointed officer or person in the lawful execution of his duty under any such bye-law or regulation, shall be liable to a fine of not exceeding five pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding three months unless such fine be sooner paid.

5. This Act may be cited as "The Local Bodies' Increased Powers Act, 1893."

No. 13—1893.

Short title.

No. 13—1893.]

[August 29, 1893.]

ACT

To invest certain Lands in the Municipal Council of Woodstock.

WHEREAS it is expedient for the better management of the Municipality of Woodstock that all vacant Crown land situate within the said Municipality shall be vested in 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, as follows:—

1. From and after the passing of this Act all vacant Crown land, situate within the Municipality of Woodstock, and all right, title and interest in the same, shall be, and the same are hereby vested in the Council of the Municipality of Woodstock.

All vacant Crown land in Municipality to be vested in Council thereof.

2. The provisions of clauses one hundred and sixty to one hundred and sixty-three of the Municipal Act, (1) 1882, shall apply to the sale, alienation or lease of any of the said lands, and the said Council shall not be authorised or permitted to sell, lease or otherwise alienate the said land, or any portion thereof, without having first complied with the provisions of the said sections.

But not to be alienated, except under provisions of Municipal Act, 1882.

3. The Governor shall at all times have the right of resuming the whole or a portion of the said land, if required for public purposes, without compensation except for improvements to the said land: and the amount of such compensation shall be agreed upon by the parties concerned, or failing such agreement shall be determined by arbitration.

Governor to have right of resumption.

4. Nothing in this Act contained shall be deemed, construed or taken to deprive the owner of any property situate within the said Municipality of any right of access to such property over any portion of the said land which at the date of the taking effect of this Act was used as a public thoroughfare.

Rights of access reserved.

No. 14—1893.]

[September 12, 1893.

ACT

To Create the Office of a Minister of Agriculture, to abolish the Office of Secretary for Native Affairs, and to amend the designation of and provide for the assignment of duties to certain Ministerial Officers.

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:—

Office of Secretary for Agriculture established.

1. From and after the taking effect of this Act there shall be in this Colony a certain office, to be called the office of "Secretary for Agriculture."

Appointment made by Her Majesty to be held during pleasure.

2. The person to hold the said office 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 him.

Sections 3, 4 and 8 of Act No. 1 of 1872 and Section 8 of Act No. 18 of 1874 to apply to office and Secretary for Agriculture.

3. The provisions of sections 3, 4 and 8 of the Act No. 1 of 1872 and of section 8 of the Act No. 18 of 1874 shall apply to the said office and the Secretary for Agriculture as though the said office and the said Secretary had been therein specifically mentioned and referred to.

Salary of Secretary for agriculture: he may be Prime Minister.

4. The Secretary for Agriculture shall from the date of his appointment receive salary at the same rate at which those officers receive salary who are named in section 2 of the Act No. 32 of 1879, which was revived under and by virtue of the provisions of Act No. 28 of 1887, and he may be the Prime Minister.

Alteration of designations of certain officers.

5. Notwithstanding anything to the contrary contained in the Act No. 1 of 1872, the officers therein styled "The Treasurer of the Colony" and "The Commissioner of Crown Lands and Public Works" shall be respectively styled "The Treasurer" and "The Commissioner of Public Works."

Office of Secretary for Native Affairs to be discharged by Prime Minister or other Minister.

6. The office of Secretary for Native Affairs constituted under the Act No. 1 of 1872 shall be and is hereby abolished, and the duties and functions hitherto assigned to and exercised by the Secretary for Native Affairs shall, from and after the taking effect of this Act, be discharged and performed by the Prime Minister of this Colony for the time being, or by any other Minister to whom the Governor may assign the same.

Meaning of the word "Minister" in the interpretation of any law.

7. In the interpretation of any law the word "Minister" shall mean that member of the Executive Council to whom the administration of that law is assigned, unless there be anything in the context inconsistent with or repugnant to such interpretation: Provided that whenever by any law the exercise of any power or the performance of any duty or function is conferred or imposed on or assigned to any Minister therein named, such power, duty, or function may legally be exercised or performed by

any other Minister to whom the Governor may assign the exercise or performance of the same.

8. The Prime Minister shall, notwithstanding that save as aforesaid he shall not hold one of the offices referred to in the third section of the Act No. 1 of 1872, be deemed to be included in the empowering provisions of the fourth section of that Act.

9. This Act shall take effect upon the promulgation thereof, and may be cited as the "Minister of Agriculture Act, 1893."

No. 15—1893.

Prime Minister to have right of debate in either Council or Assembly.

Short title.

No. 15—1893.]

[August 29, 1893.]

ACT (1)

To Amend the "Fish Protection Act, 1890."

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. The first section of "The Fish Protection Act, (1) 1890," is hereby repealed.

2. The Governor may from time to time make, alter or revoke regulations (2) for all or any of the following purposes, that is to say:

- (1) To provide for the more effectual protection and improvement of fish, and the government and management of any public rivers, lakes or waters in which fishing may be carried on.
- (2) For imposing and prescribing conditions and rules for the regulation of fishing.
- (3) For the registering of all boats and nets employed in fishing.
- (4) For determining the times and seasons at which the taking of any species of fish shall commence and cease.
- (5) To provide for and regulate the description and form of nets to be used in fishing, the size of the meshes thereof, or the prohibition of any specified description or form of nets or meshes or any machine, instrument or appliances whatsoever tending to impede the lawful taking of fish or to be in any manner detrimental to the preservation or increase of fish.
- (6) To provide for the protection of sea birds and seals by imposing conditions and rules regulating the catching, killing, or pursuing of the same, and the shooting at or disturbing of the same, and to provide for the management, government and protection of Seal and Guano

Repeal of first section of "Fish Protection Act, 1890."

Governor may make regulations for certain purposes.

¹ No. 29 (p. 2325). Extended to all the Native Territories by Proclamation 187, 1895.

² But see also Act 43, 1899, giving extended powers to delimit areas and frame regulations (penalty £20) (p. 4225).

No. 16—1893.

Islands, being Crown land, by prescribing the time, mode and place of landing on such islands, by prescribing rules for the conduct of persons whilst on such islands, and by defining, limiting or withdrawing any public right in or on the foreshore of such islands.

And such regulations, when published in the *Gazette*, shall have the full force of law with regard to those rivers, lakes, or other waters which are described in the enacting proclamation, and any person who shall be guilty of a breach of any such regulations so published, shall be liable to a penalty not exceeding five pounds, and on default of payment thereof to imprisonment with or without hard labour for a period not exceeding one month.

Meaning of "fish."
Short title.

3. "Fish" shall include crawfish.

4. This Act may be cited as "The Fish Protection Act, 1893."

No. 16—1893.]

[August 29, 1893.

ACT

To Amend the Constitution Ordinance.

BE it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of repugnant laws.

1. So much of the Constitution Ordinance, or of any other law as may be repugnant to or inconsistent with the provisions of this Act, is hereby repealed.

Cumulative voting abolished.

2. From and after the taking effect of this Act it shall not be lawful, at any election of members of the House of Assembly for the Electoral Division of Cape Town, for any voter in and for such Electoral Division to give to any one candidate for such election more votes than one.

Date of taking effect and short title of Act.

3. This Act shall take effect on a date to be proclaimed in the *Gazette* by the Governor, and may be cited for all purposes as "The Constitution Ordinance Amendment Act, 1893."

No. 17—1893.]

[August 29, 1893.

Act to Apply a Sum not exceeding Thirty-three Thousand Nine Hundred and Thirteen Pounds Seventeen Shillings and Twopence Sterling for the purpose of meeting and covering certain Unauthorised Expenditure.

[Spent.]

EAST LONDON HARBOUR BOARD.



No. 18—1893.]

[September 12, 1893.

-ACT

To Provide for the Management of the Harbour of East London.

[Repealed by Act 36, 1896.]

[Pages 3158 to 3165.]

No. 19—1893]

[September 12, 1893.

ACT

To Consolidate, Amend and Declare the Law relating to Bills of Exchange, Cheques and Promissory Notes. ⁽¹⁾

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:—

PART I.

PRELIMINARY

1. In this Act, unless the context otherwise requires—
 “Acceptance” means an acceptance completed by delivery or notification.

Interpretation of terms.

¹ Extended by Proclamation No. 171 of 1894 to East Griqualand, Tembuland, Transkei and Port St. John's. See also Act 3, 1856 (p. 550) and § 12 of this Act; 34, 1889 (p. 2683); 15, 1902 (p. 4382); and 9, 1904 (p. 4645).

- “Action” includes a counter claim, claim in reconvention, and set off.
- “Banker” includes a body of persons, whether incorporated or not, who carry on the business of banking.
- “Bearer” means the person in possession of a bill or note which is payable to bearer.
- “Bill” means bill of exchange, and
“Note” means promissory note.
- “To note” is to make a notarial minute in accustomed form of the circumstances of dishonour and at the time of dishonour of a bill or note.
- “Delivery” means transfer of possession, actual or constructive, from one person to another.
- “Holder” means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof.
- “Indorsement” means an indorsement completed by delivery.
- “Issue” means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.
- “Person” includes a body of persons, whether incorporated or not.
- “Value” means valuable consideration.
- “Written” includes printed, and
- “Writing” includes print.
- “Non-business days” include
- (a) Sunday, New Year’s Day, Good Friday, Easter Monday, Whit Monday, Ascension Day, Queen’s (1) Birthday, Christmas Day; (2)
- (b) Any day appointed by proclamation by the Governor as a solemn fast or day of thanksgiving, or as a public holiday under the “Public Holiday Act, 1889,” or any other law.
- “Payment in due course” means payment made at or after the maturity of a bill to the holder thereof in good faith and without notice that his title to the bill is defective.
- “Month” means calendar month.

PART II.

BILLS OF EXCHANGE.—FORM AND INTERPRETATION.

2. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer.

Bill of exchange defined.

¹The 24th May (Victoria Day) is a non-business day. If it fall on Sunday following day to be observed, Act 15, 1902.

²And the day after. If two non-business days fall on same calendar day, the following day is a non-business day. Act 9, 1904 (p. 4645).

No. 19—1893.

- (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with
- (a) An indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or
- (b) A statement of the transaction which gives rise to the bill, or
- (c) A statement on the bill that it is drawn against specified documents attached thereto for delivery or acceptance or on payment of the bill as the case may be, or
- (d) A statement on the bill that it is drawn under or against a specified letter of credit or other similar authority,

is unconditional.

- (4) A bill is not invalid by reason
- (a) That it is not dated;
- (b) That it does not specify the value given, or that any value has been given therefor;
- (c) That it does not specify the place where it is drawn, or the place where it is payable.

3. (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

- (2) Where in a bill, drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or as a promissory note.

4. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

- (2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

5. (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

- (2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

Effect where different parties to the bill are the same person.

Address to drawee

Certainty required as to payee.

No. 19—1898.

- (3) Where the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.
6. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.
- (2) A negotiable bill may be payable either to order or to bearer.
- (3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.
- (4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
- (5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.
7. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—
- (a) With interest.
- (b) By stated instalments.
- (c) By stated instalments, with a provision that upon default in payment of any instalment, the whole shall become due.
- (d) According to an indicated rate of exchange to be ascertained as directed by the bill.
- (2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.
- (3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.
8. (1) A bill is payable on demand—
- (a) Which is expressed to be payable on demand or at sight, or on presentation; or
- (b) In which no time for payment is expressed.
- (2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill, payable on demand.

What bills are negotiable.

Sum payable.

Bill payable on demand.

No. 19—1893.
Bill payable at a
future time.

9. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

- (1) At a fixed period after date or sight.
- (2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. An instrument expressed to be payable on or after the occurrence of a specified event, which may or may not happen, is not a bill, and the happening of the event does not cure the defect.

Omission of date
in bill payable af-
ter date.

10. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that

- (1) Where the holder in good faith and by mistake inserts a wrong date, and
- (2) In every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and
post-dating.

11. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement, as the case may be.
- (2) A bill is not invalid by reason only that it is ante-dated, or post-dated, or that it bears date on a Sunday.

Computation of
time of payment.

12. Where a bill is not payable on demand the day on which it falls due is determined as follows:—

- (1) The Act No. 3 of 1856 is repealed, and if the date on which any bill would fall due shall be a non-business day, the due date of the bill shall be the next business day.
- (2) There are no days of grace in this Colony.
- (3) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the day of payment.
- (4) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest, if the bill be noted or protested for non-acceptance or for non-delivery.

Case of need.

13. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or

non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

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14. The drawer of a bill, and any indorser, may insert therein an express stipulation—

Optional stipulations by drawer or indorser.

- (1) Negating or limiting his own liability to the holder;
- (2) Waiving as regards himself some or all of the holders' duties.

15. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

Definition and requisites of acceptance.

(2) An acceptance is invalid unless it complies with the following conditions, namely:—

- (a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

16. A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete.

Time for acceptance.

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

17. (1) An acceptance is either—

(a) General; or (b) Qualified.

General and qualified acceptances.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. In particular an acceptance is qualified which is—

- (a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:
- (b) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:
- (c) Local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to paid there only and not elsewhere:

(d) Qualified as to time:

(e) The acceptance of some one or more of the drawees but not of all.

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Inchoate instru-
ments.

18. (1) Where a simple signature on a blank paper to which a stamp has been affixed by the signer is delivered by him in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount, such stamp will cover using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on or if no time be agreed on then within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time, and strictly in accordance with the authority given.

Delivery.

19. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a) In order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be.

(b) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor or indorser,

a valid and unconditional delivery by him is presumed until the contrary is proved.

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CAPACITY AND AUTHORITY OF PARTIES.

20. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract: Provided that to the validity of a bill, accepted or indorsed by a woman, the renunciation of the benefits *senatus consulti velliani*, and *authentica si qua mulier*, shall not be requisite. Capacity of parties.
- (2) Where a bill is drawn or indorsed by an infant or minor, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.
21. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that— Signature essential to liability.
- (1) Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name.
- (2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners of that firm.
22. Subject to the provisions of this law, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to forgery. Forged and unauthorised signature.
23. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. Procuration signature.
24. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon: provided that if such person had no authority to sign for and on behalf of such principal, or in a representative character, he shall be personally liable on the said Bill. Person signing as agent or in representative capacity.
- (2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

THE CONSIDERATION OF A BILL.

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Value and holder
for value.

25. (1) Valuable consideration for a bill may be constituted by—
- (a) Any cause sufficient to support an action founded on contract or agreement;
 - (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.
- (2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.
- (3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation
bill or party.

26. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.
- (2) An accommodation party is liable on a bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due
course.

27. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:
- (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;
 - (b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
- (2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.
- (3) A holder whether for value or not who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

28. (1) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.
- (2) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or submitted negotiation of the bill is affected with fraud or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

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 Presumption of
 value and good
 faith.

NEGOTIATION OF BILLS.

29. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.
- (2) A bill payable to bearer is negotiated by delivery.
- (3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.
- (4) Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferor.
- (5) Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability.
30. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—
- (1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an allonge or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.
- (2) It must be an indorsement of the entire bill. A partial endorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorseees severally, does not operate as a negotiation of the bill.
- (3) Where a bill is payable to the order of two or more payees or indorseees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.
- (4) Where in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

Negotiation of
 bill.

Requisites of a
 valid indorsement.

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(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

31. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and the payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank and special indorsement.

32. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to, or to the order of, himself or some other person.

Restrictive indorsement.

33. (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill be endorsed "Pay D. only," or "Pay D. for the account of X," or "Pay D. or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights, and subject to the same liabilities, as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill.

34. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been—

(a) Restrictively indorsed, or

(b) Discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can require or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this

section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

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(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect or title attaching thereto at the time of dishonour; but nothing in this sub-section shall affect the rights of a holder in due course.

35. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Negotiation of bill to party already liable thereon.

36. The rights and powers of the holder of the bill are as follows:—

Rights of the holder.

- (1) He may sue on the bill in his own name.
- (2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.
- (3) Where the title is defective—
 - (a) If he negotiates the bill to a holder in due course that holder obtains a good and complete title to the bill; and
 - (b) If he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

GENERAL DUTIES OF THE HOLDER.

37. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.
 - (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
 - (4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before

When presentment for acceptance is necessary.

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presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

38. (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.
- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance and excuses for non-presentment.

39. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:—
- (a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue.
- (b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only.
- (c) Where the drawee is dead presentment may be made to his executor.
- (d) Where the drawee is insolvent or has assigned his estate, presentment may be made to him or his trustee or assignee.
- (e) A presentment through the post office, if in due course, is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
- (a) Where the drawee is dead or insolvent, or is a fictitious person, or a person not having capacity to contract by bill.
- (b) Where after the exercise of reasonable diligence such presentment cannot be effected.
- (c) Where although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

40. When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

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Non-acceptance.

41. (1) A bill is dishonoured by non-acceptance:—

Dishonour by non-acceptance and its consequences.

(a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(b) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, and immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

42. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

Duties as to qualified acceptances.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a bill has been accepted as to part it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

43. Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules:—

Rules as to presentment for payment.

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render an indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

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- (3) Presentment must be made by the holder, or by some person authorised to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found.
- (4) A bill is presented at the proper place:—
- (a) Where a place of payment is specified in the bill, and the bill is there presented.
 - (b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
 - (c) Where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known.
 - (d) In any other case, if presented to the drawee or acceptor whenever he can be found, or if presented at his last known place of business or residence.
- (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to his executor, if such there be, and, with the exercise of reasonable diligence, he can be found.
- (8) A presentment through the Post Office, if in due course, is sufficient.
44. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with—
- (a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.
 - (b) Where the drawee is a fictitious person.

Excuses for delay
or non-present-
ment for payment.

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- (c) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
- (d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
- (e) By waiver of presentment, express or implied.
- (f) Where the drawee or acceptor is insolvent or has assigned his estate.

45. (1) A bill is dishonoured by non-payment—

Dishonour by non-payment.

- (a) When it is duly presented for payment and payment is refused or cannot be obtained; or
- (b) When presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.

46. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that—

Notice of dishonour and effect of non-notice.

- (1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.
- (2) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

47. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

Rules as to notice of dishonour.

- (1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.
- (2) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.
- (3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures

for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

- (5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is, in fact, misled thereby.
- (8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.
- (9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to an executor if such there be, and, with the exercise of reasonable diligence, he can be found.
- (10) Where the drawer or indorser is insolvent notice may be given either to the person himself or to the person in whom his estate is by law vested.
- (11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless—
 - (a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
 - (b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the business day next after the dishonour of the bill, if there be a post at a convenient hour on that day; and if there be no such post on that day, then by the next post thereafter.
- (13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal

upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

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- (14) Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

48. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence.

Excuses for non-notice and delay.

When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

- (2) Notice of dishonour is dispensed with—
- (a) When after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged.
- (b) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.
- (c) As regards the drawer in the following cases, namely—
- (1) Where drawer and drawee are the same person.
 - (2) Where the drawee is a fictitious person, or a person not having capacity to contract.
 - (3) Where the drawer is the person to whom the bill is presented for payment.
 - (4) Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill.
 - (5) Where the drawer has countermanded payment.
- (d) As regards the indorser in the following cases, namely—
- (1) Where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill.

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Noting or protest
of bill.

- (2) Where the indorser is the person to whom the bill is presented for payment.
- (3) Where the bill was accepted or made for his accommodation.
49. (1) Where a bill has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorsers are discharged, with the exception of the drawer or payee of a cheque on a banker as herein-after defined.
- (2) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
- (3) Subject to the provisions of this Act, when a bill is noted or protested it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.
- (4) Where the acceptor of a bill becomes insolvent, or assigns his estate, or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.
- (5) A bill must be protested at the place where it is dishonoured: Provided that—
- (a) When a bill is presented through the Post Office, and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return, if received during business hours, and if not received during business hours, then not later than the next business day.
- (b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must if protested be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.
- (6) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify:
- (a) The person at whose request the bill is protested.
- (b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

- (7) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.
- (8) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested when necessary with reasonable diligence.
50. (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.
- (2) When by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.
- (3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him.
- (4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Duties of holder
as regards drawee
or acceptor.

LIABILITIES OF PARTIES.

51. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

Funds in hands
of drawee.

52. The acceptor of a bill, by accepting it—

- (1) Engages that he will pay according to the tenour of his acceptance.
- (2) Is precluded from denying to a holder in due course :
- (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.
- (b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his endorsement.
- (c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of ac-
ceptor.

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Liability of
drawer or indorser.

53. (1) The drawer of a bill, by drawing it—

- (a) Engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken.
- (b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill, by indorsing it—

- (a) Engages that on due presentment it shall be accepted and paid according to its tenour, and that if it be dishonoured he will compensate the holder or a subsequent indorser, who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
- (c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing
a bill liable as in-
dorser.

54. Where a person signs a bill otherwise than as drawer or acceptor, he or she thereby incurs the liabilities of an indorser to a holder in due course.

Measure of dam-
ages against parties
to dishonoured bill.

55. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

- (1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
 - (a) The amount of the bill.
 - (b) Interest thereon in accordance with the stipulation if any in the bill or from the time of presentment for payment if the bill is payable on demand, or from the maturity of the bill in any other case.
 - (c) The expenses of noting and where the protest has been extended, the expenses of the protest.
- (2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer, or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange, with interest thereon until the time of payment.

- (3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

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56. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a transferor by delivery.
- (2) A transferor by delivery is not liable on the instrument.
- (3) A transferor by delivery who negotiates a bill, thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Transferor by delivery and transferee.

DISCHARGE OF BILL.

57. (1) A bill is discharged by payment in due course or *pro tanto* by payment of part notified by indorsement on the bill if such payment be made by or on behalf of the drawee or acceptor.

Payment in due course.

- (2) Subject to the provisions hereinafter contained when a bill is paid by the drawer or an indorser it is not discharged; but

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

- (3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

58. When a bill payable to order on demand is drawn on a banker, and the banker pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority; provided such indorsement does not purport to be that of a person who is a customer of the banker at the branch on which the said bill is drawn.

Banker paying demand draft where indorsement is forged.

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 ———
 Acceptor the holder at maturity.
 Express waiver.
59. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.
60. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing on the bill, unless the bill is delivered up to the acceptor.
- (2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.
- Cancellation,
61. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.
- (2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.
- (3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.
- Alteration of bill.
62. (1) Where a bill or acceptance is materially altered then the liability of all parties who were parties to the bill at the date of alteration, and who did not assent to it, must be regarded as if the alteration had not been made; but any party who has himself made, authorised, or assented to the alteration, and all subsequent indorsers are liable on the bill as altered.
- (2) Amongst material alterations are the following:—Any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR.

- Acceptance for honour *supra* protest.
63. (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill, *supra* protest, for the honour of any party liable

- thereon, or for the honour of the person for whose account the bill is drawn.
- (2) A bill may be accepted for honour for part only of the sum for which it is drawn.
- (3) An acceptance for honour, *supra* protest, in order to be valid must—
- (a) Be written on the bill, and indicate that it is an acceptance for honour.
- (b) Be signed by the acceptor for honour.
- (4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.
- (5) Where a bill payable after sight is accepted for honour its maturity is calculated from the date of noting for non-acceptance, and not from the date of acceptance for honour.
64. (1) The acceptor for honour of a bill, by accepting it, engages that he will, on due presentment, pay the bill according to the tenour of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts. Liability of acceptor for honour.
- (2) The acceptor for honour is liable to the holder and to all parties to the bill, subsequent to the party for whose honour he has accepted.
65. (1) Where a dishonoured bill has been accepted for honour, *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. Presentment to acceptor for honour
- (2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be posted or forwarded for presentment not later than the business day next following its maturity for presentment to him.
- (3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.
- (4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.
66. (1) Where a bill has been protested for non-payment, any person not being a party already liable thereon, may Payment for honour *supra* protest.

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- intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
- (2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.
 - (3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.
 - (4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.
 - (5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is substituted for, and succeeds to both the rights and duties of the holder, as regards the party for whose honour he pays, and all parties liable to that party.
 - (6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.
 - (7) Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS.

67. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenour, giving adequate security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

68. In any action or proceeding upon a bill other than a proceeding for provisional sentence, the court or a judge may order that the loss or non-production of the instrument shall not be set up by way of defence, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Holder's rights to duplicate of lost bill.

Action on lost bill.

BILL IN A SET.

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Rules as to set.

69. (1) Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.
- (2) Where a holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.
- (3) Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.
- (4) The acceptance may be written on any part, and it must be written on one part only.
If the drawee accepts more than one part, and such accepted parts get into the hands of different holders, in due course he is liable on every such part as if it were a separate bill.
- (5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course he is liable to the holder thereof.
- (6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

CONFLICT OF LAWS.

70. Where a bill drawn in one country, colony, or state is negotiated, accepted, or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:—

Rules where laws conflict.

- (1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of every supervening contract, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Provided—

- (a) Where a bill is issued out of this Colony it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

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- (b) Where a bill, issued out of this Colony, conforms as regards requisites in form to the law of the Colony, it may for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in this Colony.
- (2) Subject to the provisions of this Act, the interpretation of the contract of the drawer, indorser, acceptor, or acceptor *supra* protest of a bill, is determined by the law of the place where such contract is made:

Provided that where a bill drawn and payable in this Colony is indorsed elsewhere, the indorsement shall, as regards the payer, be interpreted according to the law of this Colony.

- (3) The duties of the holder with respect to presentment for acceptance or payment, and the necessity for, or sufficiency of, a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.
- (4) Where a bill is drawn out of but payable in this Colony, and the sum payable is not expressed in currency of the Colony, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts, at the place of payment on the day the bill is payable.
- (5) Where a bill is drawn in one country, colony, or state and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

Cheque defined, 71. A cheque is a bill of exchange drawn on a banker payable on demand. Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of
cheque for pay-
ment.

72. Subject to the provisions of this Act—

- (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.
- (2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

- (3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

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73. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

Revocation of banker's authority.

- (1) Countermand of payment;
- (2) Notice of the customer's death;
- (3) Notice of the customer having become insolvent.

CROSSED CHEQUES.

74. (1) Where a cheque bears across its face an addition of—

General and special crossings defined.

- (a) The words "and Company," or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or
- (b) Two parallel transverse lines simply either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

75. (1) A cheque may be crossed generally or specially by the drawer.

Crossings by drawer or after issue.

- (2) Where a cheque is uncrossed, the holder may cross it generally or specially.
- (3) Where a cheque is crossed generally the holder may cross it specially.
- (4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."
- (5) Where the cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.
- (6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, he may cross it specially to himself.

76. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Crossing a material part of cheque.

77. (1) Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Duties of bankers as to crossed cheques.

(2) Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to

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the banker to whom it is crossed, or to his agent for collection, being a banker.

- (3) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection, being a banker, the banker on whom it is drawn shall refuse payment thereof.
- (4) Where the banker on whom the cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection, being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered, otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker as the case may be.

Protection to
banker and drawer
where cheque is
crossed.

78. Where the banker on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing
on holder.

79. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to col-
lecting banker.

80. Where a banker in good faith, and without negligence, receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Sections 74 to 80
to extend to docu-
ments other than
cheques; crossed
for like object.

81. Sections seventy-four to eighty of this Act shall extend to any document issued by a customer of any banker, and intended to enable any person to obtain payment on demand from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque:

Provided that nothing herein contained shall be deemed to render any such document a negotiable instrument.

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PART IV.

PROMISSORY NOTES.

82. (1) A note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer. Promissory note defined.
- (2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.
83. A note is inchoate and incomplete until delivery thereof to the payee or bearer. Delivery necessary.
84. (1) A note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenour. Joint and several notes.
- (2) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.
85. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged. Note payable on demand.
- (2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.
- (3) Where a note payable on demand is negotiated it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.
86. (1) Where a note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable, unless the particular place mentioned is the place of business of the payee, and the note remains in his hands. In any other case presentment for payment is not necessary in order to render the maker liable; Presentment of note for payment.

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- (2) Presentment for payment is necessary in order to render the indorser of a note liable.
- (3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable; but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.
- Liability of maker. 87. The maker of a note, by making it—
- (1) Engages that he will pay it according to its tenour;
- (2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.
- Application of Part II to notes. 88. (1) Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange, apply, with the necessary modifications, to notes.
- (2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.
- (3) The following provisions as to bills do not apply to notes, namely, the provisions relating to—
- (a) Presentment for acceptance;
- (b) Acceptance;
- (c) Acceptance *supra* protest;
- (d) Bills in a set.

PART V.

SUPPLEMENTARY.

- Good faith. 89. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not, and the authorised sealing with a corporate seal of a Corporation, or the authorised stamping with an official stamp of any Bank or Company, shall be deemed to be sufficient and equivalent to signature or endorsement of any such instrument or writing.
- Signature. 90. Where, by this Act, any instrument or writing is required to be signed by any person it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person, by or under his authority.
- Computation of time. 91. Where, by this Act, the reasonable or other time limited for doing any act or thing is less than four days, in reckoning such time, non-business days are excluded.

92. For the purposes of this Act, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

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When noting equivalent to protest.

93. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured any landowner or householder of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. The form given in the Schedule to this Act may be used with necessary modifications, and if used shall be sufficient.

Protest when notary not accessible.

94. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of a dividend, to a coupon for payment of interest, and to postal or money orders.

Dividend warrants and coupon for interest may be crossed.

95. Nothing in this Act shall affect the provisions of or in any way restrict—

Laws not to be affected by this Law.

- (1) The Stamp Acts or any law for the time being in force relating to the revenue.
- (2) The Bank Act, (1) 1891, and the Companies Act, (2) 1892.
- (3) The provisions of section nine of the Magistrates' Court Act of (3) 1856.
- (4) The procedure and practice in regard to the granting of provisional sentence in judicial proceedings. But all other laws inconsistent with the provisions of this Act shall be, and the same are hereby repealed.

96. Where a bill, note or other liquid document of debt of such a nature as to be capable of sustaining a claim for provisional sentence, whether dated before or after the taking effect of this Act, is payable on demand, the cause of action upon such bill, note or other liquid document as aforesaid shall for the purposes and provisions of Act No. 6 of 1861 and subject thereto, be deemed to have accrued upon the date of such bill, note, or other liquid document, but save as aforesaid nothing in this Act contained shall affect any bill, note, or cheque dated before the Act shall come into force.

Provision as to bills, &c., dated before Act comes into force.

97. This Act shall come into force on a day (4) to be fixed by Proclamation in the *Gazette* and shall be known, and may be cited, as the "Bills of Exchange Act, 1893."

Date of operation and Short title.

¹ No. 6.

² No. 25.

³ No. 20.

⁴ To come into force on 3rd October, 1893. See Proc. No. 383, 1893.

SCHEDULE.

No. 20—1893.
Schedule.

Form of Protest which may be used when the services of a Notary cannot be obtained.

Know all men, that I, A.B., landowner or householder of in the District of Cape Colony, at the request of C.D., there being no Notary Public available, did on the day of , 18 , at demand payment [or acceptance] of the bill of exchange, hereunder written, from E.F., to which demand he made answer [state answer, if any]. wherefore, I now, in the presence of G.H. and J.K., do protest the said bill of exchange.

(Signed) A.B.
G.H. } Witnesses.
J.K. }

N.B.—The bill itself should be annexed, or a copy of the bill, and all that is written thereon should be underwritten.

No. 20—1893.]

[September 5, 1893.

ACT

To Authorise the raising of a Public Loan of One Hundred Thousand Pounds for the purpose of prosecuting and improving the Harbour Works of Table Bay, and providing greater facilities for the conduct of the Business of the Port.

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:—

Power to raise loan of £100,000 for improvement of Table Bay Harbour Works, &c.

1. It shall be lawful for the Governor to raise by public loan a sum not exceeding one hundred thousand pounds sterling for the purpose of prosecuting and improving the harbour works of Table Bay, and of effecting improvements at the Docks in respect of the storage of goods and the landing and shipment of cargo.

Application of moneys by Harbour Board.

2. The application of the moneys to be raised as aforesaid for the above purposes shall be entrusted to the Table Bay Harbour Board, and the said Harbour Board shall in respect to such application have and exercise all the powers conferred upon such board by any law.

Capital and interest of loans chargeable upon revenues of Table Bay Harbour Board.

3. Save in cases in which it may be expressly provided by law to the contrary, the capital and interest of all loans raised on the guarantee of the Public Revenue, for the purpose of prosecuting and improving the Harbour Works of Table Bay, shall in the first instance, be chargeable upon the Revenues of the Table Bay Harbour Board, and such Board shall out of such Revenues indemnify the Governor for all moneys paid out of the General Revenue of the Colony on account of the capital or interest of such loans.

Short title.

4. This Act may be cited as "The Table Bay Harbour Loan Act, 1893."

No. 21—1893.]

[September 5, 1893.]

ACT

To Provide for the reducing of Gradients and the Relaying of certain portions of existing Railway Lines with Heavy Rails and Sleepers.

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. For the purpose of reducing gradients and relaying the portions of existing railway lines set forth in the Schedule to this Act, it shall be lawful for the Governor to apply out of monies authorised to be raised under the provisions of the “Temporary Loans Act, 1883,” the sum of Ninety-eight Thousand Seven Hundred and Fifty Pounds. ⁽¹⁾

£98,750 to be applied to reducing gradients and relaying railway line.

2. This Act may be cited as the “Improvement of existing Railways Act, 1893.”

Short title.

SCHEDULE.

Reducing gradients between Port Elizabeth and Sandflats	£9,750
Relaying between Worcester and Beaufort West ...	45,000
Substitution of Transverse Sleepers for Iron “Pots,” Mid-land System	30,000
Relaying between East London and Queen’s Town ...	9,500
Relaying between Port Elizabeth and Uitenhage ...	4,500
Total ...	£98,750

No. 22—1893.]

[September 5, 1893.]

ACT

To Amend “The Municipal Act, 1882.” ⁽²⁾

Be it enacted by 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. After the first election of Councillors for any Municipality under the provisions of Act 45 of 1882, no person shall be deemed to be liable to be rated within the meaning of section fifteen of the said Act, unless he shall be the owner or occupier of immovable property actually assessed in the books of the Municipal Council for the sum of twenty pounds per annum or upwards: Provided that if any immovable property within the Municipality has been omitted from the valuation roll, the owner or occupier of such

Interpretation of section fifteen of Act 45 of 1882.

¹ Made a charge against the general revenue of the Colony by § 1, Act 36, 1894.

² Extended by Proclamation No. 102 of 1894 to all the Native Territories, and by 165, 1904, to Pondoland.

No. 22—1893.

property may apply to the Council of the said Municipality to value the said property, and the said Council on receiving such application shall cause the said property to be valued at the cost of the said Municipality; and provided further that if after the valuation roll of the Council has been made any immovable buildings have been erected within the Municipality, the Council shall, on the application of the owner or occupier of the said buildings, make a valuation thereof at the cost of the applicant.

Power to Returning Officers to reject nomination of candidates at municipal elections.

2. The Returning Officer at any municipal election held under the provisions of Act 45 of 1882 shall have power to reject the nomination of any candidate not having the qualification under section fifteen of the said Act as interpreted by section one of this Act, or having any of the following disqualifications, viz. :—

- (a) Having had his estate duly sequestrated as insolvent and not having been rehabilitated.
- (b) Having been convicted of treason, or murder, or, until the lapse of five years from the date of release, any person convicted of rape, theft, perjury, bribery, of receiving a bribe or of any other corrupt practice at any election, or any infamous crime unless a free pardon shall have been granted.

Provided that it shall be competent for any voter in the Municipality to bring the action of the Returning Officer under this section by motion in review before any competent court.

Power to Mayor or Chairman to declare seat of Councillor vacant.

3. The Mayor or Chairman of any Municipality under Act 45 of 1882 shall have power to declare vacant the seat of any Councillor, on any of the grounds stated in sub-sections (one), (two), (five), of section twenty-two of the aforesaid Act, and also when any such Councillor ceases to possess the qualification under section fifteen of the said Act, as interpreted by section one of this Act, or becomes disqualified on any of the grounds stated in sub-sections (a) and (b) of section two of this Act, provided it shall be competent for any voter in the Municipality to bring the action of the Mayor or Chairman under this section in review by motion before any competent court.

Procedure in case of equality of votes at election of Mayor.

4. On the election of a Mayor or Chairman of the Municipality under section seventy-four of Act 45 of 1882, should the number of votes be found to be equal for any two or more Councillors, it shall by lot be determined which shall be elected.

Power of Council to make bye-laws for certain purposes.

5. The Council of any Municipality, under Act No. 45 of 1882, may from time to time make alter, and revoke bye-laws or regulations for all or any of the following purposes :

- (a) For prohibiting brothels, the overcrowding of houses, dwelling places and rooms, and the erection of objectionable buildings with such Municipality.
- (b) For regulating the sanitary appliances of closets and privies in connection with buildings within such Municipality and for prohibiting the use of such of them as in

the opinion of the Council should not be allowed to continue.

No. 23—1893.

Every bye-law or regulation made under the provisions of this Act shall be deemed to be a bye-law or regulation made under section one hundred and nine of the said Act, No. 45 of 1882, and all the provisions of the said Act with regard to bye-laws or regulations made thereunder shall apply *mutatis mutandis* to bye-laws or regulations made under the provisions of this Act.

6. This Act may be cited as the "Municipal Amendment Act, 1893."

Short title of Act.

No. 23—1893.]

[September 5, 1893.]

ACT

To Amend the "Northern Railways Act, 1890," and provide for the disposition of Land comprised in the Railway Land Grant, situated in the Territory of British Bechuanaland. ⁽¹⁾

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding anything to the contrary contained in the "Northern Railways Act, (2) 1890," or in either of the Agreements set forth in the Schedule to that Act, it shall be lawful for the Governor to dispose of the whole or any portion of the land known as the Railway Land Grant, situated in the territory of British Bechuanaland, upon terms and conditions framed in accordance with the certificate of ownership bearing date the 25th day of October, 1892, and set forth in Schedule A, and with the further agreement entered into between the Colonial Government and the British South Africa Company, bearing date the eleventh day of August, 1893, and set forth in Schedule B to this Act, provided that the terms and conditions may, with the consent of the said Company, be varied in any particular in manner provided by section six of the Act No. 26 of 1891.

Disposal of land of Railway Land Grant in British Bechuanaland.

2. This Act shall be read as one with the "Northern Railways Act, 1890," and may be cited as the "Northern Railway Land Disposal Act, 1893."

Effect and short title.

¹ See Act 40, 1895, §§ 21, 22 (p. 3570); Act 18, 1896, § 2 (p. 3602).

² No. 13 (p. 2808).

SCHEDULE A.

BRITISH BECHUANALAND.

CERTIFICATE OF OWNERSHIP.

Provisionally given for whole grant while ordinary certificates and titles for individual farms are being prepared.

THIS IS TO CERTIFY THAT THE GOVERNMENT OF THE COLONY OF THE CAPE OF GOOD HOPE is entitled to own certain pieces of land containing together six thousand square miles, more or less, situated in the Divisions of *Vryburg*, *Mafeking* and *Kuruman* in *British Bechuanaland*, and represented and described in the diagram hereunto annexed, subject, however, to the following conditions:—

I. That all roads and thoroughfares existing over the land hereby granted shall remain free and uninterrupted, unless the same be closed or altered by competent authority.

II. That the Government shall at all times have the right of entry on the land for such purposes as inspection and survey.

III. That this land is granted free from all mineral reservations in favour of the Crown, but subject to the condition that if under the provision of any existing law, or of any law in future to be passed, any quartz-reef digging, any alluvial digging, or any mine be duly proclaimed upon the said land, then the owner of the land for the time being shall contribute and pay to the Government of British Bechuanaland 10 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 be kept by such owner, or such books be irregularly kept, then and in that event such owner, shall pay such sums as may be necessary to defray the public expenditure as aforesaid, whether such owner shall have received out of the licence moneys, rents or royalties payable in respect of such claims sufficient to defray such expenditure or not: Provided always that if at any time there shall not be receivable by the owners of the said land any licence moneys, rents or royalties in respect of any such duly proclaimed quartz-reef, alluvial digging or mine, then, and in that case there shall be payable by such owner to the Government of British Bechuanaland, for the purposes hereinbefore stated, such sum of money yearly as may be agreed upon between the said owner and the said Government, or failing such agreement, as may be decided by an arbitrator or arbitrators appointed in manner provided by the Lands and Arbitrations Clauses Act No. 6, 1882, of the Colony of the Cape of Good Hope.

IV. That subject to the provisions of Clause 3 of the Agreement of the 23rd January, 1890, between His Excellency the High Commissioner and the Honourable C. J. Rhodes, so long as the said provisions remain unaltered and in full force, the Government or any body corporate or persons duly authorised by Government, shall at all times have the power, without compensation, of making roads,

railways and railway stations, and of conducting telegraphs over, and of taking materials for making or repairing roads and railways from any land hereby granted which has not been improved by cultivation, irrigation or otherwise, and shall further have the power of making roads, railways and railway stations, and of conducting telegraphs over, and of taking material for making or repairing roads or railways from any land hereby granted which has been improved by cultivation, irrigation or otherwise ; and of making aqueducts, dams, and drains for the benefit of the public, and of establishing convenient outspans for the use of travellers, 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 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.

V. That the Government does not undertake to point out the beacons of the land hereby granted, but the proprietor shall be bound to have the limits thereof properly traced and marked by conspicuous and permanent beacons to be by him erected and kept in proper repair at all angles of the said land.

VI. That the land hereby granted shall be further subject to all such duties and regulations as either are already, or shall in future be established respecting lands granted under similar tenure.

Given under my hand and Seal at Vryburg, this Twenty-fifth day of October, 1892.

F. J. NEWTON,
Acting Administrator.

Registered at the Deeds Registry Office
in Vryburg, British Bechuanaland,
this 29th day of October, 1892
Prov. Reg C. Dec : Vol. iv.
Folio 18. Nov 123.

M. C. GENIS,
Registrar.

SCHEDULE B.

Schedule B.

MEMORANDUM OF AGREEMENT made in Cape Town, on the 11th day of August, 1893, between the Honourable Cecil John Rhodes, M.L.A., representing the British South Africa Company, of the one part, and the Honourable Sir John Gordon Sprigg, K.C.M.G., M.L.A., Treasurer of the Colony of the Cape of Good Hope, on behalf of the Colonial Government, of the other part.

Whereas under and by virtue of certain two Agreements entered into between His Excellency the High Commissioner, and the Honourable C. J. Rhodes, as representing the British South Africa Company, and the Honourable Sir John Gordon Sprigg, as representing the Government of the Colony of the Cape of Good Hope, both bearing date the 23rd day of January, 1890, certain six thousand square miles of land in British Bechuanaland, now known as the Railway Land Grant, are held by the Colonial Government for joint account in certain shares of itself and the British South Africa

Company ; and by section four of the second of the said Agreements such land must be sold subject to a substantial quitrent of not less than £1 (one pound sterling) per thousand acres :

And whereas it is expedient that the terms upon which the said land may be sold should be amended :

Now these presents witness as follows, that is to say :—

(1) All lands forming any portion of the Railway Line Grant aforesaid, disposed of at public auction, shall not be sold on quitrent but shall be sold for a capital sum, and every purchaser shall have the option of paying either the whole or a part of the purchase money on the day of sale : provided

- (a) That if no payment be made on the day of sale, one-tenth of the purchase price shall be paid at six, and one-tenth at twelve months from the day of sale.
- (b) That if less than one-tenth of the purchase price be paid on the day of sale, the balance of such one-tenth shall be paid at the expiration of six months and the remaining one-tenth at the expiration of twelve months from the day of sale.
- (c) That if the amount paid on the day of sale be one-tenth or any sum between one-tenth and one-fifth of the purchase price the balance of one-fifth of the purchase price shall be paid at the expiration of twelve months from the day of sale.

(2) Interest on the instalments mentioned in section one shall be paid at the rate of four per centum per annum ; and the payment of the instalments together with the interest thereon shall be secured on the day of sale by two good and sufficient sureties to the satisfaction of the Civil Commissioner of the district, or such person as the Colonial Government may approve, which sureties shall bind themselves in regard to such payment as sureties *in solidum* and co-principal debtors renouncing the exceptions of excussion and division.

(3) The expenses of survey, erection of beacons, and of the title and transfer deed, together with the transfer duty payable thereon shall be paid to the Civil Commissioner or other duly authorised person in that behalf on the day of sale.

(4) If the purchaser shall fail to fulfil the obligations mentioned in sections two and three he shall forfeit any payment that may have been made by him, and the land shall be declared not sold, and if deemed expedient shall be again immediately put up to auction.

(5) The purchaser shall be bound to pass a mortgage bond bearing interest at the rate of four per centum per annum in favour of the Colonial Government, for four-fifths of the purchase price, unless he shall have paid on the day of sale more than one-fifth thereof, in which case the amount of the bond shall be for the balance of the purchase price, the purchaser having the right to pay off the amount of the bond, or any portion thereof, not being less than fifty pounds at any time.

(6) If at any time it should appear to the Colonial Government upon petition of any adjacent or neighbouring proprietor that such adjacent or neighbouring proprietor requires a way or road of

necessity to or from the land of such adjacent or neighbouring proprietor, the owner of land purchased hereunder, upon which such road is required, shall be bound to grant such way or road of necessity, and to point out the direction and width thereof: Provided that in case of a dispute or difference regarding such road, or its sufficiency, the direction and width of the road shall be decided upon by such body or person as the said Government shall appoint: Provided further that the said owner shall not be bound to allow such road or thoroughfare across land which shall at the time be in a state of cultivation or improvement, and that compensation for the right of way and any damage done shall be paid for by the person or persons for whose benefit and upon whose application the said road is made according to determination by arbitration.

(7) The Colonial Government shall at all times have the right of resuming the whole or a portion of the land 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 determined by arbitration in accordance with the Lands and Arbitration Clauses Act, 1882.

(8) All rights to gold, silver, and precious stones found or discovered at any time on or in lands sold hereunder shall be reserved to the vendors together with a right of ingress to and egress from any mines or works undertaken for mining or prospecting purposes by any person or persons authorised by the Colonial Government. The further right shall be reserved to the vendors to resume proprietorship of any portion of such lands and of the water supply thereof as may be required for the convenient working of mines or works for gold, silver or precious stones, on payment of such sums of money in compensation as may be mutually agreed upon by the parties concerned, or failing such agreement, as may be determined by arbitration.

(9) All land shall be sold subject to the terms and conditions set forth in the Certificate of ownership of the said Railway Land Grant dated the 25th day of October, 1892, save in so far as clause three of the said Certificate is modified by clause eight of this Agreement; and provided that the rights reserved to the Government of the Territory of British Bechuanaland in clauses four and five of the said Certificate shall also be reserved to the Colonial Government.

In witness whereof the parties hereto have hereunto affixed their respective signatures, at the time and place first above written.

J. GORDON SPRIGG,
Treasurer of the Colony of the Cape of Good Hope.

Witnesses :

THOS. E. FULLER.
D. C. DE WAAL.

C. J. RHODES,
For the British South Africa Company.

Witnesses :

THOS. E. FULLER.
D. C. DE WAAL.

No. 24—1893.]

[September 12, 1893.

ACT

To Provide for the Construction of certain Additional Works in connection with Railways.

Preamble.

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:—

Provision for construction of works and rolling stock.

1. For the purpose of constructing the works and providing the rolling stock set forth in the Schedule to this Act, it shall be lawful for the Governor to expend a sum not exceeding Four Hundred and Ninety-six Thousand Four Hundred and Forty-one Pounds Sterling.

Provision as to raising sum of £326,441.

2. For the purposes aforesaid it shall be lawful for the Governor to raise the sum of Three Hundred and Twenty-six Thousand Four Hundred and Forty-one Pounds Sterling 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.

£170,000 to be applied out of available balance under Railway Construction Balances Account Act, 1892.

3. It shall further be lawful for the Governor to apply the sum of One Hundred and Seventy Thousand Pounds out of the available balance under the Railway Construction Balances Account Act of 1892 for the work set forth in the above mentioned Schedule.

Short title.

4. This Act may be cited as the "Railway Additional Works Act, 1893."

SCHEDULE.

No. 25—1893.

	£	s.	d.
1 Additional Rolling Stock	200,000	0	0
2 Additional accommodation for Passenger Traffic and Shunting operations at Cape Town, including purchase of property East of Strand Street	50,000	0	0
3 Locomotive Workshops, Steam Sheds, Pits, &c.	20,000	0	0
4 Salt River—New Station	3,000	0	0
5 Electric Lighting of Trains	5,108	0	0
6 Electric Lighting of Port Elizabeth Stations	5,600	0	0
7 Water Supply	17,066	0	0
8 Additional Station accommodation ...	20,000	0	0
9 Additional Siding accommodation ...	5,850	0	0
10 Additional accommodation for Railway Employés	4,000	0	0
11 Stores, Warehouses and Offices	15,000	0	0
12 Bridges, Culverts and Waterways ..	4,347	0	0
13 Signals... ..	6,470	0	0
14 Postal and Telegraph accommodation ...	1,100	0	0
15 Additional Telegraph Wire, Port Elizabeth to Viljoen's Drift... ..	6,100	0	0
16 Lewis and Marks' Siding and Weighbridge at Vereeniging, and Office and Stable accommodation for Cape Agent at Johannesburg (£62 Os. 0d.)	7,096	0	0
17 Orange Free State Collieries Syndicate Siding	3,719	0	0
18 New and Additional Works on Free State Lines	121,985	0	0
Total	£496,441	0	0

No. 25—1893.]

[September 12, 1893.]

ACT

To Amend the Criminal Law, and to make further provision for the protection of Women and Girls. (1)

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. Any person who

(1) Unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of twelve years, and under the age of fourteen years; or

Defilement of girl between twelve and fourteen years of age or of female idiot or imbecile woman.

¹ See also Act 36, 1902, Part IV. (p. 4493), as to brothels, &c. Extended to all Native territories by Proclamation No. 291, 1905.

No. 25—1893.

- (2) Unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile;

shall be guilty of a contravention of this section, and upon conviction shall be liable to a fine not exceeding five hundred pounds, or to be imprisoned, with or without hard labour, for any period not exceeding five years:

Provided that it shall be a sufficient defence to any charge under sub-section one of this section if it shall be made to appear to the court or jury before whom the charge is brought that the girl at the time of the commission of the offence charged was a prostitute, or that the person so charged was at the said time under the age of sixteen years, or had reasonable cause to believe that the girl was of or above the age of fourteen years.

Provided, also, that nothing in this section contained shall be taken to alter or impair the present provisions of the law with regard to the crime of rape upon girls who are of or above the age of twelve years and under the age of fourteen years.

2. Any person who, being the owner or occupier of any premises, or, having or acting or assisting in the management or control thereof,

induces or knowingly suffers any girl of such age as is in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, shall be guilty of a contravention of this section, and shall

- (1) if such girl be under the age of twelve years, be liable upon conviction to be imprisoned, with or without hard labour, for any period not exceeding seven years;
- (2) if such girl is of or above the age of twelve and under the age of fourteen years, be liable upon conviction to be imprisoned, with or without hard labour, for any period not exceeding four years:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge is brought, that the person so charged had reasonable cause to believe that the girl was of or above the age of fourteen years.

3. Any person who detains any woman or girl against her will—

- (1) In or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or
- (2) in any brothel;

shall be guilty of a contravention of this section, and shall be

Householder, etc.,
permitting defilement of young girl on his premises.

Unlawful detention with intent to have carnal knowledge.

liable, upon conviction, to be imprisoned with or without hard labour, for any period not exceeding three years.

Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises, or in such brothel, if with intent to compel or induce her to remain therein such person withholds from such woman or girl, any property belonging to her, or any wearing apparel, or threatens such woman or girl with legal proceedings if she takes away with her such wearing apparel.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

4. If it appears to any Resident Magistrate on sworn information by any parent, relative or guardian of any woman or girl, or any other person who, in the opinion of the magistrate is *bonâ fide* acting in the interests of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, then such magistrate may issue a warrant authorising any person named therein to search for and take to and detain in a place of safety, such woman or girl until she can be brought before him; and the magistrate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may require.

Power of search.

The magistrate issuing such warrant may, by the same or any other warrant, causes any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before him, to be dealt with according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally, and

- (a) Either is under the age of fourteen years; or
- (b) If of or above the age of fourteen years and under the age of twenty-one years is so detained against her will, or against the will of her father or mother, or any person having the lawful care or charge of her.
- (c) If of or above the age of twenty-one years is so detained against her will.

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid, may enter (if need be by force) any house, building or other place specified in such warrant, and may remove any woman or girl therefrom:

Provided, always, that every warrant issued under this section shall be addressed to and executed by some inspector or other

No. 26—1893.

officer of police, who shall be accompanied by the person making the information, unless the magistrate otherwise direct.

Power on indictment for rape to convict of offence under section one.

5. If upon the trial of any person for rape, the jury shall be satisfied that the accused is guilty of an offence under section one of this Act, but are not satisfied that he is guilty of the crime of rape, or of an attempt to commit the same, then the jury may acquit the accused of rape, and find him guilty of such offence as aforesaid, and thereupon he shall be liable to be punished accordingly.

Short title.

6. This Act may be cited as the "Criminal Law Amendment Act, 1893."

No. 26—1893.]

[September 12, 1893.]

ACT (1)

To repeal the Acts No. 44 of 1882, No. 28 of 1885, No. 26 of 1890, and No. 37 of 1892, and to consolidate, amend and add to the law regulating the Municipal Corporation and Government of Cape Town.

Preamble.

WHEREAS it is expedient to consolidate, amend and add to the existing law regulating the Municipal Corporation and Government of Cape Town, and with that object to repeal the Acts No. 44 of 1882, No. 28 of 1885, No. 26 of 1890, and No. 37 of 1892, to amend the constitution of the Municipal Corporation and the mode of election of Councillors, and generally to confer upon the Town Council of the City of Cape Town amended or increased rights, powers, and privileges with regard to municipal property, works and undertakings, and the acquisition of immovable property for municipal purposes, with regard to the levying of certain rates for municipal purposes, with regard to municipal officers, and with regard to the good, cleanly, and healthy order and condition of the Municipality of Cape Town and the inhabitants thereof, and with regard to maintaining and developing good municipal government therein by means of suitable rules and regulations made by the Council and approved of by the Governor:

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:—

PRELIMINARY.

¹ Repeal of former Acts.

1. The Act No. 44 of 1882, entitled the "Cape Town Municipality Act of 1882," the Act No. 28 of 1885, entitled the "Cape Town Municipality Act, 1882, Amendment Act, 1885," and Act No. 26 of 1890, entitled "The Cape Town Municipality Act Amendment Act, 1890," and the "Cape Town Municipal Amendment and Drainage Act, 1892," are hereby repealed: Provided

¹ Amended by Act 25, 1897 (p. 3772). So much of this Act as is inconsistent with Act 28, 1902, is repealed (p. 4468).

that the Town Council of the City of Cape Town constituted under this Act shall be subject and liable to every contract, engagement, claim, debt and demand to which the Town Council of Cape Town, constituted under the Act 44 of 1882, is subject or liable at the time of the taking effect of this Act, and in like manner shall be vested with or entitled to all rates, assets, benefits, rights and claims which the last mentioned Town Council was at the time of the taking effect of this Act vested with or entitled to.

2. The Municipality of Cape Town (hereinafter styled the Municipality) shall include the space of ground situated within the following limits, that is to say:—From the outside boundary of the military lines at Fort Knokke along the said lines to their termination at Zonnebloem; thence in a straight line to the summit of the Devil's Mountain; thence along the edge of the summit of Table Mountain to the point of the edge of the said mountain nearest the Lion's Head; thence in a straight line to the Government fountain in the kloof near the block-house; thence along the ravine through which the said fountain empties itself into the sea from the point where the said fountain empties itself into the sea along low water mark to where the western boundary line of the property formerly belonging to the late Mr. Frederick Liesching (called Botany Bay), prolonged northwards runs into the sea; thence along the last mentioned boundary line to its southern extremity; thence, by a line running in a straight direction, to the Lion's Head; thence, eastwards along the ridge and on the line which divides the waters flowing therefrom to the north and south, to a point where the line of the west side of Strand-street, prolonged northwards, shall intersect the southern boundary line of the land now or heretofore belonging to Mr. Wessels (being Lot No. 1 of the Green Point lots), prolonged upwards and westwards; thence downward along the said boundary line, and by a prolongation of the said boundary line in a straight direction downward and eastward across the Somerset or Green Point Road, to a point twenty yards to the eastward of the said road; thence by a line running parallel with and twenty yards to the eastward of the said road and of the cross road branching therefrom to Three Anchor Bay, to low water mark; thence along low water, to the point first mentioned.

3. The Municipality shall be divided into six separate districts which shall be proclaimed by the Governor in the *Gazette*, and any readjustment of or alteration in any of the said districts shall likewise be so proclaimed by publication in the *Gazette*, and the production of the *Gazette* shall be proof thereof in any proceeding or action: Provided, always, that until any such division, re-adjustment, or alteration shall have been made under this provision the existing districts into which the City of Cape Town is divided shall remain as at present constituted.

4. There shall be in the Municipality a body corporate, which shall take and bear the name of "The Town Council of the City

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Limits of Cape
Town MunicipalityDivision of Town
into six Districts.Incorporation of
"Town Council of
Cape Town."

No. 26—1893.

of Cape Town," and by that name have perpetual succession and which shall have a common seal, shall by that name sue and be sued, and shall 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 thereof.

5. The Town Council of the City of Cape Town (hereinafter referred to as the Council) shall consist of eighteen councillors (one of whom shall be the Mayor), who shall be elected in manner hereinafter provided by the voters whose names shall appear in the voters' roll of the said Municipality voting as one constituency.

MUNICIPAL COUNCIL.

Qualification of Councillors.

6. Every male person of full age, who is qualified to vote at elections of Councillors under this Act, 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 and not be disqualified under the terms of this Act or otherwise: Provided, however, that the provisions of this Act shall not in any way affect the status of existing Councillors during their present terms of office.

Disqualifications.

7. No person who is a member of the Council or Board of any Municipality other than that of the City of Cape Town, or is a member of any Village Management Board, no person whose estate shall be in liquidation under assignment in trust for his creditors, no insolvent who shall not have obtained his rehabilitation, no alien who has not been naturalized, no person not qualified to vote at elections under this Act, no person of unsound mind, and no person who is disqualified by this Act, shall be capable of being elected or of continuing a Councillor.

Further disqualifications.

8. No person holding any office or place of profit under Government, or under or in the gift of the Council, or who is directly or indirectly by himself or his partner concerned in or participating in the profit of, any contract with the Council, or concerned in, or in the profit of, any work to be done under the authority of the Council, shall be capable of being elected or continuing a Councillor: Provided that nothing in this section contained shall extend or apply to any contract entered into by any company, partnership or association consisting of seven or more 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 Council shall offer to sell by public competition.

No Councillor to accept salary, &c.

9. No person elected a Councillor shall have or receive any salary, or shall exact, take or accept any fee or reward whatsoever, for or on account of anything done as such Councillor, nor shall he act as agent for any ratepayer at any meeting of the committee appointed and acting under section ninety-one of this Act.

10. All proceedings of the Council or of any person acting as Mayor, Deputy Mayor, Councillor or Town Clerk as the case may be, shall notwithstanding that it be discovered that there was some defect in the election or appointment of any 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.

No. 26--1893.

Validity of Council's proceedings, notwithstanding certain defects in election.

11. Any Councillor who shall cease to possess the qualification by this Act provided, or shall absent himself from meetings of the Council for four consecutive ordinary meetings without leave from the Council having been had and obtained, or who is a paid agent for a candidate at any municipal election under this Act, during his term of office shall, *ipso facto* vacate his office, and the Mayor may at any meeting of the Council declare any such vacancy which may have occurred, subject to review, by motion, to the Supreme Court: and in case any person elected a Councillor shall die, or become disqualified under the terms of this Act, or cease to be qualified to be a Councillor, or shall resign, or shall refuse to accept the office of Councillor, or in case of any vacancy happening in any manner whatever, then such vacancy shall forthwith be filled up in the manner directed by this Act; but subject nevertheless to the provision hereinafter made as to vacancies occurring within three months of the annual election.

In cases of disqualification of Councillors

VOTERS.

12. The list of persons qualified to vote at the election of Councillors in force at the time of the taking effect of this Act, shall remain conclusive evidence of the qualification of any person to vote at any election of members of the said Council or any meetings of voters, and upon the taking of a poll of the voters of the Municipality, until a Voters' Roll shall have been made in pursuance of the provisions of this Act.

Who to vote prior to preparation of Voters' Roll under this Act.

13. Every person of full age not disqualified under the provisions of this Act, who on the fifteenth day of March 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 Voters' Roll for the Municipality, according to the following scale:

Qualification of Voters.

- (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.

14. When more persons than one are either as partners or otherwise jointly liable to be rated in respect of any property, or

Provisions in case of joint owners or occupiers of property.

No. 26—1893.

are joint occupiers of any property upon the assessed value of which being not less than one hundred pounds rates are assessed such persons shall be jointly and severally liable for all rates levied in respect of such property, and shall if not otherwise disqualified be entitled to be enrolled upon the Voters' Roll aforesaid; provided that

- (a) The number of votes to which each shall be entitled shall be ascertained by dividing the assessed value of the property by the number of such persons;
- (b) Unless the assessed value of the property when divided by the number of such persons is not less than one hundred pounds sterling only that one of such persons shall be entitled to vote in respect of such property who shall be named in writing by them all and enrolled in the Voters' Roll, in which case the number of votes the said person shall be entitled to give shall be calculated upon the whole value of the property;
- (c) No person shall be entitled to be enrolled under this section by virtue of being a member of or shareholder in any joint stock company, society, or association, owning or occupying any property.

Companies as voters.

15. Every Society, Association or Company owning or occupying property in the Municipality shall be entitled to be enrolled on the Voters' Roll aforesaid with the same rights and subject to the same restrictions as are hereinbefore given to or imposed upon persons of full age, and shall be entitled to vote by a Director, Manager, Secretary or other official of the Society, Association or Company duly authorised to that end, whose name shall have been duly placed upon the said Voters' Roll as representative of the Society, Association or Company.

Enrolment of voter in a single district.

16. Every person entitled to be registered as a voter and who shall be the owner or occupier, joint owner or joint occupier of immovable property, in more than one of the districts of the Municipality, shall be entitled to elect the district in which he will vote, and should he decline or fail to make such election he shall be registered as a voter in such district as the Council may think proper; but his voting power shall be estimated with regard to his ownership or occupation in the whole municipality and not merely in the particular district in which he is enrolled as a voter.

Persons disqualified as voters.

17. 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 due and payable three months or more before the day of voting.
- (2) Persons at any time convicted of treason, or murder, or until the lapse of five years from the date of release of any person convicted of rape, theft, perjury, bribery, of receiving a bribe or of any other corrupt practice at any

election, or any infamous crime, unless a free pardon shall have been granted.

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- (3) Persons whose names do not appear upon the Voters' Roll for the time being.

MAKING OF VOTERS' ROLL.

18. The Council shall forthwith, after the passing of this Act, and thereafter biennially in the month of April, cause a list to be made of all persons qualified to be enrolled on the Voters' Roll under the provisions of this Act, which list shall be subdivided into six parts so as to show the persons entitled to vote within the several districts in the Municipality, each of which parts shall respectively show the names of the voters of that district in alphabetical order of streets (1), allot a certain number of each voter, and contain the full name, residence, qualification and occupation of each voter, and the number of votes to which he is entitled, and such lists shall be and remain open to public inspection.

List of voters to be made biennially.

19. The Mayor or Town Clerk, forthwith after the making of such list, shall cause such list to be affixed in some conspicuous place in the Town Hall, and cause to be appended thereto, and published in one or more local newspapers, a notice of not less than fourteen days, that all objections and claims to be enrolled will be heard and determined at some time and place to be herein stated.

Notice of objections to List.

20. The Council shall hear and determine all claims and objections and may enrol the names of any voters which have been omitted, and strike out the names of all persons not entitled to be enrolled; provided that no name of any person shall be struck out until such person shall have had two clear days' notice of the investigation of his qualification, and shall be heard in regard thereto should he so desire. The meetings of the Council for hearing and determining such claims and objection may be adjourned from time to time, and any decision may be brought on motion by petition under review of the Supreme Court if notice of review be given by any interested person within two clear days after the declaration of such decision.

Council a Court to determine on objections.

21. The list when so settled and amended shall, subject to any addition which may from time to time be made in manner herein-after provided, be the Voters' Roll for the Municipality of the City of Cape Town, until the next Roll shall in like manner be completed, and such Roll, with such additions as may be made thereto in due form, shall be deemed and taken to be the conclusive and only proof of the right of every person enrolled therein to act as a voter in the Municipality of Cape Town, and in respect of the number of votes for which he is enrolled.

Roll to be in force till new one framed

22. Any person who after such Roll shall have been completed shall make application in writing to the Council to be enrolled as a voter, and shall prove his qualification and not be disqualified

Additions to Voters' Roll.

¹ Printed as amended by Act 28, 1902 (p. 4468).

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under this Act, shall be entitled to be enrolled as a voter and have his name added to the said Roll; provided that no enrolment in pursuance of the terms of this section shall be made upon application made after the publication of the notice referred to in section twenty-eight until after such election, and that the non-enrolment of any voter upon any such application shall not invalidate any election made after the date of such application, and that any voter whose name has been omitted merely by reason of the non-payment of rates in accordance with section thirteen may make application under this section upon proof that such rates have been paid.

ELECTION OF COUNCILLORS.

Existing Council-
lors remain in office

23. The Councillors in office at the time of the taking effect of this Act shall be the first Councillors under this Act, and each of them shall respectively remain in office for a period of one month longer than he would have done had the Act No. 44 of 1882 not been repealed, but only so long as he shall be duly qualified and not disqualified under the terms of the said Act No. 44 of 1882.

Annual election of
Councillors.

24. An annual election of Councillors shall take place on the second Monday in the month of September of each and every year for the purpose of electing six Councillors to replace an equal number of retiring Councillors, and for the purpose of electing Councillors to fill up such casual vacancies as may require to be filled up under the provisions of this Act.

Duration of Coun-
cillors' terms of
office.

25. The six candidates at such election who shall receive the highest number of votes shall hold office for a period of three years, and the casual vacancy or vacancies referred to in the following section shall be filled up by the candidate or candidates having the next highest number of votes or who shall lose election by lot under section forty-four. In the event of there being one Councillor to be elected to fill a casual vacancy, he 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 in the event of there being two or more candidates elected to fill casual vacancies, he of them who stands highest at the election shall hold office for the remainder of the term of the vacating Councillor who had the longest period to serve before his term of three years expired, and the next highest candidate shall take the place of the Councillor with the next longest unexpired term of office, and so on.

Casual vacancies.

26. When and as often as any casual vacancy shall occur in the Council, the Councillor or Councillors to be elected to fill such vacancy shall be elected in the manner provided for the election of candidates at the annual election. But if such vacancy or vacancies shall occur within three months of the ensuing annual election, then the vacancy or vacancies shall not be filled up at a special election, but shall remain until the holding of the annual

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election: Provided, always, that such vacancies do not exceed three in number, in which case they shall be filled up at a special election held for the purpose, and the Councillors so elected shall hold office for the remainder of the term for which the Councillors whom they succeed would otherwise have remained in office, the candidate receiving the highest number of votes succeeding the vacating Councillor with the longest term to serve, he with the next highest number of votes succeeding the Councillor with the next longest term to serve, and so on.

27. The Mayor or in case there is no Mayor, or he be absent or incapable of acting, then the Deputy Mayor, and if there is no Deputy Mayor, or he be absent or incapable of acting, then the Town Clerk, and failing the Town Clerk, then such Councillor as the Council may appoint, shall be the returning officer at all municipal elections, and all such elections shall be held before such returning officer; provided, always, that no returning officer shall be or become a candidate for office at such election.

Returning officer.

28. The Town Clerk shall, not less than twenty-one days prior to any election of a Councillor or Councillors, publish a notice of such election in one or more local newspapers, and in such notice shall specify a day, not being less than ten or more than fourteen days from the date of giving of such notice, as the day of nomination, and shall require all candidates at such election to be nominated in manner hereinafter mentioned.

Nomination for Councillors.

29. No person shall be a candidate at any election or qualified to be elected a Councillor unless he shall have received a requisition signed by at least five enrolled voters, and shall have transmitted such requisition, with his acceptance thereof, given under his own hand or that of his duly qualified agent, to the Town Clerk ⁽¹⁾ not later than the hour of 4 o'clock p.m. on or before the day appointed for receiving nominations: Provided that if any such voter shall sign more than one such requisition, the Town Clerk shall erase his name from all such requisitions as he shall have signed, which shall, for the purpose of nomination, be deemed never to have been signed by him. If the number of candidates who are nominated as aforesaid does not exceed the number of Councillors to be elected, such candidates shall be deemed and taken to be duly elected on the day of nomination. If, however, there shall be less than the required number of candidates nominated then fresh nominations to fill the vacancies shall be called for in manner aforesaid.

Manner of nomination.

30. In the event of the number of nominations exceeding the number of Councillors to be elected, the Town Clerk shall, forthwith after the expiry of the nomination day, inform the returning officer by this Act appointed, of the necessity of an election being held, and such returning officer shall forthwith cause a notice to be published in one or more local newspapers, stating the names of the candidates nominated, the day upon which a poll will be

Notice of election

¹ Printed as amended by Act 28, 1902.

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taken for the election of Councillors, not being less than six days or more than fourteen days from the date of such notice, nor less than twenty-one days from the date of the notice calling for nominations, the number of vacancies to be filled, and the places where the poll will be taken. And the poll shall take place accordingly, and shall commence at nine o'clock in the forenoon and close at seven (1) o'clock in the afternoon.

Election arrangements.

31. For the purposes of every election the polling station of the Municipality shall be the Town Hall or such other places as the Council may determine. For all elections the returning officer shall provide such compartments, desks, ballot boxes, ballot papers, stamping instruments, copies of register of voters and other things; appoint presiding officers, and polling officers, and do such other acts and things, and make such arrangements to facilitate the taking of the poll as he may deem advisable for effectually conducting the election; and everything done by the returning officer shall be at the expense of the Council.

Presiding officer.

32. The presiding officer and other officers at the polling station shall keep order thereat, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except the returning officer, the clerks, the candidates, the agents of the candidates, and the constables on duty.

In case candidate desires to retire from contest.

33. If after a poll has been appointed at any election any candidate nominated for election shall be desirous of retiring from the candidature, he may, not later than three days before the day of polling, sign and deliver a notice of his retirement to the Town Clerk, who shall forthwith hand the same to the returning officer, who 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, declare the remaining candidates to be on that day 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.

Candidate's agents.

34. Every candidate may, if he think fit, appoint in writing under his hand, a person to represent him at the polling station to see that the votes are fairly taken, and may also appoint in writing an agent to represent him at the counting of the votes by the returning officer.

Enquiries as to right to vote.

35. No inquiry shall be made at any election as to the right of any person to vote, except that the polling officer may himself, or at the request of the agent of any candidate, put to any voter the following questions, or any of them, and no other:—

- 1st. Are you the person whose name appears as A.B. on the voters' roll of voters in this district?
- 2nd. (2) Have you already voted at this election?

¹ Printed as amended by Act 28, 1902.

² And in case of person entitled under Section 15 to Vote in a representative capacity "Have you already voted at this election in the capacity in which you now seek to record your vote?" See Act 28, 1902, § 4 (p. 4469).

3rd. Have all sums due and payable by you or for which you are liable in respect of rates payable three months or more before this date been paid?

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And no person who shall refuse to answer any such question, or who shall not answer the first and third of such questions in the affirmative, and the second of such questions absolutely in the negative, shall be permitted to vote.

36. Any person who shall wilfully make a false answer to any of these questions shall be liable to a penalty not exceeding ten pounds, to be recovered in the court of the Resident Magistrate, or in default of payment to imprisonment for a term not exceeding three months.

Penalty for false answers.

37. All the acts enumerated as acts of bribery and corruption, personation, or undue influence in any Act for the time being in force regulating or in respect of elections of members of Parliament, shall, *mutatis mutandis*, be deemed to be acts of bribery, corruption, personation, 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.

Bribery at elections.

38. Every voter coming to record his vote shall vote without undue delay, and any voter who delays unduly in recording his vote may, unless he shall forthwith proceed to vote upon being thereunto required by the presiding officer, be removed from the polling station, upon the instruction of the presiding officer, and shall not be entitled to vote at the election.

Voter required to vote without delay at polling station.

39. The voting at all elections held under the provisions of this Act shall be by ballot, which shall be conducted in substance and as nearly as is material as follows:—

Manner of voting.

(a) The polling officer shall ascertain that the name of the person coming to vote is a voter enrolled upon the Voters' Roll, and having ascertained that such person is so enrolled and his number on such Roll, shall enter his number and the number of his votes upon the counterfoil in the voting ticket book, and shall then tear out the ticket corresponding to such counterfoil, and having stamped the same with a perforating stamp provided for that purpose, shall hand it to the voter. And every voting ticket shall be in the form set forth in the Schedule, with such printed instructions as the Council may approve.

(b) When the voter has received such ticket, on which shall be printed in alphabetical order the names of all the duly nominated candidates at such election, he shall take the same to the compartment and desk provided for that purpose, and signify for whom he desires to vote by secretly placing a cross or crosses equal to the number of his votes, opposite the names of the candidate or candidates whom he wishes elected, not exceeding the number

Zz

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to be elected at such election. He shall then fold the ticket so that the perforated stamp may be visible, and having held up the ticket so that the polling officer can recognise the perforated mark, shall drop the ticket in the ballot box placed in front of the polling officer.

- (c) Should the voter either sign his name on the ticket or make any mark or word by which his voting paper could become recognisable then such voting paper shall be considered blank and not taken into account.

Spoilt ballot papers.

40. If a voter inadvertently spoils a voting paper he may return it to the presiding officer, who will, if satisfied with such inadvertence, give him another paper, and retain the spoilt paper, and the spoilt ballot paper shall be immediately cancelled and the fact of such cancellation shall be noted upon the counterfoil.

Blind, &c., voters.

41. Any presiding officer on the application of any voter, who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, shall before such agents of the candidates as may be present cause the vote or votes of such voter to be marked on a ballot paper or papers in manner directed by such voter, and the ballot paper or papers to be placed in the ballot box and the name and number on the Voters' Roll of every voter whose vote is marked in pursuance of the terms of this section, and the reason why it is so marked shall be entered on a list in this Act called the "list of votes marked by the presiding officer."

Tendered ballot papers.

42. If a person representing himself to be a particular voter applies for a ballot paper after another person has voted as such elector the applicant shall, upon duly answering the questions, permitted by this Act to be asked of voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (hereinafter called a tendered ballot paper) shall not be put in the ballot box, but shall be given to the presiding officer appointed for that purpose ⁽¹⁾, and endorsed by him with the name of the voter and his number in the Voters' Roll, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the Roll shall be entered in a list in this Act called the "tendered votes list."

Sealing up of ballot boxes, &c.

43. Every polling officer shall be subordinate to some presiding officer, and such presiding officer as soon as practicable after the close of the poll shall, before such agents of the candidates as shall be present receive from such polling officer and make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

- (1) Each ballot box entrusted to any polling officer under his direction unopened but with the key attached; and
- (2) The unused and spoilt ballot papers placed together; and
- (3) The tendered ballot papers; and

¹ Printed as amended by Act 28, 1902.

- (4) The marked copies of the Voters' Roll and the counterfoils of the ballot papers; and
- (5) The tendered votes list, and the list of votes marked by him as presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the head "physical incapacity," and shall deliver such packets to the returning officer.

The packets shall be accompanied by a statement made by each presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers.

44. (1) Upon the receipt of the aforesaid packets from such presiding officer by the returning officer, the latter shall take charge of the same, and shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate, and in such counting of the votes the returning officer shall have regard to the number of votes the voter is entitled to give as shown by the number inserted at the right hand top corner of the voting ticket or ballot paper, and shall count and record the votes given on each ticket or paper accordingly, the same number of votes being recorded for each candidate for whom the voter votes, whatever be the number of crosses placed opposite the name or names of the candidate or candidates for whom the voter desires to vote, and shall forthwith declare the candidate or candidates who are elected under the provisions of this Act according to the vacancies to be filled up. In the event of the number of votes being found to be equal for any two or more candidates all of whom cannot be declared elected to fill an ordinary or casual vacancy in the Council as the case may be, the returning officer shall by lot immediately determine the election. The decision of the returning officer shall be final subject to reversal on petition to or action in the Supreme Court questioning the election or return in like manner, *mutatis mutandis*, in which elections or returns of members of Parliament may by law be brought in question.

Declaration of poll.

Counting of votes

45. The returning officer shall reject and not count any ballot papers which,—

- (a) Do not bear the official mark;
- (b) Give votes to more candidates than the voter is entitled to vote for;
- (c) Bear any writing or mark by which a voter can be identified otherwise than is in this Act prescribed;
- (d) Are unmarked or void for uncertainty.

What ballot papers shall be rejected.

46. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to" if an objection be in fact made by any agent to his decision.

Marking of rejected ballot papers.

¹ Printed as amended by Act 28, 1902.

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Sealing up of
papers by returning
officer.

47. (1) The returning officer shall immediately after the declaration of the poll enclose in separate packets the counted and rejected ballot papers. He shall not open any sealed packet of tendered ballot papers or marked copy of the Voters' Roll and counterfoils, but shall proceed before such agents of the candidates as are present to reseal after examination each of the other sealed packets received by him from the presiding officers. All the packets aforesaid, together with a certificate stating the names of the Councillors declared to be elected, shall be enclosed together in one sealed packet and delivered to the Town Clerk, who shall safely keep such sealed packet for six months, after the expiration whereof the said packets and all papers contained therein may be destroyed in the presence of two Councillors, and a copy of the certificate stating the names of the Councillors declared to be elected, duly signed by the returning officer shall be laid before the Council at the meeting immediately following such election of Councillors for the purpose of recording the Minutes of Proceedings and shall be recorded in such Minutes of Proceedings accordingly.

Return of Coun-
cillors elected.Sealed papers to
remain unopened.

48. No such sealed packet as aforesaid shall be opened during the said period of six months unless by order and in presence of the Council or by order of the Resident Magistrate, the Supreme Court or any judge thereof; and if any person shall, contrary to the provisions hereof, wilfully break the seal or open any such packet he shall, upon conviction, be liable to a penalty not exceeding twenty pounds, which may be recovered in the Court of the Resident Magistrate.

Council may
make regulations.

49. The Council shall have power from time to time to issue instructions and make regulations for the purpose of more effectually carrying out the provisions of this Act, as to the proceedings for election by ballot, provided that such instructions and regulations are not inconsistent with its terms.

Immaterial mis-
takes not to affect
validity of election.

50. No election shall be declared invalid by reason of any mistake or non-compliance with the terms of this Act if it appears to the Court having cognisance of the question that the election was conducted in according with the principles laid down in this Act and that such mistake or non-compliance did not affect the result of the election.

MAYOR AND DEPUTY (2) MAYOR.

Appointment of
Mayor.

51. At the first meeting of the Council held after every annual election of Councillors the Councillors present shall elect one Councillor to be Mayor, who shall be styled Mayor of the city of Cape Town, and who shall forthwith enter upon his office and continue therein until his successor be appointed after the next ensuing annual election of Councillors, unless his office be sooner vacated, and in case of such vacancy then a successor shall at the

¹ Printed as amended by Act 28, 1902.² See also § § 10 & 11 Act 28, 1902.

meeting next but one of the Council after such vacancy be chosen by the Councillors from amongst themselves, who shall forthwith enter upon his office, and serve as Mayor for the remainder of the period for which the vacating Mayor was elected: Provided, always, that should a Mayor for any reason not be elected at a meeting as herein prescribed, he may be elected at the first ordinary meeting of the Council held thereafter or at a special meeting called for the purpose.

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52. (1) That Councillor in office at the time of the election of a Mayor after the annual election aforesaid, who shall last have held the office of Mayor in the Council at any time prior to the then elected Mayor, and failing any such Councillor still in office, such other Councillor as the Council shall elect shall be Deputy Mayor, and shall during the absence or illness of the Mayor do all acts which the Mayor as such might do. The fact of the absence or illness of the Mayor shall be notified by the Town Clerk or his deputy to the first meeting of the Council after the illness or absence of the Mayor has happened, and be recorded in the Council's minutes. Such record shall be a sufficient authority for all acts done within the scope of this Act by the Deputy Mayor in lieu of the Mayor. In the event of the office of Deputy Mayor becoming vacant by reason of death or resignation, or by his ceasing to be a member of the Council the Council shall, at the next ordinary meeting following the meeting at which such vacancy is reported, fill the vacancy.

Deputy Mayor.

PROCEEDINGS OF COUNCIL.

53. The Council shall hold ordinary meetings not less than once in each month for the transaction of business, on such days and at such hours as the Council shall from time to time appoint, and, when such appointment is made, the Town Clerk or his deputy shall give notice thereof to each of the Councillors, and they shall afterward, until the time of each ordinary meeting is changed and notice of the change given to the Councillors, be required to attend such ordinary meetings without notice.

Ordinary meetings.

54. (1) The Mayor or any three Councillors may at any time convene a special meeting of the Council, and if convened for the day upon which an Ordinary Meeting of the Council is held, such special meeting may be held either before or after the hour at which the ordinary meeting is held.

Special meetings.

55. (1) All notices of any special meeting or adjourned meeting of the Council shall be in writing, or print, or partly in writing and partly in print, and shall be delivered, or sent by post or otherwise, to the usual place of business within the Municipality, or to the residence of each of the Councillors, twenty-four hours at least previous to such 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

Notices of adjourned and special meetings.

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- Meetings may be adjourned. thereof. But want of service of such notice on any member of the Council shall not affect the validity of a meeting.
- Meetings to be open to public. 56. The Councillors present at any meeting may from time to time adjourn such meeting; and if at any meeting of the Council a quorum be not present, the Councillors present or the major part of them voting, or any one Councillor, if only one be present, may adjourn such meeting.
- Chairman of meetings. 57. (1) All meetings of the Council shall be open to the public provided that this section shall not apply to any Committee meeting either of the Council or of any Committee thereof if a resolution to exclude the public be carried; provided that not less than six Councillors shall vote for such resolution.
- Quorum. 58. At every meeting of the Council the Mayor if present shall be Chairman. If the Mayor be absent, then the Deputy Mayor shall be Chairman. If neither the Mayor nor Deputy Mayor be present such Councillor as the members of the Council then present choose shall be Chairman.
- Casting vote of Chairman. 59. All acts of the Council and all questions coming or arising before the Council may be done and decided by the majority of such Councillors as are present and vote at a meeting held in pursuance of this Act; provided the whole number present at the meeting whether voting or not be not less than seven.
- Minutes. 60. In case of an equality of votes the Chairman at any meeting of the Council or of a committee shall have a second or casting vote.
- Minutes, &c., in the English language. 61. Minutes of the proceedings of every meeting of the Council, or any committee, shall be drawn up and entered in books kept for that purpose, which shall be signed at the same or the next ensuing meeting, by the Mayor, or by a Member of the Council or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute was signed and such minutes so signed, or a copy of or an extract therefrom, attested by the Mayor and Town Clerk shall be received in evidence in proceedings criminal or civil without further proof.
- Acts of Council unaffected by vacancy. 62. All minutes of the proceedings of the Council, and all books, writings, accounts, and records thereof, shall be made and kept in the English language, it being left to the option of the members of the Council to address the Council either in English or Dutch.
- Committees. 63. No act or proceeding of the Council shall be questioned on account of any vacancy in their body or any lack of qualification or any disqualification in regard to any Councillor taking part in such act or proceeding.
64. The Council may from time to time appoint out of their own body an Executive Committee and such and so many committees, either of a general or special nature, and consisting of such number of persons as they think fit, for any purposes which in the opinion of the Council would be better regulated and managed by

means of such committees and may also delegate to any committee such powers as they may think fit, and 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.

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Powers of Committees.

65. The acts of a committee shall not be binding upon the Council until submitted to and approved of by the Council, excepting in those cases in which the Council shall by resolution have authorised a committee to manage, regulate, or conclude any matter or matters without further reference to the Council.

Council to approve acts of Committee.

66. All questions brought before any committee shall, provided a quorum be present, be decided by a majority of the votes of the members present and voting.

Decision by majority of committee.

67. Until the contrary be proved every meeting of the Council or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are the proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

Meetings to be presumed to be duly held.

68. The Council may from time to time make rules of order, not inconsistent with the terms of this Act, for the regulation of their proceedings and business, and may vary or revoke the same; and, until they do so, the existing rules of order shall be and remain in full force excepting in so far as they may be opposed to the provisions of this Act, and in the said Rules of Order, the Mayor, Deputy Mayor, or Chairman (as the case may be) shall have power to name a Councillor: and upon motion made and adopted by not less than two-thirds of the Councillors present and voting on the question, to suspend a Councillor for a period not exceeding the conclusion of the next succeeding ordinary meeting of the Council.

Rules of order.

ACCOUNTS AND AUDIT.

69. The Council shall annually, as soon as conveniently may, be after the annual election of Councillors, elect an auditor, and the Governor shall appoint one, and there shall be paid to them out of the municipal funds such remuneration as the Council may deem fitting. Upon the occurrence of any vacancy in the office of auditor by death, removal, resignation or otherwise, the Council or the Governor, as the case may be, shall supply such vacancy forthwith, and all elections for auditors shall be conducted in manner similar to that employed in the election of officers of the Council.

Auditors.

70. (1) The auditors shall before the close of the last day of every month examine and certify to a return prepared by the Treasurer, showing:—

Monthly return by treasurer, and auditors' duties.

(a) The amounts of moneys voted by the Council during the preceding month for specific objects which shall be

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- mentioned, with the date of such votes, and whether the same are payable out of loan account or other revenue;
- (b) The total amount expended to the last day of the preceding month in connection with all matters, objects or things contained in the Annual Estimates of Expenditure, and the balance remaining unexpended under each head of expenditure.
- (c) The amounts recovered on account of revenue and the balances unrecovered under each particular head, inclusive not only of such items as were contemplated in the estimate of probable revenue prepared at the commencement of the year in terms of this Act, but also of sources of revenue which have occurred during the year.

Further duties of auditors.

71. The auditors on the occasion of each monthly audit shall, *inter alia*, certify that they have examined every voucher, that the books agree therewith, and that the amounts referred to therein have been correctly entered in the books in accordance with the votes of the Council. They shall further render an account of all unauthorised expenditure and set out in detail all the accounts in which the expenditure shall have exceeded the amount voted by the Council.

Instructions to auditors.

72. The auditors shall further conform to, and carry out, any instructions which from time to time they may receive from the Council: provided the same be not in conflict with the provisions of this Act; and as far as possible the system of audit which they pursue shall be in accordance with the system and manner of audit carried on in the office of the Controller and Auditor-General of the Colony.

Examination of cash by auditors.

73. The auditors shall further, not less than once in every three months, make an examination, without previous notice to any one, of the books and cash in the hands of the Treasurer and shall compare the cash with the books and personally check the various balances, the cash in hand and the bank account, and thereafter make a special confidential report to the Council of the result of such examination.

Account books to be kept.

74. The Council shall cause books to be provided and kept at the Town Hall in Cape Town, which shall not be taken thence, except by leave of the Council, or by process of some competent court, in which shall be entered true and regular accounts of all sums of money received and expended for or on account of the purposes of this Act, and of the several articles, matters and things for which such sums of money shall have been disbursed and paid; and such books shall at all reasonable times be open to the inspection of the Councillors, and of every enrolled voter, and the Councillors and other persons aforesaid, or any of them, may take copies of or extracts from the said books without paying for the same.

Annual accounts.

75. (1) In the month of January in every year a true account shall be made, in writing, of all moneys received and paid by

¹ Printed as amended by Act 28, 1902.

virtue of this Act during the preceding year ending on the 31st day of December, and a copy or duplicate of such account, verified by solemn declaration of the Treasurer and certified by the auditors, shall be deposited with the said Council on or before the 31st day of the said month of January, and shall be open to the inspection of any enrolled voter, and an abstract thereof shall be advertised before the first day of March following in one or more papers published in Cape Town.

76. (1) The Council shall in the month of December in every year draw out an estimate of the probable revenue and expenditure for the year next ensuing, showing the several taxes or rates to be levied or assessed during the same, which estimate shall be signed by the Treasurer, Mayor and Town Clerk, and shall be open to the inspection of any enrolled voter, and an abstract thereof advertised in one or more papers published in the said city before the 31st day of the month of January in the year next ensuing. And after such publication of the said annual estimate a special meeting of the Council shall be held upon fourteen days' notice, for the purpose of finally considering and confirming the said estimate, and at such meeting it shall not be competent or lawful to place any new item on said estimates or to increase any item.

77. After the said estimate, amounts and abstracts in the two last preceding sections of this Act mentioned shall have been published, as therein directed, at least twice during the fourteen days, the said Council shall immediately after the expiration of the said period call a meeting of the Council upon not less than seven days' notice, to be advertised in one or more papers published in Cape Town, for the purpose of assessing any such rate or rates on the immovable property situate within the Municipality, not to exceed the rate or rates hereinafter provided, and to endure for such period, not exceeding twelve months, as the majority of Councillors present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this Act.

OFFICERS.

78. The Council shall from time to time appoint a fit person not a Councillor to be Town Clerk of the City of Cape Town, who shall hold office during the pleasure of the Council, shall perform such duties as the Council may determine, and shall have the charge and custody of and be responsible for the deeds, records and documents of the Council which shall be kept as the Council direct.

79. In case of the illness or absence of the Town Clerk, or in case the office of Town Clerk be vacant, the Council may appoint a Deputy or Acting Town Clerk from among the Council's officers to hold office during their pleasure, and all things required or authorised by law to be done by or to the Town Clerk may be done by or to the Deputy or Acting Town Clerk.

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Estimates of revenue and expenditure.

Levying of rates

Town Clerk.

Deputy Town Clerk.

¹ Printed as amended by Act 28, 1902.

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Treasurer.

Town Clerk and
Treasurer's offices
to be held by differ-
ent persons.
Officers of Coun-
cil.

Duties and re-
muneration of
officers.

Officers not to en-
gage in other busi-
ness.

Duties of Treas-
urer and other
officers as to ac-
counts and moneys.

80. The Council shall from time to time appoint a fit person, not being a Councillor, to be Treasurer of the City of Cape Town, who shall hold office during their pleasure.

81. The office of Town Clerk and Treasurer shall not be held by the same person.

82. The Council shall from time to time appoint such other officers as they may think necessary and, unless it shall be otherwise stipulated in the contract with or appointment of any such officer, may at any time remove any such officer upon a notice of not less than one month, or in case of misconduct without notice.

83. The Council shall require the Town Clerk, the Deputy or Acting Town Clerk, the Treasurer and all officers charged with the collection or the administration of moneys or the custody of documents or property of the Council to give such security as they think proper for the due execution of their offices, and may assign to every officer such duties and responsibilities as they may see fit, and shall allow him such remuneration as they think reasonable.

84. No officer appointed by the Council shall be engaged directly or indirectly in any other business, trade or profession than the business of the Council, save with the express sanction of the Council.

85. Every Treasurer and other officer appointed by the Council shall, at such times and in such manner as the Council shall direct, deliver to the Mayor, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge, and also of all moneys which shall have been by such officer received by virtue or for the purposes of this Act, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and every such other officer shall pay all money due from him to the Treasurer or as the Council shall direct, and if any such Treasurer or officer refuses or neglects to make or render such account, or to deliver up the vouchers relating to the same, or to make payment as aforesaid, or refuses or wilfully neglects to deliver to the Mayor, or to such person appointed to receive the same forthwith, after being thereunto required by the Mayor by notice in writing, under his hand, given to or left at his last or usual place of abode, all books, papers, and writings in his custody or power belonging to the Council, or relating to the execution of his duties, or to give satisfaction to the Mayor or such other person as aforesaid respecting the same, then and in every such case, upon complaint made by the Mayor or by such person as aforesaid to the Supreme Court or any judge thereof, the said court or judge may, if they or he shall see fit, order the officer, so refusing or neglecting, to appear at an appointed time and place, and if it shall appear to the said court or judge upon the hearing of the case, that any moneys remain due from such officer, such court or judge may, by decree of the said court, or warrant under the hand of the said judge, cause such money to be levied by distress and sale of the goods and

chattels of such officer, and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money and the charges of distraining and selling the said goods and chattels, or if it shall appear to such court or judge that such officer had refused, or wilfully neglected, to render and give such account or to produce the vouchers relating thereto, or that any books, papers or writings belonging to the Council or relating to the execution of his duties remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case it shall be lawful for such court or judge to make such order as to justice shall appertain and, if such court or judge think fit, to commit such offender to the common gaol within the Municipality, there to remain without bail until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid and until he shall have delivered up such books, papers and writings, or given satisfaction in respect thereof, to the Council, or to such other person as aforesaid, or until such other or future time as the said court or judge shall direct: Provided that nothing herein contained shall prevent such Treasurer, officer, or other person being tried, and, if found guilty, convicted and sentenced according to law for any crime or offence which he may have committed relative to any matter or thing entrusted to him under the provisions of this Act: and provided, further, that nothing herein contained shall prevent the Council from bringing an action for the recovery of any sum or sums due by the Treasurer, officer or other person to the Council.

86. No prosecution or commitment of any Treasurer or other officer or person shall acquit and discharge any surety or security that shall or may have been taken by or given to the Council, for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Liability of sureties for officers.

MAKING OF VALUATIONS.

87. The Council shall from time to time, but not less than once in every three years, cause a valuation of all immovable property within the Municipality to be made by one or more competent persons who shall be sworn appraisers appointed by the Master of the Supreme Court.

Making of valuation.

88. 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 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 Cape Town, 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

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property would, in my judgment, be likely to realise 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.

“Declared at———, this———day of———
“Before me———.”

And every such declaration shall be lodged with and preserved by the Council.

Particulars in
Valuation Roll.

89. The valuer or valuers shall frame the valuation roll in such a manner as to show:—

- (a) The name and address of the owner.
- (b) The name of the occupier (or if unoccupied to be stated).
- (c) Description of the property valued.
- (d) Name and situation of property.
- (e) Rateable value

Objections to
Valuation Roll.

90. When this valuation roll has been completed it shall be laid before the Council and a copy thereof shall lie at the office of the Council for the inspection of every owner or occupier of any property included therein who may at all reasonable times inspect the same, and the Council shall by notice published in one or more local newspapers and by circular call upon owners and occupiers to lodge in writing with the Town Clerk any objections they may have against the valuation of any property whether owned or occupied by them or not, within a specified time not being less than fourteen days from the first publication of such notice.

Council to appoint
committee to settle
Valuation Roll.

91. After the expiration of the time specified in such notice the Council shall appoint from among themselves a committee consisting of the Mayor and not less than two other Councillors who shall be assisted by two assessors to be appointed annually by the Governor, and form a valuation court, and such court shall thereafter at meetings duly called by the Town Clerk upon the instruction of the Mayor, proceed to consider the valuation roll and the objections made as aforesaid, and shall be entitled to make such alterations or amendments in the valuation roll as by them may seem expedient.

Notice of final
valuation to be
given to persons
interested.

92. When such court has completed its examination of the valuation roll, and has made such alterations and amendments therein as to it may seem necessary, the Town Clerk shall cause copy of such roll as settled to be made for the inspection of persons interested, and shall cause an advertisement to be published in one or more local newspapers not less than three times within a period of one week of the publication of the first advertisement and also a circular to be sent informing all owners and occupiers of landed property of the completion thereof and that the same will become fixed and binding upon all parties interested who shall not, before a date fixed in such notice not being less than fourteen days from the date of the first advertisement, bring the decision of the court in review before the Supreme Court on motion; provided, however, that no person shall be entitled to take any proceedings what-

ever for review who shall not have duly lodged an objection to the valuation as originally made or be interested as owner or occupier in a property the valuation of which shall have been increased by the valuation court and that no valuation shall be set aside or varied merely by reason that the circular notice referred to in this and section ninety of this Act shall not have been duly sent.

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93. Notwithstanding anything to the contrary in this Act stated, the Council may at any time direct that a valuation be made of any property discovered to have been omitted from the valuation roll, or of any buildings erected or improved, or of any property sub-divided, or of portions of any property which are occupied by different persons after any general valuation of property made as aforesaid, or may within three months after any general valuation of property, direct a valuation of any property which in the opinion of the Council is undervalued, and upon the making of any interim valuation, the same forms shall be observed as are in the last preceding section set forth with regard to general valuations, excepting that in the option of the Council the prescribed notice may be served, in writing, either upon the owners or occupiers of the property or properties affected instead of being published as aforesaid.

Interim valuation

94. Every valuer provided with written authority signed by the Town Clerk shall, for the purpose of making any valuation as aforesaid, have power to enter at all reasonable hours in the day-time into and upon any immovable property within the Municipality without being liable to any action on account thereof.

Power of entry by valuer.

95. All rates made or levied by the Council under the provisions of this Act shall be made or levied upon the valuation of immovable property framed in terms of this Act; and until such a valuation be made such rates shall be levied according to the existing valuation made under the Act 44 of 1882.

Rates leviable upon valuation.

MAKING OF RATE.

96. It shall be lawful and competent for the Council to impose and levy a rate of not more than fourpence in the pound in any one year on the value of all rateable immovable property in the Municipality.

Making of rates.

97. And the person or persons in whom shall be vested on the 15th day of March in each year the legal title to any immovable property shall be the person or persons primarily liable for the rates imposed during that year in respect of such property; provided that any person entitled to the usufruct or any other limited interest for life in respect of any such property shall be deemed to be invested with the legal title for the purposes of this section; and provided, always, that nothing in this Act contained shall in any way affect the provisions of the "Crown Property Rating Act, 1891," and the "Public Libraries and Museums Relief Act, 1892," or render liable to be rated any places used exclusively for public worship, public schools, or institutions supported by public charity.

Liability for rates.

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Application of
moneys received
from rates.

98. The rate in the last preceding sections mentioned shall be voted and levied for all municipal objects, purposes and services, including water supply and water works, sewerage, drainage, improving, cleaning, repairing and maintaining streets and squares, the construction and repairs of municipal buildings, payment of municipal servants, and all and every other municipal object or purpose necessary, in such manner as the Council shall deem advisable and expedient, and at the time of making the said levy it shall be determined how the amount to be so raised shall be apportioned and appropriated among and to such objects, purposes and services.

Notice of rates
payable.

99. As soon as possible after the passing of a resolution to levy a rate on immovable property, in addition to every other notification required by law, a notice shall be posted to the address of each person by whom any money is payable because of such resolution, which notice shall set forth the rate levied, the property assessed, the amount payable, the latest date when, and the place at which payment must be made; provided, however, the non-receipt of such notice shall not be any defence in any proceeding instituted for the recovery of any such rate.

When rates pay-
able.

100. All rates levied under this Act shall be due and payable at the office of the Treasurer of the Council on the 15th day of March of each year, and every person who shall be in default in payment of any such rates after the 30th day of June in each year, shall become liable to pay, and shall pay in addition to the rate in regard to which he shall have made such default, an additional sum equal to one-twentieth of the rate, and such additional sum together with the original rate shall be deemed to be the rate payable under this Act, and shall be recoverable as such by any of the means provided by this Act.

RECOVERY OF RATES.

Recovery of rates.

101. After any rate levied by virtue of this Act shall have been assessed, the same shall be published in one or more local newspapers, and the Council may appoint one or more collectors for the purpose of collecting the amounts due and payable, and the said collectors are hereby authorised to demand and receive the amounts so to be collected, which shall, on non-payment thereof, be recoverable at the suit of any such collector, upon production of any such local newspaper, by action in the court of the Resident Magistrate of Cape Town, or in case any person liable for any rate shall not reside within the Municipality, then either in the court of the Resident Magistrate of Cape Town, or in the court of the Resident Magistrate of the district in which such ratepayer shall reside: Provided that as often as any ratepayer not resident in the Cape Division shall be proceeded against in the court of the Resident Magistrate of Cape Town, the summons directed to such ratepayer shall be served upon the person, if any, in occupation of the premises in regard to which the rate alleged to be due is claimed. And each collector

shall give security to the Council for the due execution of his office to such amount as the Council shall deem sufficient.

102. If the amount of any rate which under the provisions of this Act shall have been assessed on any immovable property liable to be rated or portion thereof shall not be paid by the owner thereof, it shall be lawful for the Council to sue either the occupier thereof at the time such rate was due and payable or the owner separately or both of them in one and the same action, each for the whole, before any competent court, and to obtain the judgment and process of such court for the recovery of the same, reserving to such occupier such relief against the owner as he may be lawfully entitled to: Provided that every person who, as occupier of any such property or portion thereof, shall at any time have become liable to pay any rate which may have been assessed thereon, shall continue to be liable, and may be sued in manner aforesaid for the same, notwithstanding that he shall have ceased to occupy such property or portion thereof: Provided, also, that any and every rate assessed under the provisions of this Act shall in so far as the owner of any property is concerned, be and be deemed to be a charge upon the property rated and recoverable against the owner at the time such rate was levied or any future owner; provided, always, that no future owner of property shall be liable for any rates which became due and payable at any period more than one year prior to the date upon which he became owner of the said property.

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Joint and several liability of owner and occupier for rates.

103. In any proceeding to levy or recover rates, or consequent on the levying or recovering of any rate, as well as in all other legal proceedings under the provisions of this Act, the Valuation Rolls, Rate Books and Records of the Council, and all entries made therein, and extracts or certified copies thereof signed by the Town Clerk and sealed with the seal of the Council, and also all copies of any newspaper containing any notice necessary to be proved, 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 party to any such proceeding to offer evidence to prove the contrary.

Evidence in suit for recovery of rates.

LOANS.

104. It shall be lawful and competent for the Council to borrow at any time on security of the rates any sum or sums of money upon obtaining the consent of a majority of the enrolled voters of the Municipality (1) present at a duly convened meeting of such voters, or in the event of a poll being duly demanded, then upon obtaining the decision in favour of the borrowing of any such sum or sums as the Council may desire to borrow, of a majority of the votes recorded at such poll; provided always that no such consent shall be necessary so long as the total indebtedness of the Council

Power to raise loans.

¹ Printed as amended by Act 25, 1897.

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does not exceed ⁽¹⁾ seven hundred and nineteen thousand pounds, of which sum fifty-seven thousand pounds shall be devoted exclusively and only towards increasing the capacity of the contemplated reservoir now in course of erection on Table Mountain.

Provisions for obtaining consent of voters to any loans.

105. When the Council has resolved to ask the consent of the enrolled voters to any loan or loans.

- (1) The Council shall cause notice of a meeting of such voters to be advertised for a period of not less than three weeks nor more than six weeks before the date of holding such meeting, in one or more newspapers published in Cape Town.
- (2) The notice of such meeting shall set out the place, date, and hour of meeting, and describe the loan or loans, authority for the raising of which is sought, together with the object or objects towards which the money obtained from such loan or loans will be devoted.
- (3) The Mayor or some other Councillor appointed by the Council shall be chairman of such meeting and shall make such arrangements as to him may appear necessary to insure the due conduct of such meeting, the taking of minutes of the proceedings thereof, that none but enrolled voters shall take part therein, and to provide for the mode in which the ballot shall be taken in case of a poll.
- (4) All questions coming before such meeting shall be decided by show of hands, each voter counting for one vote, and the declaration of the chairman as to the result of the voting and an entry to that effect on the minutes shall be conclusive evidence of the fact: Provided always that any five such voters present at such meeting may immediately after the declaration of the chairman upon any question demand a poll of such voters of the Municipality thereon.
- (5) If a poll be legally demanded it shall be taken and conducted at the expense of the Council as nearly as possible in the manner prescribed for voting at an election of Councillors, and before the returning officer at such elections by this Act appointed.
- (6) A poll shall be taken on some day fixed by the returning officer, of which notice shall have been given in one or more local newspapers published in Cape Town for a period of not less than seven days, nor more than fourteen days prior to the day of voting.
- (7) Each voter at such poll shall be entitled to give on the question submitted the same number of votes which he might give at any election of Councillors.

Advances from Bank.

106. For the temporary accommodation of the Council, it shall be lawful for the Council to obtain advances from banks or other financial institutions by overdraft of the current account; but no such overdraft or accommodation shall at any time under any

¹ Printed as amended by § 1, Act 9, 1894.

circumstances exceed the Council's income for the year ending 31st December previously.

107. The Act No. 11 of 1867, known as the "Public Bodies' Debts Act, 1867," shall apply in the case of all debts due, or which may hereafter become due, by the Council, anything in the said Act to the contrary notwithstanding.

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Incorporation of
Public Bodies'
Debts Act, 1867.

CONTRACTS.

108. The Council may carry out any works departmentally, and may from time to time enter into any contract with any person or company whatsoever, for any work to be done and performed, or for any materials to be furnished to and for the Council by virtue and for the purposes of this Act, or in connection with any work authorised to be done by the Council, which contract shall specify the work to be done and the price to be paid for the same, and the time when the work shall be completed and the penalty to be suffered in case of non-performance thereof. Every contract shall be deemed to be duly executed on behalf of the Council if sealed with the Common Seal of the Council and the affixing of such seal shall be duly witnessed by the Mayor and Town Clerk, or by two Councillors authorised by resolution of the Council, who shall attest such documents accordingly. No contract above the value of fifty pounds shall be entered into, unless fourteen days' notice be previously given in one or more of the public newspapers published in this city, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the Council at a certain time and place in such notice to be mentioned: Provided, always, that if the Council shall be of opinion that it will not be advantageous to contract with the person offering the lowest price or with any other person making a proposal, it shall be lawful for the Council to contract with such other person or persons as they shall think proper, and such person or company so contracting shall give security for the due performance thereof to the satisfaction of the Council: Provided, however, that any Councillor who shall, either directly or indirectly, become a contractor or tender for any contract, either in his name or in the name of, or jointly with, any other person, shall forfeit all his share and interest in such contract for the benefit of the Council, and shall also be considered to have vacated his office of Councillor.

Powers as to con-
tracts.

109. No Councillor shall be deemed or taken to have vacated his office of Councillor or to have incurred any penalty or forfeiture whatever, by reason merely that the Council shall have entered into any such contract as in the last preceding section mentioned, or any other dealing or transaction with any joint stock company in this Colony, of which such Councillor shall be a shareholder or in which he shall be otherwise interested, nor shall any shareholder or person otherwise interested in any joint stock company with which com-

Contracts with
companies in which
Councillors have
interest.

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pany the Council shall have entered into any executed or still subsisting contract, dealing or transaction be deemed or taken to be ineligible to be elected or to act as a Councillor by reason merely of such contract, dealing or transaction: Provided, always, that no Councillor who is also such a shareholder or so otherwise interested as aforesaid shall be allowed to vote as a Councillor upon the question of making or entering into any contract, dealing or transaction with the joint stock company in which he is interested or upon any matter in connection with such interest, dealing or transaction; and any Councillor who shall so vote in contravention of this restriction shall for every such offence forfeit the sum of one hundred pounds: Provided, also, that nothing herein contained shall be deemed or taken to prevent the Mayor, being such a shareholder as aforesaid, from signing any such contract as by this Act is required.

MUNICIPAL PROPERTY.

Roads, &c., vested
in Council.

110. The property of and in the streets, roads, public lanes, thoroughfares, foot pavements, footpaths, sidewalks, squares, and open spaces, to which the inhabitants of the Municipality shall at any time have or acquire a common right and the property of and in the Green Point Common so far as it is situated within the Municipality and of and in the foreshore within the Municipality excepting in so far as it is situated between the Harbour Board enclosure on the north side of the Breakwater and the mouth of the Castle moat or ditch shall be vested in the Council: Provided that the Council shall not have the right to sell, part with, or lease or appropriate for building purposes any portion of the ground known as the Grand Parade, save with the approval by the Governor of a resolution of the Legislative Council and the House of Assembly.

Landed property
vested in Council.

111. The property hereinafter mentioned and situate within the Municipality, to wit the town hall, the town market, the butcher's shambles, the granary buildings, the fish market, the waterworks and the buildings belonging thereto, together with all the waste ground or land situate within the Municipality, together with all the stone quarries therein situate, and all right, title and interest in and to the same, and which was before the first day of January, 1828, vested in or committed to the administration of the late Burgher Senate, and which, by Ordinance No. 34 of 1827 was afterwards vested in trustees, and all other property which at the time of the expiration of Ordinance No. 1, 1840, was legally vested in the Commissioners, except in so far as the same or any part thereof has been since transferred away to other persons in due form of law, shall be and the same are hereby vested in the Council as owners thereof, and the same and all landed property of which title has been or shall be received by the Council from Government, or which has been or shall be transferred to the Council in due form of law shall be administered, and the revenue thereof

employed and made use of for the benefit of the Municipality; and for the purposes of this Act: Provided that the Council shall not be authorised or permitted to sell, lease or otherwise alienate the said buildings, lands or landed property without having first obtained the consent of the Governor for the time being to such sale, lease or alienation, and without having, previously to obtaining such consent, published such resolution to sell, lease or alienate during three successive weeks in two or more papers published in Cape Town: Provided, also, that nothing herein contained shall affect, or be construed to affect, any right or title which Her Majesty's Imperial Government has, or may have, in the immovable property hereinbefore mentioned or any part thereof, or to vest in the Council aforesaid any greater or other right in or to the granary buildings aforesaid than shall have been lawfully vested in the Commissioners of the Municipality on the 31st December, 1860, under the provisions of the Ordinance No. 1, 1840.

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112. The property of and in the lamps, lamp-irons, lamp-posts, bridges, sluices, dams, reservoirs, sewers, drains, market houses, pipes, posts, chains, pales, and rails in or about, belonging to the said streets and places within the Municipality, and of and in all iron, timber, stone, bricks, and other materials, appurtenances, and furniture and things of, in and belonging thereto (except when the same shall be otherwise regulated by contract with the Council), also all the movable property which now is under the administration of the Council, and employed by them for the use of the Municipality, shall be, and the same is hereby, vested in the Council and may be used, sold, and disposed of by them from time to time as they shall deem necessary; and the money arising from such sale shall be applied towards the purposes of this Act; and the Council are hereby authorised and empowered to bring or cause to be brought any civil or criminal action or proceedings, in manner as is herein provided against any person or persons who shall steal, break or otherwise damage any of the buildings or other things, the property in which is vested in the Council, subject, however, to the provisions of the law for the time being in force in that behalf; and in all such actions and proceedings it shall be and be deemed and taken to be sufficient to state generally that the article or thing for or on account of which such action or proceeding shall be brought is the property of the Council.

Other property
vested in Council.

113. If any person shall wilfully break, throw down, spoil, or damage any lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any lamp, or shall break, spoil or damage any building, the property in which is vested in the Council, or shall wilfully break or damage any public watercourse, sewer, drain, pipe or ditch within the Municipality, it shall be lawful for any person who shall see the offence committed, to apprehend, and also for any other person or persons to assist in apprehending the offender, and by the authority of this

Penalties for
injuring Council's
property.

No. 26--1893.

Act and without any warrant to deliver to any constable, who is to keep him in safe custody, and with all reasonable dispatch to convey him before the Resident Magistrate of Cape Town, or any Justice of the Peace having jurisdiction, and if the party accused shall be convicted of any such offence by such Resident Magistrate he shall forfeit any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for such damage not exceeding twenty pounds sterling as the Magistrate may at the instance of the Council summarily adjudge, and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purpose of this Act: and in case any such offender shall not on conviction pay the said forfeiture, such Magistrate is hereby required to commit him to the common gaol or house of correction, there to be kept at hard labour if such Magistrate shall so order, for any time not exceeding one calendar month unless such forfeiture shall be sooner paid: Provided nothing herein contained shall prevent the Council from electing to bring any civil action for damages against such offender before the Supreme Court, should they consider the amount of such damages to exceed the jurisdiction of the said Magistrate.

Accidental injury
to property.

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

POLICE EXPENSES.

115. [Sections 115-117 repealed by Act 32, 1902.]

WATER SUPPLY TO GREEN AND SEA POINT.

Green Point water
supply.

118. The inhabitants of the Municipality of Green Point and Sea Point shall have the right, and shall be entitled to be furnished and provided from the waterworks now existing, or which may hereafter be made, erected or provided, for supplying water to the inhabitants of Cape Town, with a supply of water, in the same proportions, on the same terms, at the same rates, under the same

obligations and under the same regulations in, on, at, and under which the inhabitants of Cape Town shall for the time being have, or be entitled to have water supplied to them; and subject always to the payment of the rates which by the terms of this Act the Council have power to levy upon the immovable property within the Municipality of Green Point and Sea Point; and in consideration of such water rates to be paid by the inhabitants of the Municipality of Green Point and Sea Point as aforesaid, the Council shall, and they are hereby required to provide, keep in good order and repair, a main pipe extending from the said waterworks as far as the main pipe by which water is now supplied to the inhabitants of Green Point and Sea Point at present extends, for the due supply of water to the inhabitants of the Municipality of Green Point and Sea Point.

119. The Council shall in the month of January in every year make and frame a true and accurate account in writing showing the actual cost of the Municipal Waterworks with its appurtenances and appliances for the supply of water calculated up to the 31st day of December then last past. When such account has been framed a statement shall be prepared with a view to estimating the sum which will be required for water supply and waterworks for the then current year. In preparing such statement the Council shall add together the amount of the interest on the actual cost aforesaid calculated at the rate of five per cent. and a fair and reasonable amount as an allowance for depreciation. From the sum of these amounts shall be deducted all revenue derived during the year last past from the sale of water by the Council in the Municipalities of Cape Town and Green Point and Sea Point, and the deficiency found shall be the estimate of the sum required for the purposes of water supply and waterworks during the then current year.

Council to make annually an account showing actual cost of waterworks for past year.

120. The estimate arrived at in the last preceding section shall then be divided in the proportion which the true and just valuation of the immovable property in the Municipality bears to the true and just valuation of the immovable property in the Municipality of Green Point and Sea Point. When by this means the fair proportion of moneys required from the inhabitants of the latter Municipality has been obtained, it shall be lawful and competent for the Council to impose and levy a rate on the valuation of all immovable property in the Municipality of Green Point and Sea Point sufficient to cover such fair proportion; provided always that such rate shall never in any one year exceed three-fourths of a penny in the £ upon such valuation, and that if it be necessary to levy a rate the Council shall never be required to levy a rate of less than one-eighth of a penny in the £.

How estimate of proportionate value of immovable property in Cape Town and in Green Point and Sea Point arrived at.

121. To enable the Council from time to time to levy the rates in the last preceding section mentioned upon a fair valuation the Commissioners of the Municipality of Green Point and Sea Point

Commissioners of Green Point and Sea Point Municipality to make

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valuation of property.

shall be bound not less than once in every three years to cause a true and just valuation of the immovable property in the said Municipality to be made in terms of any law or regulations in that behalf for the time being in force in the said Municipality, and upon such valuation being made a copy thereof shall after being duly certified by two of the Commissioners be transmitted to the Council and shall be deemed to be a valuation roll of the Council in terms of this Act.

Rates to be levied on valuations made

122. All rates levied under the provisions of the one hundred and twentieth section of this Act shall be levied upon the valuations made in terms of the last preceding sections, and until such valuations be made such rates shall be levied according to the existing valuations of immovable properties in force in the Municipality of Green Point and Sea Point.

Power to lay mains, &c. in Green Point.

123. It shall be lawful for the Council, from time to time, with consent of the Commissioners of the Municipality of Green Point and Sea Point to lay under any of the streets, roads and public places within the said Municipality, such mains, service pipes and waterleadings, as in the opinion of the Council it may be advisable to provide for the purpose of facilitating the supply of water to the inhabitants of the said Municipality and the same to keep in order, repair and renew from time to time.

Water supply arrangement terminable by Green Point

124. It shall be lawful for the Commissioners of the Municipality of Green Point and Sea Point upon a notice of not less than three months, to be given by them to the Council, to terminate and annul the arrangement mentioned in section one hundred and eighteen, either in the whole or in part, regarding the supply of water from the waterworks of Cape Town, for the time being, to the inhabitants of the Municipality of Green Point and Sea Point; and upon the expiration of such notice, or sooner, should the said Commissioners and Council so agree, all and singular the provisions of the one hundred and eighteenth to one hundred and twenty-third, inclusive, and the one hundred and thirty-second sections shall cease, determine and become void, as to the district or districts in respect to which the notice is applicable; but no notice terminating the said arrangement shall be of any validity unless and until the said Commissioners shall have prior to giving such notice obtained the sanction of a majority consisting of two-thirds of the householders present at a meeting called for the purpose upon due notice; provided that any householder present at such meeting may demand a poll of householders of the said Municipality, in which case no such notice as aforesaid shall be of any validity unless two-thirds of the householders polled shall by their votes declare in favour thereof; and provided that no householder who is not qualified as the owner of landed property in the said Municipality shall be entitled to vote at any such meeting, or at the taking of any such poll, unless he shall have been resident in the Municipality for a period of six months prior to the day of voting: Provided, always, that if any such arrange-

ment as aforesaid be terminated and annulled either in the whole or in part, the Council shall sell to, and the Municipality of Green Point and Sea Point shall be bound to purchase and pay the fair value of the service pipes, mains and waterleadings belonging to the Council, situate in the district or districts in respect of which such arrangement shall terminate; and in the event of no agreement being arrived at the purchase price payable to the Council by the said Municipality shall be fixed by arbitration.

POWERS AND DUTIES OF THE COUNCIL.

125. The Council shall make and maintain, at all times in serviceable order and efficient repair, all dams, tanks, reservoirs and other works necessary for the impounding of an adequate supply of water to the inhabitants of the Municipalities of Cape Town and Green Point and Sea Point and to the shipping in Table Bay; as also all mains, branch service pipes, and other appurtenances required to convey that supply to every locality or district entitled to it by the provisions of this Act.

Council's duty as to maintenance of water.

126. The Council is hereby required to maintain, at all times, an adequate supply of water to every public fountain erected by or with the consent of the Council, and to every fire plug, to the cisterns from which the shipping in the harbour of Table Bay is supplied, and to all dwelling-houses and private water leadings; and in order to enable the Council to supply every dwelling-house with water the owner of every such dwelling-house shall within twenty-one days after receiving written notice to that effect lay on a private service pipe to the main branch or service as may be directed, and in all cases when the owner shall refuse or neglect, he shall be liable to a penalty not exceeding five pounds sterling, and the Council is hereby empowered to supply and lay on such private service pipe at his expense; and for such purpose, and in case of renewing or relaying such pipes as may already have been lawfully laid, or in the laying on, at the expense of owners, private service pipes or water-leadings to dwelling-houses the Council shall have power to enter on private property.

Council's duty to maintain water supply.

127. The Council shall cause to be made, provided, erected, and built, covered in or removed, such bridges, sluices, dams, or reservoirs, watercourses, drains, and ditches as now are or shall be deemed necessary within the Municipality, and shall cause the same to be kept at all times in good and efficient repair, and from time to time to make such rules and regulations thereon as they shall find necessary.

Bridges, sluices, &c.

128. The Council is hereby authorised and required to remove put down and abate all nuisances of a public nature with the said Municipality, or which may tend either to injure the health or in any way affect the safety or reasonable comfort, peace and quiet, or the rights of the inhabitants at large, and if need be, to proceed at law before the Resident Magistrate or Supreme Court, against

Abatement of nuisances.

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any person or persons so committing any such nuisance for abatement thereof and recovery of damages, if any; and the Council shall and they are hereby required to cause all streets, watercourses, drains, roads and places within the said Municipality to be kept clean and free from dirt, filth or rubbish; and any person convicted upon the complaint made by the Council to the Resident Magistrate, of throwing dirt, filth or rubbish into any such street, road, watercourse, drain, or place as aforesaid shall forfeit and pay any sum of money not exceeding five pounds; and in default thereof to be imprisoned for any period not exceeding two months unless such fine shall be sooner paid.

Repairs to streets,
&c., and making of
new streets.

129. The Council shall cause the public streets, roads, and places, within the Municipality, to be at all times kept in good and efficient repair; and as far as the funds of the Municipality shall permit shall cause such new streets and roads to be made as may be necessary for the public use, and shall keep the same in good and efficient repair, and from time to time make such rules and regulations thereon as to them shall seem fit.

Lighting of streets,
&c.

130. It shall be lawful for the Council to make provision for lighting in a suitable manner the whole streets, lanes, squares, public passages, thoroughfares, and public places within the city, and to provide, erect and maintain, or grant leave to any person or persons, company or companies to provide, erect and maintain, under such conditions as they may see fit, such a number of lamps, lamp-posts, lamp-irons, and other appliances and appurtenances as may be necessary for that purpose, and to light or enter into contracts for lighting, and cause to be lighted such lamps by means of oil, gas, electricity or otherwise; and the Council are hereby authorised to order and require such lamp-posts, lamp-irons and other appliances and appurtenances to be put or fixed upon the sides of the pavements, footways, streets and roads, or upon or against the walls and palisades of buildings on the sides of the streets, without being liable to any claims for compensation. And the Council may also from time to time make such regulations on the aforesaid matter as they shall find necessary.

Provisions for
water supply.

131. It shall be lawful for the Council 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 water to the inhabitants of the Municipality and to keep the same in repair; and to carry out any preliminary works in connection with a contemplated water supply from any quarter; and to enter into contracts for the supply of water to the Council and the inhabitants, or for any of the purposes aforesaid.

Compulsory sup-
ply of water.

132. The Council shall have power to call upon the owner of each and every house entitled to a supply of water under the terms of this Act to take from the Council at his own expense a water-leading and a supply of not less than one hundred gallons per diem and to pay the price thereof, and upon being so called upon

every such owner shall be obliged so to do; provided that the terms of this section shall not apply to houses within the Municipality of Green Point and Sea Point at present supplied with water by the Sea Point and Green Point Waterworks Company, Limited, so long as they continue to be supplied by such company, its successors or assigns.

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133. It shall be lawful for the Council from time to time to cause such sewers, drains and pipes to be made, laid, altered, deepened, covered over and maintained within the Municipality as shall be necessary for the effectual draining of the Municipality or any portion thereof, and from time to time to cause to be made and maintained all such reservoirs, sluices, engines, ventilating shafts and other works as shall be necessary for cleansing and ventilating such sewers, drains and pipes, and if needful they may carry such sewers, drains, pipes and ventilating shafts through and across private lands or beneath or against private buildings, making compensation for any damage done, which compensation shall, if not mutually agreed upon, be settled by arbitration; and the Council or any person duly authorised by them shall have right of access for maintenance of such sewers and drains.

Drainage.

134. The Council may within the limits of the Cape division, carry any sewer through, across, or under any public road or street, or any place laid out as, or intended for a public street, and through, across or under any vacant or unimproved Crown land, or any vacant or unimproved land belonging to any Municipality, and may expropriate any vacant or unimproved Crown land for a sewage farm, pumping station, or for other purposes connected with the drainage and sewage of Cape Town, without paying compensation.

Power to carry sewer across public roads and streets and to expropriate vacant Crown land.

135. The Council shall have power to take and expropriate at such price as may be fixed by arbitration any landed property within the Cape Division required by them for the purpose of sewage farm or farms and pumping stations and generally for any purpose connected with the drainage and sewage of the city, and may carry their drains and sewers through or beneath any landed property lying within the Cape Division along any proposed route for such sewers from the city to the said sewage farm or farms, paying such compensation for damage done as may be ascertained by arbitration, and the Council and its officers and servants shall have right of access to private property for maintenance and inspection of all such sewers and drains.

Sewage farms, &c.

136. The Council shall at least one month before commencing the construction or extension of any sewer or other work for sewage purposes beyond the limits of the Municipality of Cape Town, give notice of the intended work by advertisement in one or more local newspapers, circulating within the district where the work is to be done. Such notice shall describe the nature of the

Notice of any sewerage works to be commenced or extended to be given in local papers.

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intended work, and shall state the intended terminus thereof, and particulars of the roads, streets, and other land (if any) through, across, under or on which the work is to be done; and shall name a place where a plan of the intended work is open for inspection at all reasonable hours, and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land, and on the local authority (if any) having the care of such roads or streets.

Effect of objection of owner, occupier or lessee to projected work.

137. If any such owner, lessee or occupier, or any such local authority, or any other person who would be affected by the intended work objects to such work, and serves written notice on the Council of such objection at any time within the said period of one month, then the intended work shall not be commenced without the sanction of the Governor, unless such objection is withdrawn.

Governor may appoint inspector to report.

138. The Governor may on the application of the Council appoint an Inspector to make an enquiry on the spot into the propriety of the intended work, and the objections thereto, and to report to such Minister as the Governor may direct on the said matter. And on receiving the report of such Inspector the Governor may make an order disallowing the intended work, or allowing it with such modification (if any) as he may deem necessary.

Council's power to deal with land held by it for the purpose of sewerage.

139. The Council may deal with any land held by it for the purpose of receiving, storing, disinfecting, or distributing sewage in such manner as it deems most profitable, either by leasing the same for a period not exceeding twenty years for agricultural purposes, or by contracting with some person to take the whole or part of the produce of such land, or by farming such land and disposing of the produce thereof; provided always that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.

Erection of houses over sewers.

140. No house or building shall be erected over any sewer or drain belonging to or vested in the Council without previous notice to them so that such works as they may deem necessary may be executed for the protection of the sewer or drain; and if any house or building be erected, without such notice, the Council may demolish the same, and the expense incurred thereby shall be recoverable by the Council from the person erecting such house or building.

Protection of sewers, &c., against damage.

141. Every person who without the written consent of the Council shall make or cause to be made any opening into any public sewers or drains, or who shall destroy or injure, or cause to be destroyed or injured, any of the said sewers or drains or any works in connection therewith, vested in or constructed under the authority of the Council, shall be liable to a penalty not exceeding ten pounds sterling over and above the expenses incurred by the Council in making good the damage thereby occasioned; and such penalty and expenses shall be recoverable in any court of competent

jurisdiction, and upon failure to pay such penalty and expenses such person may by order of such court be imprisoned for a period not exceeding three months.

142. It shall be lawful for the Council to enter into an agreement with the Council of the Municipality of Woodstock, with a view to the drainage and sewage of the two Municipalities being jointly carried out and dealt with, to such extent, and upon such terms as may be mutually agreed.

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Drainage agreement with Woodstock.

143. It shall be lawful for the Council from time to time to enter into agreements with the Colonial Government, the Councils of other Municipalities and other public bodies in the Cape Division with a view to carrying out any public works or for any public purposes which in the opinion of the parties to the agreement it is advisable should be dealt with jointly, and such agreements shall be in such terms and upon such conditions as may be mutually agreed upon.

Council may enter into agreements with public bodies.

144. The Council may from time to time as occasion may require, keep up and establish within the Municipality, a market or markets for the sale of cattle, meat, fish, game, poultry, vegetables, fruit, and other produce of South Africa, and may cause suitable land, houses and buildings to be purchased, built, erected, and kept in repair for the convenience of persons attending, holding and superintending such market or markets, and in connection therewith may lease or let out stalls or portions of such market or markets upon such terms and conditions as they may deem advisable, and may also frame and make such regulations and impose such fines as they shall think necessary for ensuring order and cleanliness within the said market or markets.

Establishment of markets.

145. The Council may from time to time make regulations for the due and proper care of weights and measures and with reference to the quality and assize of bread, and the quality of meat and other eatables; and may empower any person, at all times, to visit and enter into the shops or places where bread, meat, fish and other eatables are sold for the purpose of assizing the bread and examining the weights and measures, and also of taking proper care that the bread, meat, fish, game or other eatables therein sold are good and wholesome, and to seize, confiscate, remove and destroy all bad or unwholesome bread, meat, fish and other eatables.

Assize of weights and food.

146. The Council shall have power to require the due registration of births and deaths of individuals within the Municipality; and with regard to deaths, they shall be entitled to require medical men to grant to persons entitled to ask therefor, under any regulation which may be framed, such certificate as to the cause of death as may be required to be furnished to the Council by such persons. And no undertaker, or other person shall bury a corpse, and no person or persons shall remove or cause to be removed any corpse outside the Municipality until a certificate of the registration of death by the Council shall have been exhibited to him. And the

Registration of births and deaths.

- No. 26—1893. Council may make such bye-laws or regulations with reference to births, deaths and burials as to them may seem expedient, and shall therein provide for the registration of deaths upon every day of the week.
- Contribution to Public Library. 147. The Council may contribute annually, out of the municipal revenue a sum not exceeding three hundred and fifty pounds sterling towards the expense of keeping the South African Public Library open during the evening for the benefit of the public, under such conditions as the Council shall impose.
- Contribution to New Somerset Hospital. 148. (1) The Council may contribute annually, out of the revenues of the Municipality, a sum not exceeding the sum of five hundred pounds sterling in aid of the purposes and objects of the Somerset Hospital of Cape Town, in such manner and under such conditions as the Council shall deem advisable.
- Contribution to public functions, &c. 149. The Council may from time to time out of its revenues, other than rates, pay such sums as it may deem necessary towards public functions, public demonstrations, and to defray the expense of the representation of the Council as such on any such occasion; provided, always, that nothing herein contained shall be construed so as to permit any Councillor to make any profit out of such sums. And the Council may further annually pay to the Mayor, to be expended by him, as Mayor, for the purposes of public hospitality, a sum not exceeding five hundred pounds sterling, anything to the contrary in this Act contained notwithstanding.
- Pensions and allowances to officers and families. 150. The Council may pay to such officers and servants of the Municipality as shall be superannuated or become unfit for duty, such pensions or retiring allowances as such officers or servants would be entitled to according to the scale and regulations at the time existing relative to pension or retiring allowances of the civil service of the Colony, and pay such allowances and gratuities to the wives and families of deceased officers or servants as they may deem proper and expedient.
- Construction of public baths, wash-houses, &c. 151. The Council may from time to time make, establish, construct and maintain public baths, abattoirs, refuse destructors, urinals, latrines, cabmen's shelters, coffee stalls and wash-houses, with or without drying grounds, and public bathing places for the use and accommodaton of the inhabitants of Cape Town, and for any such purposes may expropriate, purchase and acquire lands and buildings and may utilise municipal property, and may from time to time fit up, furnish and supply the same respectively with all requisite furniture, fittings, requirements and conveniences and from time to time alter, enlarge, repair, renew and improve the same respectively and afford the use thereof respectively to such inhabitants at such reasonable charges and under and subject to such regulations as the Council may deem expedient.
- Sale of public baths, wash-houses, &c. 152. Whenever any of such public baths, bathing places, abattoirs, refuse destructors, urinals, latrines, cabmen's shelters,

coffee-stalls, wash-houses or drying grounds are deemed by the Council to be unnecessary or too expensive to be kept up, or for other reasons it be deemed inexpedient to continue the same the Council may discontinue the same and sell by public or private sale the lands, buildings and materials for the best price that can reasonably be obtained; provided that no such sale shall be made unless the Council resolve thereon at a meeting at which two-thirds of the Councillors in office be present, held not less than a fortnight after notice shall have been given to the Council at a meeting thereof of an intention to move that such discontinuance be carried out and such sale effected.

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153. The Council may from time to time make, establish, maintain, enclose, and provide gardens, parks, ornamental, pleasure, recreation, athletic, and racing grounds and pavilions, refreshment rooms, lavatories and other conveniences in connection therewith for the use of the inhabitants of Cape Town or any section thereof, and may from time to time level, drain, plant and otherwise lay out and improve the same for the more convenient use and enjoyment thereof, and the general management, regulation and control of the same shall be vested in the Council who may from time to time determine the charges if any to be made for the use thereof.

Establishment of gardens, recreation grounds, &c.

154. The Council may from time to time, upon obtaining the consent of the Colonial Government and of the Table Bay Harbour Board respectively, execute, construct, carry out, improve, work, manage, and control wharves and piers with buildings thereon in Table Bay, and embankments and promenades and such buildings along the seashore, and may in order to make such embankments, promenades or buildings or carry out any other work of public utility upon obtaining such consent as aforesaid, reclaim land from the sea in Table Bay; and all such wharves, piers, embankments, promenades and reclaimed land shall be vested in the Council who shall have the control and management thereof, and be entitled to make regulations with regard to the use thereof, and the charges to be made in connection therewith.

Construction of wharves, piers, &c

155. The Council may from time to time erect and construct buildings and may from time to time alter, enlarge, repair and remove the same and fit up, furnish and supply the same respectively with all requisite furniture, fittings and conveniences and may from time to time let or lease such buildings or such parts thereof as are not immediately required for the Council's purposes.

Acquisition of property for Municipal purposes.

156. (1) The Council may for the purpose of town improvement, expropriate, purchase and acquire land, with or without buildings, and may remove, alter, renew or repair such buildings and erect new buildings upon such land and all streets which they may close to traffic, and the Council may from time to time sell, let, lease or otherwise deal with any property so acquired without obtaining the

Improvement of city and streets.

¹ See § 2, Act 15, 1894.

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sanction of the Governor: Provided that no act shall be done under the powers by this section conferred unless and until such act shall have been resolved upon by a majority of Councillors at the time in office at a meeting of the Council held not less than a fortnight after notice shall have been given to the Council at a meeting thereof of an intention to move for such expropriation or purchase, and that no such expropriation of land shall take place until the Council shall have prepared a plan showing the nature of the intended improvement or work, and shall one month before proceeding to expropriate have given a notice in two or more newspapers published in Cape Town of the intended expropriation, and setting forth a place where the said plan shall be open for inspection at all reasonable hours, and until a copy of such notice shall have been served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said land: Provided further that if any person interested as owner, lessee, or occupier, shall within such period of one month serve written notice on the Council of any objection to such expropriation at any time within the said period of one month, then such intended work shall not be commenced without the sanction of the Governor, unless such objection be withdrawn; and the Governor may, on the application of the Council, proceed as in the one hundred and thirty-eighth section of this Act set out, and make such order as in the said section is referred to.

Closing of streets,
&c.

157. (1) Should any property acquired by the Council under the terms of this Act include or constitute the whole of the properties on both sides of any street, lane or thoroughfare, the Council is hereby invested with authority to close such street, lane or thoroughfare: Provided, always, that if the Council decide to close any such street, lane or thoroughfare, they shall not less than one month prior to so doing advertise their intention in two or more local newspapers, during which time any person feeling aggrieved by such contemplated closing may apply to any competent Court for relief, and upon any such application being made within such period of one month the Court shall be entitled to restrain the Council from such closing unless they shall satisfy the Court that no real or substantial damage will be occasioned to the applicant or until they shall have expressed their willingness to make compensation for such damage as may be found by arbitration to have been caused to such applicant.

FIRE.

Extinction of fires.

158. The Council may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep or hire such horses for drawing such engines as they think fit; and may purchase, build, provide or hire places for keeping such engines with their appurtenances, and for the horses, and for

¹ See § 2 Act 15, 1894.

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the accommodation of the persons charged with the management thereof, and shall employ a force of firemen, to be called "The Cape Town Municipal Fire Brigade," which shall be under the command of an officer appointed by the Council, and styled the "Superintendent" of the Fire Brigade, and the Council may make rules for the regulation of the said force, and may therein prescribe who shall be the officer in charge of the brigade at any fire when the superintendent is absent or incapacitated from acting, and may also give such firemen and other persons such salaries and rewards for their exertions in case of a fire as the Council think fit. In the absence or incapacity of the superintendent, unless it be otherwise prescribed in the regulations, the senior in rank in the brigade present at any fire shall assume the duties of the superintendent, and be the officer in charge for the time being.

159. On the occasion of any fire within the Municipality, the superintendent of the said brigade, or the officer in charge, shall, from the time he arrives at the fire, have control over the property on fire, and over such other property as may be considered by him at risk, and shall so continue until he reports to the Council that the fire has been extinguished, which report may be made verbally to the Mayor or Town Clerk. He may in his discretion avail himself of the assistance, and if he does accept such assistance, shall take command, of any persons who may voluntarily place their services at his disposal, and generally he may take any measures that may appear expedient for the protection or saving of life and property, with power by himself, his men, or any person under his command, to enter upon, break into, or through, or take possession of, pull down, or destroy any buildings or other property for the purpose of protecting, saving life or property, or putting an end to or preventing the spread of 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 other property. The persons volunteering as aforesaid and any person whose services may be temporarily engaged, for the time they are assisting shall be deemed to be members of the said brigade, and the superintendent or the officer in charge shall have power to dispense with the services of any of them at any time.

Powers of Superintendent of Fire Brigade in case of fire.

160. The police shall aid the brigade in the execution of their duties: they may close any street, passage or thoroughfare, in or near which a fire is burning, and may on their own authority, and shall at the request of the superintendent or other officer of the brigade, remove any persons who may interfere, or are considered as likely to interfere by their presence or otherwise with the operations of the Brigade.

Powers of Police in case of fire.

161. The brigade, the police, and all persons acting under the orders of the superintendent or the officer in charge, are hereby indemnified and exempted from all claims or demands whatever by reason of anything necessarily done in the execution of their duty,

Certain persons indemnified from claims for damages.

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Charges to be
made by Council
in case of fire.

and the Mayor, Deputy Mayor, and Council are hereby indemnified and exempted from all claims or demands whatsoever by reason of any damage done upon sufficient necessity by them, the brigade, the police, and other persons aforesaid.

162. (1) The Council shall be authorised to charge on a private dwelling-house and its out-buildings which shall be or shall have been on fire or which shall only have been prevented from taking fire by the efforts of the Brigade the sum of five pounds sterling for the services of the brigade and the use of the fire engines and appliances, and also the sum of one pound sterling per hour for every jet of water during the time that such jet shall be playing upon the said dwelling-house, its out-buildings, and contents, and upon the adjoining buildings and erections, to prevent the extension of the fire. And the Council are hereby authorised to charge on every building (other than a private dwelling-house and its out-buildings) which shall be or shall have been on fire or which shall only have been prevented from taking fire by the efforts of the Brigade the sum of ten pounds sterling for the services of the brigade and the use of the fire engines and appliances, and also the sum of two pounds sterling per hour for every jet of water during the time that such jet shall be playing upon any such building and its contents and upon any adjoining buildings and erections to prevent the extension of the fire: Provided, however, that the provisions of this section shall not extend to any buildings owned or occupied by the Government of this Colony when and so long as any special agreement exists between the Council and the Government as to the terms upon which the Council will grant the services of the brigade and supply water for the extinguishment of fire upon such buildings.

Who to pay
charges.

163. The amounts charged on any building, in terms of the last preceding section, shall be payable by the owners and occupiers of such building in equitable proportions, and the distribution thereof shall be made by the superintendent or officer in charge, whose certificate shall be final and binding upon all parties interested, without appeal or review on any ground whatever. The amount charged on any building shall, however, be recoverable by the Council from the owner or occupier thereof, or both, who may be sued jointly or severally, each for the full amount, in any court of competent jurisdiction, and any owner or occupier paying the full amount charged as aforesaid, shall be entitled to be reimbursed by the other owners and occupiers to the extent to which according to the said certificate they are severally liable.

Salvage expenses.

164. No expenses incurred by the Council, superintendent or officer in charge, in causing to be pulled down or destroyed, any buildings or erections, or any parts thereof, for the purpose of putting an end to or preventing the spread of a fire, or for saving life, or in attempting to save buildings adjacent to or in the

vicinity of a fire, shall be chargeable against the owners or occupiers of immovable property, but the Council shall not be liable to rebuild or repair or make compensation for any damage caused to any person or any buildings or other erections so dealt with.

165. The Council shall be entitled to sue for and recover all expenses incurred by them, the superintendent and officer in charge, in saving and removing and in attempting, or with a view to save or remove movable property from any buildings or erections on fire and from any buildings or erections adjacent to or in the vicinity of any building or erection on fire, and all expenses in keeping safe custody thereof, from the owners of the movable property saved or removed in equitable proportions, and the Council shall have an absolute lien upon the movable property so saved or removed until the expenses aforesaid shall have been received by the Council. The apportionment of the expenses aforesaid shall be made by the superintendent or the officer in charge, whose certificate shall be binding on all parties without appeal or review on any ground whatever: and if the aforesaid lien be not paid and discharged within twenty-one days, the Council shall have the right to sell and dispose of the said movables, or any of them, by public auction after three days' notice in two or more newspapers published in Cape Town, and after applying the net proceeds in reduction of such expenses may sue for and recover any deficiency which may be found to exist.

166. The superintendent or the officer in charge shall make a report in writing to the Council on every fire he attends, and shall also send a similar report to the Resident Magistrate of Cape Town forthwith after the fire.

167. All expenses incurred by the superintendent, the brigade, and the Council in the saving and removing or attempting to save or remove movable property, and in operations to save property and extinguish fire, charged against, and recoverable by the Council from owners or occupiers of movable or immovable property under this Act, and all damage occasioned by the brigade in the execution of their duties, and all sums chargeable upon any buildings, and payable in terms of section one hundred and sixty-three, shall be deemed to be loss or damage by fire within the meaning of any policy of insurance of such property or buildings against fire: Provided that nothing herein contained shall be construed so as to compel any Insurance Company to pay any sum in excess of the full amount insured in terms of such policy.

RULES AND REGULATIONS.

168. The existing rules and regulations of the Municipality of Cape Town, framed under Act 44 of 1882, in so far as the same are not contrary to law, and not repugnant to or inconsistent with the true intent and meaning of this Act, shall remain as legal, valid, and effectual as if the same had been word for word inserted in this

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Apportionment
of expenses in-
curred.

Report to coun-
cil on every fire by
superintendent.

Damages and ex-
penses incurred to
be within meaning
of policy of insur-
ance.

Existing regula-
tions to continue
till changed.

AAA

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Power to make
and alter regula-
tions.

Matters upon
which regulations
may be made.

Act, until such time as the same shall have been altered by the Council in due form of law.

169. The Council may from time to time repeal, alter, add to or amend any of the municipal rules and regulations, and may frame any new rules and regulations within the scope of existing rules and regulations and the provisions of this Act, and from time to time add to, alter or amend the same.

170. The Council may also from time to time make, alter, revoke or amend rules ⁽¹⁾ and regulations for all or any of the following purposes:—

- (1) For regulating the duties of the Council's officers and servants;
- (2) For regulating the level, width, direction and construction of new streets made by the Council or by owners of private property and the sewerage and drainage thereof.
- (3) For regulating the structure of walls, foundations, roofs and chimneys of new buildings, also their height and cubical contents, and the fixing of fireproof doors and shutters, at internal and external openings; for securing stability, the observance of sanitary precautions, the prevention of fires, and for purposes of health and public safety;
- (4) For regulating the sufficiency of space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings;
- (5) For regulating the drainage and sewerage of buildings and for compelling the connection at the owner's expense of private drains with public drains, sewers or pipes, and for regulating the construction by the Council at the owner's expense of all house drains in so far as they connect with and extend from the main sewer to the kerb of the street;
- (6) For regulating waterclosets, earthclosets privies, ashpits, and cesspools in connection with buildings, and to prohibit the use of such of them as the Council consider ought not to be allowed to continue.
- (7) For regulating with respect to the closing of buildings or parts of buildings unfit for human habitations, and the prohibition of their use for such habitation;
- (8) For prohibiting brothels, the overcrowding of houses, dwelling places and rooms and the erection of objectionable buildings;
- (9) For securing the regularity of lines and levels of buildings, the class of architecture of buildings, and the removal, alteration and prevention of projections or obstructions in front of buildings.
- (10) For regulating the giving of notices, and the deposit for the Council's approval of plans and sections by persons

¹Special powers to frame further bye-laws conferred by § 22, Act 28, 1902 (p. 4472).

intending to lay out streets or to construct or alter buildings; the inspection by the Council or its officers; and as to the power of the Council to prevent, remove, alter, or pull down at the expense of the owner any work begun or done in contravention of its regulations.

- (11) For compelling the pulling down, removing or rendering safe all buildings, walls, bridges, earthworks and stoeps of an unsafe or dangerous character or which have been allowed to fall into a dilapidated or ruinous condition, and for doing so at the cost of the owner;
- (12) For regulating the inspection of buildings and structures by the Council and its officers;
- (13) To provide for the due and proper care of the common pasture and other municipal lands, and therein to specify and regulate the quantity and kinds of live stock which each inhabitant shall be allowed to keep and depasture on the said lands;
- (14) For preventing the spread of contagious or infectious diseases and for preserving the public health;
- (15) For regulating and preserving public parks, walks, avenues, botanical gardens, public libraries, bleaching and drying greens and grounds, public washhouses, abattoirs, urinals, latrines, cabmen's shelters, coffee stalls, public baths, public places of recreation and open spaces, and preventing offences, nuisances and annoyances therein, and for regulating bathing and the hours of bathing near public thoroughfares or near any of the quays or piers;
- (16) For regulating the storing, carriage, removal and use of gunpowder, dynamite, petroleum, oils, fireworks and other combustibles, and explosives, and for regulating the use of firearms;
- (17) For regulating the removal of night soil, stable litter, filth, and refuse from private premises and from all streets, roads and public places, and for regulating the time and mode of the removal of any offensive matter or thing;
- (18) For imposing a tax upon the keeping of dogs and providing with regard to the seizure, sale and destruction of ownerless dogs and those in respect of which the tax has not been paid;
- (19) For the abatement of nuisances and causing vehicles to be kept under proper control; for preventing and removing obstructions in the streets, roads, public thoroughfares, squares, open spaces, foot pavements and sidewalks of the city; for dealing with diseased animals, and the burial of dead animals, and the driving of live stock through the streets, and as to live stock found straying in the streets;

- (20) For regulating the naming from time to time of the streets, roads, thoroughfares, and open spaces, in the Municipality, and the numbering and re-numbering the houses, buildings and places therein, and imposing duties and obligations upon the inhabitants in respect thereof.
- (21) For regulating the killing of cattle and sale of butcher's meat, the establishment and locality of slaughter houses, the keeping of slaughter houses and meat shops in a cleanly and proper state, and removing the filth therefrom, and requiring that all such places shall be provided with a sufficient supply of water.
- (22) For providing that cattle, dogs, live stock and poultry shall not be kept in such places, or in such manner as to be a nuisance or annoyance to the inhabitants; for prescribing the situations or places in which swine may be kept, and for prohibiting, if deemed advisable, the keeping of swine;
- (23) For regulating the beating or shaking of carpets, rugs or mats in streets or public places generally, and the hours within which carpets, rugs or mats may be beaten.
- (24) For regulating the supply and distribution of any water under the control or management of the Council, the quantity of water to be supplied to and taken by the inhabitants, the price to be paid therefor, the time or times at which such supply is to be received, and for the purpose of preventing any waste of drinking water within the Municipality;
- (25) For establishing one or more pounds within the Municipality and for providing for the management of pounds, the appointment of poundmasters, and for making such pound regulations as may seem necessary or expedient;
- (26) For preventing any person or persons from carrying any board, basket or burden so as to obstruct or incommode passengers on any sidewalks or foot pavement, and for preventing the wheeling of perambulators, wheelbarrows and similar vehicles on any sidewalk or foot pavement, except for the purpose of crossing the same to or from any house or building;
- (27) For preventing persons from congregating with others and thus causing an obstruction in any footpath, foot pavement, sidewalk or crossing, and for preventing the flying of kites, the use of catapults, and playing of games in public streets, thoroughfares, and open spaces, and for preventing the obstruction of public streets, thoroughfares and open spaces;
- (28) For preventing the pollution of any water which the inhabitants have a right to use;
- (29) For regulating the width, kerbing, paving, guttering, gravelling, cleaning and watering of roads and streets;

- (30) For supervising and licensing pleasure boats and vessels and prescribing the fees to be paid;
- (31) For granting licences or permits for the making of bricks and for digging or removing sand, clay or gravel and for quarrying stone, and for cutting firewood, brushwood or grass upon municipal lands, and to prescribe the fees (if any) to be paid for the same;
- (32) For regulating traffic and processions;
- (33) For regulating, supervising and licensing hackney carriages and cabs, for fixing the amount of licence fees to be paid, the number of passengers to be carried, the fares to be charged, amount of luggage allowed to passengers, for regulating disputes as to fares, the position of cabs on stands to be appointed by the Council, and for the safety and convenience of passengers and the public;
- (34) For regulating, supervising and licensing wagons, carts and other conveyances or vehicles drawn by any horse, mule, donkey or ox kept or used within the Municipality or plying for hire or profit, and for fixing the licence fees to be paid;
- (35) For regulating the supervising and licensing of tramcars and omnibuses and for fixing the licence fees to be paid, the number of passengers to be carried, precautions to be taken and provisions to be made against accidents, and regulating for the safety and convenience of the public;
- (36) For regulating the keeping in repair and paving of tramway and railway lines running over public streets or roads and the keeping in repair and paving by tramway and railway companies and owners of tramcars and railways of the roadway between and adjacent to their rails;
- (37) For regulating the use of bicycles, tricycles and velocipedes in streets, squares, thoroughfares and public places;
- (38) For regulating or prohibiting the cleaning and training of animals, repairing, cleaning and outspanning of vehicles in streets and public places;
- (39) For regulating the conditions upon which and the locality where noisome and offensive trades may be carried on and for prohibiting if deemed desirable the establishment of and for restraining the same;
- (40) For planting and preserving trees and shrubs;
- (41) For regulating and registering houses let or occupied as common lodging houses and sub-let tenement houses, boarding-houses and hotels, and inspecting such houses and hotels, and the keeping the same in a cleanly and wholesome state.
- (42) For maintaining generally the good rule and government of the Municipality, and the safety, convenience and

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comfort of its inhabitants; and in framing regulations the Council may prescribe the time within which any works or things required to be done shall be executed, done or completed, and may provide in case of default for the execution, doing or completion by the Council of any such work or thing at the expense of the defaulter.

Penalties for breaches of Act or regulations.

171. Any rule 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 thereof, but no penalty shall exceed twenty pounds; and any such rule or regulation may provide that in addition to any such penalty any expense incurred by the Council in consequence of the breach of any such rule or regulation and in the execution of any work directed by any such rule 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.

Approval of regulations by Governor.

172. After any regulation has been passed by the Council a copy of the same shall be posted in the Town Hall and a notice published in one or more local newspapers calling attention thereto, and three weeks after such notice shall have been advertised it shall be submitted for the approval of the Governor, and if approved, shall be published in the *Gazette* and thereupon shall have the force of law in the Municipality.

Production of Gazette to be evidence of regulation

173. A copy of the *Gazette* containing any bye-law or regulation shall be evidence of the due making of such bye-law or regulation and of the contents thereof.

MISCELLANEOUS.

Penalties for fouling municipal water.

174. The Council shall use all endeavours to keep the water flowing to or impounded in its reservoirs or other waterworks from being fouled or in any way rendered impure, and for this end every person convicted upon the prosecution of the Council, of any of the following offences, shall forfeit to the use of the said Council a sum not exceeding five pounds; on failure of the payment of such fine the party convicted shall be liable to imprisonment, with or without hard labour, for any period not exceeding two calendar months;

- (a) Every person who shall bathe or wash himself in any stream, reservoir, or other waterworks belonging to the Council, or wash, throw, or cause to enter therein any dog or other animal;
- (b) Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, or other waterworks, or wash or cleanse therein any cloth, wool, leather or skin of any animal, or any clothes or other thing.
- (c) Every person who shall cause the water of any sink, sewer, or drain, or any filthy water whatever, belonging

to him or under his control, to run or be brought into any such stream, reservoir, or other waterworks, or do any act whereby the water under the charge of the Council shall be fouled or made impure; and every such last mentioned person shall also forfeit the sum of one pound for each day, if more than one, during which the last mentioned offence shall be continued.

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175. In case the Council shall require to take or use any land within the limits of the Municipality with or without the buildings, if any, erected thereon, or any frontage or stoep belonging to any premises, for the purpose of doing any act or of executing any work or undertaking authorised by this Act, or for the purpose of making or improving streets, roads, sidewalks, thoroughfares, causeways or pavements, or any other municipal purpose, or shall require to dig out and to carry away any materials, or to appropriate or to make use of any springs, streams or other supplies of water belonging respectively to any person or persons upon any lands within the limits of the Municipality, who shall not be bound by law to allow the Council so to do, then and in that case it shall be lawful for the Council, and they are hereby authorised and empowered to treat and agree with every such person or persons for the purchase, hire or use, as the case may be, of any such land, buildings, frontage, stoep, materials, springs, streams, or supplies of water as aforesaid; or for the payment of consequential damages, and generally to enter into any such contract or contracts relative to the obtaining or using of any such land, buildings, frontage, stoep, materials, springs, streams, or any other supplies of water as aforesaid, on such terms and conditions as they shall deem expedient. And if any such person or persons and the Council shall not agree upon the purchase money or hire or recompense for consequential damages to be respectively given by one party and received by the other, then the amount of compensation, hire or recompense shall be settled by arbitration. Provided always that arbitrators, acting under the provisions of sections one hundred and fifty-six, one hundred and fifty-seven, or this section, in deciding upon any amount to be paid shall take into consideration the benefit and advantage derived or to be derived by the person claiming recompense or compensation, by reason of any work or improvement done or contemplated by the Council.

Expropriation of property for public purposes.

176. Every medical practitioner in the Municipality shall, upon becoming aware, or being of opinion that any person attended on by him is suffering from an infectious disease, shall forthwith send a certificate to the Health Officer of the Council, or such other officer as the Council may appoint, disclosing the name and residence of the patient, and the disease he believes him to be suffering from, and for every certificate truly reporting the occurrence of an infectious disease the Council shall, after receiving the certificate, pay to the medical practitioner a fee of 2s. 6d., if

Medical men to give information as to infectious diseases.

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the case occurs in his private practice. Any medical officer not complying with the terms of this section shall be deemed to have contravened a provision of this Act. The infectious diseases, of which notice must be given, shall include small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, or scarlet fever, and typhoid, typhus, enteric, relapsing, continued, yellow and puerperal fevers, and such other diseases as may at any time be declared by the Medical Council to be infectious.

Inquests.

177. In the case of the death of any person within the Municipality, when there has been no medical attendant who can testify as to the cause thereof, the occupier or occupiers, person or persons, responsible for the rent of the house in which the death has occurred, shall forthwith upon such death happening, report the fact to the Council and to the Resident Magistrate of Cape Town, the latter of whom shall, should he deem it advisable, hold an inquest as to the cause of death, and in the event of his deciding so to do, he shall have the powers and be charged with the duties set forth in the Act No. 22 of 1875, known as the "Inquests Act, 1875," excepting in so far as any part thereof may conflict with the provisions of this section.

Council to have preference on property for work done thereto.

178. In all cases, where by this Act or any rule or regulation at any time in force, the Council is authorised to do any work upon any private property, the expenses to which the Council may be put in doing such work and defraying the cost of materials in connection therewith, shall be a first claim and charge upon such property, and be paid in preference to any debt obligation or mortgage thereon by the owner thereof; provided that the Council shall at no time take legal proceedings for the recovery of such expenses until three months after notice has been given to the owner of the property affected, and in the case of the owner not being known or to be found, until the Council can show that due diligence has been used in endeavouring to ascertain the whereabouts of the owner and that he cannot be found.

Actions at law.

179. In any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, by or against the Council, the warrant of attorney to sue or defend shall be deemed to be duly executed if issued under the common seal of the Council and signed by the Town Clerk; and all such costs, charges, and expenses as the Council shall be put to or become chargeable with by reason of bringing or defending such action or suit, or under any judgment of the Court, shall be paid out of the funds of the Council, and no Councillor shall be personally answerable or liable for the payment of the same, or any part thereof, unless such action or suit shall arise in consequence of his own wilful neglect or default.

Service of legal process on council.

180. Any summons or notice or any writ or other proceeding at law which any person may desire to serve or have served upon the

Council may be served by being given personally to the Town Clerk or by being left at his office with one of the officers of the Council.

No. 26—1893.

181. In all cases on which any matter or thing is by this Act required to be advertised or printed in one or more newspapers published in Cape Town, the Council shall from time to time appoint at least one newspaper which may be regarded as its medium for such purposes.

Newspaper in which notices to be published.

182. The Council shall for the purposes of this Act and its rules and regulations have power by themselves or their officers to enter at all reasonable hours into and upon any building or land for the purpose of executing any work or making any inspection authorised to be executed or made by them under this Act or the Council's rules and regulations without being liable to any legal proceedings on account thereof.

Power of entry upon private property.

183. Every person who shall at any time obstruct the Council in any of its officers in the performance of anything which they are respectively empowered or required to do by this or any other Act or by any municipal regulation, shall be liable in each case to a penalty not exceeding five pounds.

Penalty for obstructing Council.

184. Every person who shall contravene any provision of this Act or any rule or regulation in force in the Municipality, shall for every offence be liable to a penalty expressly imposed by this Act or any such rule or regulation, and if no other penalty be imposed to a penalty not exceeding ten pounds.

Penalties for contravention of Act or regulations.

185. All offences committed in contravention of this Act, or of any municipal rule or regulation, may lawfully be prosecuted in the Court of the Resident Magistrate for Cape Town; and if any person shall be convicted of any such offence, and shall not pay or satisfy the amount of fine imposed on him, it shall be lawful, unless otherwise provided in this Act, for the said Resident Magistrate to sentence such offender to any period of imprisonment not exceeding three months, unless such fine shall be sooner paid; and the amount of all fines, forfeitures, and penalties, when recovered, shall be paid to the Treasurer of the Council for the purposes of this Act.

Prosecution of offences and recovery of penalties.

186. For the purposes of any arbitration under the provisions of this Act, when the mode of arbitration is not set forth, the provisions of the "Lands and Arbitrations Clauses Act, 1882," are hereby incorporated.

"Lands and Arbitrations Clauses Act, 1882," incorporated.

187. All costs, charges, and expenses incurred in and about the promotion and passing and carrying the provisions of this Act, and of the Municipal Regulations into effect, shall be paid out of the money authorised to be received by the Council under the provisions of this Act.

Council's expenses.

188. This Act may be cited as "The Cape Town Municipal Act, 1893."

Short title of Act.

SCHEDULE.

No. 27—1893.
Schedule.

Form of Front of Ballot Paper. *No. of Votes.*

Counterfoil
No.

No. of Votes

NOTE :
*The Counterfoil
is to have a
number to cor-
respond with
that on the back
of the ballot
paper.*

1	BROWN (John Brown, of 21, Ad- derley Street, Cape Town, merchant.)	
2	JONES (Henry Jones, of 45, St. George's Street, Cape Town, attorney.)	
3	SMITH (Frederick Smith, of 51, Kloof Street, Cape Town, broker.)	
4	ROBINSON (George Robinson, of 33, Strand Street, Cape Town, draper.)	

Form of Back of Ballot Paper.

No.....

Election for Town Council of the City of Cape Town.

.....189...

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

No. 27—1893.]

[September 12, 1893.

ACT

To Prevent the Spread of Contagious and Infectious Diseases amongst Cattle and other Animals. (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 Ordinance No. 5 of 1844, the Ordinance No. 1 of 1853, the Act No. 7 of 1866-67, the Cattle Diseases Act, 1868 (2), and the Animals Diseases Act, 1881 (3), and so much of any

¹ Additional provisions made for dealing with Rinderpest by Acts 22, 1896 (p. 3611); 2 and 12, 1897 (p. 3727). R. M. Courts have summary jurisdiction under these Acts, § 9, Act 12, 1897. Modified and extended by Proclamation No. 424 of 1893 to all the Native Territories, and by Proclamation No. 53, 1896, to Eastern and Western Pondoland. See Act 3, 1893 for Rabies (p. 3147).
Act 20, 1894, Scab (p. 3347).

² No. 20.

³ No. 2.

Repeal of Laws.

other law as may be repugnant to or inconsistent with the provisions hereof are hereby repealed: Provided that the repeal of any of the aforesaid laws shall not affect any proceedings commenced before the passing of this Act.

No. 27—1893.

2. For the purposes of this Act the following terms shall bear the following meanings:

Interpretation clause.

“Animal (1) shall mean any horse, gelding, mare, mule, ass, bull, ox, cow, heifer, calf, sheep, goat, pig or ostrich, and shall, for the purposes of sections three, four, five, six and seven, include “dogs” and “cats.”

“Occupier” shall mean:—

- (a) Any person, company or co-partnership occupying or in possession of land other than Crown land, in respect of such land.
- (b) The Field-cornet in respect of public roads, outspans and waste Crown lands within his field-cornetcy.
- (c) The inspector of native locations, in respect of locations on Government land, and in respect of locations on private land the owner or person in charge of such land.
- (d) The Chairman or, in his absence, the Town Clerk or Secretary of a Municipality or Village Management Board, in respect of lands, other than private property, roads and outspans, within the limits of such Municipality or Village.

“Scab Inspector” (2) shall mean any inspector appointed under the provisions of Act No. 28 of 1866 (2), or of Act No. 33 of 1888. (3)

PART I.—IMPORTATION.

3. It shall be the duty of the port captain, harbour master, or other officer of Government who shall first board any ship or vessel arriving at any of the ports of this Colony, to ask the master of such ship or vessel whether he has on board any animals within the meaning of this Act, mentioning such animals by their denominations; and should the said master reply in the affirmative, the port captain, harbour master, or other officer shall inform the said master of this Act and of any proclamation that may have been made thereunder, and deliver to him a copy of the same respectively.

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

4. From and after the first day of January, 1894, no animal brought from any place separated by sea from the Colony shall be landed at any place in the Colony from any ship, vessel or boat unless or until it be certified to the officer in command of such ship, vessel or boat under the hand of some person authorised

No animal from over sea to be landed without certificate.

¹ For rinderpest, word “animal” includes any animal. Act 2, 1897, § 2 (p. 3704).

² Shall mean any inspector appointed under Scab Act No. 20, 1894. See § 56 (p. 3364).

³ Repealed by Act No. 20, 1894.

No. 27—1893.

by the Governor in that behalf, that such animal is free from any infectious or contagious disease, and that it has been proved to the satisfaction of such person that such animal is not brought from some place beyond the Colony in respect to which the proclamation in the next section of this Act mentioned shall be in force; and any officer in command of any such ship, vessel or boat who shall land or permit to be landed therefrom, contrary to the provisions of this section of this Act, any such animal shall, for every such animal so landed or permitted to be landed, be liable to a fine of not exceeding one hundred pounds and in default of payment thereof to imprisonment with or without hard labour for any period not exceeding six months unless such fine be sooner paid.

Governor may by proclamation prohibit importation of animals, &c.

5. It shall be lawful for the Governor by Proclamation in the *Gazette* to prohibit the importation or introduction into this Colony from any place beyond the same in which any infectious or contagious disease affecting animals shall be known or supposed to be prevalent, of any such animals for such time as in such proclamation shall be mentioned, and from and after such proclamation and during the time mentioned therein, the master of any vessel or ship, and the owner of any boat, who shall knowingly land or permit to be landed from such vessel, ship or boat, and any other person who shall otherwise introduce into this Colony any such animals, contrary to the prohibition in such proclamation contained, shall for every such animal so landed or otherwise introduced, as the case may be, be liable to a fine of not exceeding one hundred pounds, or in default of payment thereof to imprisonment, with or without hard labour for any period not exceeding six months, unless such fine be sooner paid.

Governor may permit landing of animals under certain conditions.

6. Notwithstanding the provisions in the last two preceding sections contained, it shall be lawful for the Governor by proclamation in the *Gazette* to permit the landing or introduction of any such cattle, sheep, horses or other animals, as aforesaid, at such place or places in the Colony, and subject to such restrictions and regulations as may in such proclamation be imposed.

Governor may make regulations as to animals so landed.

7. It shall be lawful for the Governor in and by such proclamation as in the last preceding section mentioned to make rules and regulations regarding the quarantine, isolation, care, safe-keeping or other treatment of any such animals so permitted to be landed or introduced as aforesaid, and such regulations may provide for the destruction of any such animals should it be deemed expedient to do so.

PART II.—DISEASES IN THE COLONY.

Any animal affected with any contagious disease to be isolated, and notice given of fact.

8. Every person who shall have in his possession or under his charge, or shall knowingly have on any property of which he shall be the occupier, any animal affected with the disease of lung sickness, or the disease of glanders, or with such other disease as the Governor may proclaim to be contagious or infectious, shall forthwith destroy, or shall keep such animal separate

from all animals not so affected, and shall forthwith give notice to the Resident Magistrate of the district or the field-cornet of the ward in which such animal is, or to the nearest justice of the peace, inspector of native locations, or scab inspector, and also to all the occupiers of all contiguous lands (not being lands situate within the limits of any town or village) that such animal is so affected; and every such justice of the peace, field-cornet, inspector of native locations, or scab inspector to whom such notice shall be given, or who shall himself be the person from whom such notice is required, shall report the notice received or shall give the notice required, as the case may be, to the Resident Magistrate of the district, and every Resident Magistrate to whom such report is made or notice given, shall report the same to the Minister in charge of the Agricultural Department.

9. Whenever any notice or information shall have been received by any Resident Magistrate, field-cornet, Justice of the peace, inspector of native location, or scab inspector, or it shall otherwise have come to the knowledge of any such person, or such person shall have reason to suspect, that any animal in his district, ward, area, or location, is affected as aforesaid, he shall, with all convenient speed, call to his assistance any two farmers, being landowners, chosen from a list framed for each district of such landowners as are recommended by the Divisional Council (which list shall be published by notice in the *Gazette* and may be altered and amended from time to time), who are hereby authorised and required, upon being so called upon, to render such assistance; and he shall, together with such farmers, forthwith proceed to inspect such animal, and to hold an enquiry into the circumstances of the case, and if they, or any two of them, shall be of opinion that such animal is affected with any such disease as aforesaid, and that there is danger of such disease spreading they shall forthwith cause such animal to be destroyed or isolated, or dealt with in such other manner as they, or any two of them, may deem expedient in order to prevent the spread of such disease: or if they shall unanimously be of opinion that though such animal is not actually affected with any such disease, but that in order to prevent the spread of such disease it is necessary to deal with such animal as if so diseased, it shall be lawful for them to cause such animal to be isolated or dealt with in such manner other than destruction as shall be deemed expedient. The carcasses of all animals destroyed under the provisions of this Act, or that may have died from any contagious or infectious disease, shall forthwith be buried or burnt by the owner thereof at the spot as nearly as may be where the death occurred.

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

Carcasses of animals destroyed to be buried or burnt.

10. When under the provisions of the last preceding section any animal has been found to be affected with glanders, the Board convened in terms of such section shall cause such animal to be immediately destroyed; but in the case of lung sickness the

If animal found affected with lung-sickness, may be destroyed.

No. 27—1893.

Board may cause the immediate destruction of such animal unless the owner of the infected animal has, in the opinion of the Board, a sufficiently safe camp, shed or stable in which to keep the infected animal isolated.

Resident Magistrate may declare infected area pending proclamation by Governor.

11. Whenever it shall come to the knowledge of any Resident Magistrate that any animal within the district is affected with any infectious disease, it shall be lawful for such magistrate upon notice to the occupier of the land on which such animal is, to declare such land or any portion thereof an infected area, and to prohibit the removal of any such animal as may be named in such notice from the land so declared an infected area, for a sufficient period from the date of such notice to enable the Governor, if he thinks fit, to issue the proclamation referred to in the next succeeding section, and such notice shall be published in some newspaper circulating in the district, and a copy thereof shall be posted at the office of the Resident Magistrate, and from and after such notice and prohibition and during such period the owner of any such animal in such infected area who shall allow any such animal to stray or be removed into any uninfected area, shall be guilty of an offence against the provisions of this Act and liable to the penalties prescribed for the contravention of the same.

Governor may by proclamation declare area or district infected.

12. Whenever any such disease as aforesaid is known to exist among animals in any district or districts, the Governor may by proclamation in the *Gazette* declare such district or districts or any area embracing or forming part of such district or districts, to be an infected district or area, and may by such proclamation order and direct that it shall not be lawful to remove from such district or area any such animals as shall be named in such proclamation whether the same are or are not affected with any such disease, and may by such proclamation make rules and regulations regarding the quarantine, isolation, care, safe keeping or other treatment of any animals in such district or area, and such regulation may provide for the destruction of such animals should it be deemed expedient to do so, and for such compensation for animals so destroyed as the Governor may deem fit: Provided that it shall be lawful for the Governor in such proclamation to make such exceptions as he shall think fit with regard to the removal from such district or area of any animals not affected with any such disease as aforesaid.

Withdrawal of proclamation by Governor.

13. Whenever it shall be shown to the satisfaction of the Governor that contagious and infectious diseases have ceased to exist amongst animals in any district, area, or portion of any such district or area with regard to which any such proclamation as in the last preceding section mentioned shall have been issued, it shall be lawful for him, if he thinks fit, at any time to repeal such proclamation by another proclamation in the *Gazette* and to declare such district or area or portion of such district or area as the case may be to be no longer infected.

PART III. —GENERAL.

14. Any person contravening any of the provisions of this Act or any proclamation issued under the provisions thereof, or willfully obstructing any person in the due execution of any of the said provisions shall be liable to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding three months, unless such fine be sooner paid.

Penalty clause.

15. For the purposes of the operation of "The Pound Act, 1892," within any district or area declared or proclaimed to be an infected district or area under the provisions of this Act, the term "nearest pound" shall be deemed to be the nearest pound within such proclaimed or declared district or area; and in case there is no pound in such district or area, the Governor may proclaim at some convenient spot, a pound therein, for the purposes of this Act, which pound shall then be under the control of the Divisional Council.

Operation of Pound Act within infected district or area.

16. Nothing in this Act contained shall be taken to apply to the disease known as scab amongst sheep or goats, or the disease known as strangles, or, save as to the provisions of sections three, four, five, six, and seven thereof, to the disease known as "Rabies."

Act not to apply to certain diseases.

17. This Act may be cited for all purposes as the "Animal Diseases Act, 1893."

Short title.

No. 28—1893.]

[September 12, 1893.

ACT

To Authorise a Company to be styled the Green and Sea Point Water and Electric Lighting Company (Limited), to construct and maintain certain Water and Electric Lighting Works.

WHEREAS it is desirable for the better supply of water and for the supply of electric lighting to the inhabitants of Sea Point and Green Point, and to the persons residing within the distributing area shown on the plans hereinafter referred to, that a company should be formed for the purpose of constructing reservoirs and other works on, and laying down a line of water pipes and other works from the property known as Oudekraal, being portion of the entailed estate Orangezicht, belonging at present to Michael Alexander Willem van Broda, to Botany Bay at Sea Point to the reservoirs to be there constructed, and thence to be distributed within the Municipality of Green Point and Sea Point, and distributing area as shown upon the diagrams deposited with the Clerk of the House of Assembly:

Preamble,

And whereas the plans and sections of the said line of water pipes are now deposited in the office of the said Clerk of the House of Assembly:

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And whereas it is desirable that the company should acquire for such purpose all rights to the water and the springs, fountains and other sources of the same, flowing, existing or rising, or which may in future be found to flow, exist or rise on the said property Oudekraal, and certain rights over the said property and over the land adjacent to the said line of pipes and other works :

And whereas agreements have been entered into between one Hercules Petrus du Preez and Michael Alexander Willem van Breda who is entitled to the said property subject to the provisions contained in the Deed of Transfer in favour of the late Dirk Gysbert van Breda, dated 13th day of February, 1851, wherein the conditions under which the said property is entailed are set forth; and whereas under the said agreements the said Michael Alexander Willem van Breda has consented, subject to the consent of Parliament being obtained to the release of the said entail, to let in perpetuity the said property together with all such rights over the same as are necessary for the acquisition, storage and conveyance of the water thereupon and the purposes of the company in respect of the same, to any company which may be formed by the said Hercules Petrus du Preez for the above purposes and duly constituted and registered within this Colony under the Companies Act, 1892, within a year after the passing of the Act releasing the entail, in consideration of an annual income or rental of five hundred pounds being paid to the said Michael Alexander Willem van Breda and his successors, the first payment of the said income to be made on December 31st, 1894, and thereafter the said annual sum to be paid on the last day of each and every succeeding year :

And whereas it is necessary to provide that the said annual income or rental shall be guaranteed and secured to the said Michael Alexander Willem van Breda and his successors so soon as he shall have obtained from Parliament the release of the said entail subject to the conditions that upon the failure to fulfil the terms of payment of the said annual income as aforesaid the release shall be void and the entail be restored, and all the rights, powers and privileges granted by this Act shall lapse, cease, and determine :

And whereas the said Hercules Petrus du Preez has undertaken to transfer, cede and assign all his right and title under the said agreements to the company to be formed under this Act :

And whereas it is expedient and necessary that certain rights, privileges and powers should be granted to and vested in the said company for the furtherance and carrying out of the purposes aforesaid :

And whereas it is desirable that the liability of the shareholders in the said company should be limited to the amount of their respective shares :

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. 28 1893.

1. The company shall pay to the said Michael Alexander Willem van Breda and his successors for the lease in perpetuity of the property Oudekraal being portion of the entailed estate Orangezicht in the Cape District, and containing 599 morgen and situate on the north-west slope of Table Mountain between the places Van Camps Bay and Houts Bay including all rights necessary for the purposes of this Act the annual income or rental of five hundred pounds which shall be a preferent charge upon all the assets of the said company, the payment of which sum shall be made on the 31st day of December, 1894, and thereafter on the last day of each and every succeeding year: Provided that before the said 31st day of December, 1894, the said Michael Alexander Willem van Breda shall have obtained from Parliament the release of the said entail; and provided further that in the event of failure of the said annual income or rental for a period of thirty days after the due date and after lawful demand made in writing of payment the release of the said entail shall be void and the said entail shall be restored and all the rights, powers and privileges granted and conferred under this Act shall lapse, cease, and determine.

Payment to Mr. Breda of £500 per annum.

2. The company shall be duly constituted and shall be registered with limited liability under the Companies Act, 1892, within a year of the passing of the said Act releasing the entail, and in default of such registration within the said period all the powers and privileges granted and conferred under this Act shall lapse, cease and determine.

Constitution and registration of company.

3. The said company shall be and is hereby authorised and empowered, subject to the provisions of section one of this Act, to convey such a supply of water as it may require for the purposes of this Act, from the said property Oudekraal, and to conduct, lead, and carry such water across ground the property of the estate of the late Daniel Mills, thence across the ground the property of the Sea Point Waterworks Company, Limited, Charles A. Fairbridge and others, thence across the property of E. Tilley, thence across the property of "Ohlsson's Cape Breweries, Limited," thence across ground vested in the Town Council of Cape Town, thence across the property of C. H. van Zyl, thence across the property of Mrs. Kingon, into the Municipality of Green Point and Sea Point, as shown on the diagram in the hands of the Clerk of the House of Assembly, and to generate and transmit electrical energy within the limits or area of distribution shewn on the said diagram or plan: Provided that it shall be lawful for the company to deviate from and vary the line of the said water pipes and alter the proposed site of reservoir and other works with the consent of any owner or owners through whose lands the said line may pass, or on whose land the proposed site of such reservoir and other

Power to Green and Sea Point Water and Electric Lighting Company Limited to take, generate and convey water and electrical power. Line of pipes and works.

No. 28 - 1893.

works shall be situated, or in the case of lands vested in any Municipality or Town Council, with the consent of such Municipality or Town Council.

Powers of company to enter on lands, &c.

4. For the purposes of this Act the company is hereby authorised and empowered on its formation to do all and each of the following acts and things in respect of land lying adjacent or convenient to the line of pipes or works marked on the aforesaid plans, that is to say:—

- (a) To enter upon, taken possession of, use, hold and appropriate any such land.
- (b) To dig and make excavations and cuttings in, and make and construct mounds, walls, slopes, banks, bridges and culverts upon the said land.
- (c) To place, make, construct and lay down upon, in, and under such land reservoirs, dams, pipes, canals, aqueducts, machinery, dynamos, wires, poles, cables, insulators, tubes, pipes, boxes, and any other constructions or works necessary or adapted for the impounding, storing, diverting, appropriating, cleaning, purifying, taking, conveying, or distributing water, and for the generating, conveying, transmitting or distributing electricity, for the purposes of this Act.
- (d) To take, raise and carry away stones, clay, gravel and other materials, upon and from such land.
- (e) To build and erect buildings, store house, engine houses, sheds, machinery and any other requisite for construction or maintenance of the said water pipes, water works, electric lines and electric lighting works.
- (f) From time to time to do all and each of the aforesaid acts and things, and such other acts and things as may be necessary in order to improve or maintain the works made and constructed for the purposes of this Act:

Compensation to be paid.

Provided, however, that in respect of every such act and thing done by the said company in respect of such land, without agreement made and entered into with the owner, lessee or occupier thereof, or in respect of such land as is vested in any Municipal or Town Council, without agreement made and entered into with such Municipal or Town Council; or in respect of such land as is the property of Her Majesty in her Colonial Government, without the consent of the Governor, the owners of such land or such Municipal or Town Council, or the Colonial Government as the case may be, shall be entitled to receive compensation from the company, and in addition thereto the lessee or occupier shall be entitled to receive compensation for disturbance of his possession or occupation, and for any injury that he may sustain by reason of the act or thing done: and provided further that no such act or thing as aforesaid shall be done without the consent of the

Governor, or the owner, or such Municipal or Town Council, as the case may be, in respect of any such land which is cultivated, planted or built upon, and provided also that nothing be done to interfere with the present pipes or other fittings and connections, the property of the Town Council of Cape Town or the Sea Point Waterworks Company, save as hereinafter provided.

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Exemption of
land cultivated,
planted, or built on

5. Whenever compensation shall be claimed from the company under and by virtue of any of the provisions of this Act the amount of such compensation shall, in the absence of agreement, be determined by arbitration, and with regard to every such arbitration the provisions of the "Lands and Arbitrations Clauses Act, 1882," shall *mutatis mutandis* apply so far as they are not inconsistent with any of the provisions of this Act.

Provisions of
Lands and Arbitra-
tions Clauses Act
to apply.

6. Subject to the provisions of this Act the company shall, if required, supply water and electricity within the area of distribution for the purpose of this Act; provided that electric lighting shall be supplied only by means of a system approved, in writing, by the Commissioner of Crown Lands, and subject to such regulations and conditions for securing the safety of the public and for insuring a proper supply of lighting as the said Commissioner may from time to time approve: and provided further that at least fourteen days before submitting the regulations for the approval of the Commissioner, a copy thereof shall be furnished by the company to the Municipality.

Commissioner of
Crown Lands to
approve of Regula-
tions regarding
electric lighting.

7. The company is, for the purposes of this Act and within the limits of the Municipality of Sea Point and Green Point, and limits or area of distribution as shown on the plans aforesaid, authorised and empowered to lay down, make and construct pipes, meters, conduits, and any other appliances necessary for the supply of water, and to attach hydrants, and to lay down, erect and construct poles, wires, insulators, cables, tubes, pipes, meters, and any other necessary appliances for the supply of electric lighting, under or along any public road, street or thoroughfare: Provided that before the company open or break up any public road, street or thoroughfare, they shall give to the person under whose control or management, or in whom the same may be vested, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works of the company, and in such cases the said notice shall be given so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen: Provided further that no such public road, street or thoroughfare shall be opened or broken up except according to such plan and in such manner as shall be approved of by the persons in whom the same, or the control and management thereof, may be vested: and provided that all wires, insulators and the like appliances shall be placed at such a height as not to impede public or private traffic.

Power of company
to construct works,
and protection of
public in respect
thereof.

No. 28—1893.

Provided, also, that when the company open or break up any public road, street or thoroughfare, they shall with all convenient speed complete the work for which the same shall be broken up and fill in the ground and reinstate and make good the road or pavement so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and kept there every night during which such road or pavement shall be continued open or broken up, and shall make good any damage which may exist or be caused by such opening or breaking up and to the satisfaction of the Municipality, Council or persons aforesaid at any time within a period of three months from such opening or breaking up, and shall moreover make good any subsidence of the soil arising from such opening or breaking up which shall occur within twelve months from and after such opening or breaking up: and provided further that where pipes cross private property the company shall leave sufficient communication between the portions of the property separated by such pipes and that in case of excavation on private property the ground shall be properly levelled.

If the company open or break up any public road, street or thoroughfare without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or if the company make any unnecessary delay in completing such work or in filling in the ground or reinstating and making good the public road, street, or thoroughfare so open or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to make good any defect caused by such opening or breaking up which may appear or arise within a space of three months next after the reinstatement of the road, street, or thoroughfare, or any subsidence of the soil caused by such opening or breaking up which may appear or arise within the space of twelve months next after such reinstatement, they shall forfeit to the persons having the control or management of the public road, street, or thoroughfare in respect of which such default is made, a sum not exceeding five pounds for every such offence and an additional sum of not exceeding five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof: provided further that in all such doings the company shall be liable for any accident or damages that may happen by reason of any neglect or fault on the part of the company or their employés.

8. The right to and property in all and singular the work and buildings constructed as aforesaid by the company, under the provisions of this Act, and in all and singular the appurtenances to such works and also in all land appropriated for the purposes of this Act or acquired by the company in connection with the said works shall be vested in the company. Provided that the title to land appropriated by the company shall not vest in the company

Works and lands
vested in company.

until transfer thereof be made in due form of law and until compensation be made for such appropriation if such compensation be required.

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9. It shall at all times be lawful for the company, its directors, engineers, contractors, agents or servants to have free and convenient access and right of way to every portion of the works constructed, and all land or other property used, possessed or owned by it under the provisions of the Act, for the purpose of altering, adding to, repairing, reconstructing, relaying, supervising or maintaining the said works or any part or portion thereof, or generally in order to carry out the purposes of this Act.

Right of access to works.

10. The company shall have the right to supply any person residing outside the limits of the Municipality, but within the limits or area of distribution as shown on the plan aforesaid, with water and electric lighting at such a rate as shall be mutually agreed upon between the company and such person, and to supply the inhabitants residing within the Municipality and the Municipal Council thereof with water and electric lighting at such a rate as may be mutually agreed upon between the company and the Commissioners of the Municipality, subject to the sanction of ratepayers in the manner provided for in the twentieth section hereof; provided

Right of company to supply municipality within area of distribution.

- (a) That nothing in this Act or in the plans aforesaid contained shall give the company the right to supply water or electric lighting within the Municipality of Cape Town without the consent of the Town Council of the City of Cape Town first had and obtained.
- (b) That if at any time after the happening of the conditions in the twentieth section of this Act referred to, the company shall at any time for the space of twenty-four hours, fail to supply water according to the requirements of the inhabitants or Commissioners of the Municipality, the said Commissioners shall have the right and are hereby authorised forthwith to enter upon and take possession of the water works of the company and to make all necessary provisions for supplying and to supply the said inhabitants with water according to their requirements at the expense and risk of the company until such time as the company shall be in a position to resume the supplying of water as aforesaid, and all costs, loss, charges, and expenses made or incurred by the inhabitants or the said Commissioners in supplying the said inhabitants with water as hereinbefore provided shall be borne and paid by the company and shall be a charge on the assets of the said company ranking next after the charge in the first section hereof mentioned, and the said Commissioners shall have the further right to receive and collect all amounts due and owing by the said inhabitants to the said company for or in respect of water supplied previous

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to and during such default, and shall set off all amounts so collected or received against the costs, charge and expenses hereinbefore referred to.

Company to supply persons who demand to be supplied.

11. The company may from time to time, and shall at any time upon the application of the owner, or upon the application of the occupier, with the consent, in writing, of the owner of any dwelling house, building, or other property within the limits of the said Municipality and limits or area of distribution as shown on the aforesaid plans, make, construct and lay down communicating pipes, conduits, wires, cables, poles, insulators or any other appliances necessary or suitable for the conveyance and supply, and for the measurement of the supply of water and electric lighting to any such house, building or property, and to attach hydrants for the supply of water, and wires, cables, poles, insulators for the supply of electric lighting to such house, building or property, and shall supply water and electric lighting to same.

Cost of house connection and repairs borne by consumer.

12. The cost of the house connection with shut-off cocks and suitable house fittings, and of all repairs, shall be borne by the persons to whom the water or electric lighting is supplied; but the materials for the same shall be of good quality and laid down by competent workmen or contractors, and the company shall have the right to object to any material or work supplied of an inferior quality to that usually put into such work: Provided always that when the water or electric lighting is supplied by meter the work up to and including the meter shall be done by the servants of the said company, and the work and fittings on the consumer's side of the meter may be done by the consumer in such way as he may deem fit.

Company to frame tariff of charges.

13. So soon as may be after the company is prepared and ready to supply water and electric lighting, it shall be lawful for the said company, and it is hereby required, to frame a tariff of charges in accordance with any agreement entered into under the tenth section hereof showing the terms upon which filtered and other water, and electric lighting, shall be supplied by the said company, and to make regulations showing at what times, in what manner and under what conditions the Municipal Council, the inhabitants of the said Municipality of Green Point and Sea Point, and of the said distributing area may obtain a supply of water and electric lighting; provided that such tariff and regulations or any alterations thereof shall be published in the *Gazette* from time to time and also in one or more of the newspapers published in Cape Town: Provided further that should any street lamp supplied by the company fail to give light at the appointed time through failure on the part of the company to supply the electric current, notice of the said default shall be given to the company, and if the said default continue for forty-eight hours after receipt by the company of the said notice, the company shall be liable to pay to the Municipality a fine of two shillings and sixpence for every night that such default shall be made in respect of each lamp;

and in case of failure, through similar causes of any lamp installed in any private house, there shall be payable by the company to the Municipality, after receipt of such notice, and default for forty-eight hours as aforesaid, a fine of sixpence for every night that such default shall continue.

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14. If any person supplied with water or electric lighting by the company under the provisions of this Act shall, for thirty days after lawful demand, fail or neglect to pay the amount fixed by the tariff of the company for water or electric lighting supplied to him, the company may lawfully cut off the supply of water or electric lighting supplied to such person, and may by legal proceedings recover, not only the amount due for water or electric lighting supplied, but also any expense or costs incurred in or about the cutting off of such supply.

In default of payment company may cut off supply and sue for recovery.

15. It shall be lawful for the company from time to time to make, alter, and repeal bye-laws and regulations for preventing waste or damage to the company, for regulating the conduct while 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 providing penalties, which shall not exceed five pounds for each offence, for the contravention of any of such bye-laws or regulations: Provided, however, that no bye-law affecting or imposing penalties upon persons other than servants of the company shall be of any force or effect until it shall have been approved by the Governor and published in the *Gazette* and one or more local newspapers: and provided further that at least fourteen days before submitting the regulations for the approval of the Governor, a copy thereof shall be furnished to the Municipality, and published in the *Gazette*, and in one or more local newspapers.

Company may frame bye-laws to be approved by Governor and published in *Gazette*.

16. The company shall cause all bye-laws and regulations made under the preceding section to be printed, and shall cause a copy of such bye-laws and regulations to be given to every officer and servant of the company affected thereby, and shall cause the short particulars of the several offences for which any punishment or penalty is provided by this Act or by any bye-law or regulation made under this Act, 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 upon paper and pasted thereon in the English and Dutch languages, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such board to be affixed on some conspicuous place approved of by the Municipality in the immediate neighbourhood, to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or removed.

Copies of bye-laws to be supplied to servants, and to be placed in public places.

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Company may enter premises and cut off supply for purpose of inspecting and repairing.

17. The company may authorise any of their servants or employes, for the purpose of inspection and repair, to enter upon and into any house or building supplied with water or electric lighting by the company, between the hours of ten a.m. and four p.m., and to cut off the supply to any such house after twenty-four hours' notice, in writing, shall have been given of the intention to do so: Provided, however, that such supply shall not, under this section, be cut off for any period longer than may be actually required for the purpose of detecting waste water or making necessary repairs.

Company is bound to commence and to complete works within certain periods for water and electric lighting respectively, under penalty of losing benefits of Act; but Governor may extend time.

18. The company is hereby bound and required to commence the works to be constructed for the purpose of this Act, within one year, and to complete the said work so as to be able to supply water to the said Council and the inhabitants of the said Municipality, within three years, and so as to be able to supply the said Council and the inhabitants of the said Municipality with electric lighting within three years from the date of the passing of this Act, and failing either the due commencement or the due completion of the said works within the time specified, all the rights, powers and privileges by this Act conferred on the company shall cease and determine, so far as relates to the special purpose in respect of which default is made, that is to say in case of failure to comply with this section in respect of the aforesaid waterworks, the power to supply water only shall cease and determine, and in case of failure to comply in respect of the aforesaid works for electric lighting, the power to supply electric lighting only shall cease and determine, unless before the expiration of the period of one year, or three years aforesaid, the Governor shall see fit to extend the time for either the commencement or completion of the said works, upon proof that the company is unable, through no negligence or fault on its part, either to commence or complete the said works within the period respectively specified: Provided that no extension of time shall be granted until after the expiration of three months from the date of a notice to be published in the *Gazette* and one or more local newspapers, setting forth the intention to apply for such extension.

Company may take over property and plant of Sea Point Waterworks Company, Limited.

19. It shall be lawful for the company to agree with the Sea Point Waterworks Company to take over and purchase or otherwise acquire from the said company all the land, water, water rights, buildings, conduits, pipes, plant, machinery, and every other matter or thing belonging to the said company and used by it for the purpose of supplying water to the said Municipality, and in like manner to acquire all the rights of the said Sea Point Waterworks Company under the "Sea Point Waterworks Company Act, 1861," at a price or for a consideration to be mutually agreed on, and from and after such agreement and such taking over of such works and rights aforesaid, the said Sea Point Waterworks Company shall cease to have the right to supply the Municipality and

its inhabitants with water, or any rights whatsoever under the said Act, and all the rights of the said company under the said Act shall vest in the company who shall continue the said waterworks and supply water subject to the provision of this Act.

20. After the taking over and acquisition by the company of the rights and works in the preceding section mentioned, and upon the Commissioners of the said Municipality being satisfied that the works are substantially built, of sufficient capacity, and that the supply of water is ample throughout the year, and that the company are able to supply the inhabitants thereof with sufficient water, it shall be lawful for the said Commissioners, with the sanction of the registered owners of the landed property, as hereinafter mentioned, within the Municipality, to give to the Town Council of Cape Town the notice in the fifty-ninth section of the Cape Town Municipal Act, 1882, mentioned, and upon the expiration of such notice or sooner, should the Commissioners and Town Council so agree, the provisions of the fifty-third, fifty-fourth, and fifty-fifth sections of the said Act shall cease, determine and become void as to the district or districts in respect of which such notice is applicable: Provided always that if any such arrangement as is in the said Act mentioned be terminated and annulled in the whole or in part, the Town Council of Cape Town shall sell to, and the Municipality shall be bound to purchase and pay the fair value of the service pipes, mains and waterleadings belonging to the Town Council of Cape Town situate in the district or districts in respect of which such arrangement shall terminate, and in the event of no agreement being arrived at the purchase price payable to the said Town Council by the said Municipality shall be settled by arbitration, and upon such sale and purchase the said Municipality shall sell to the company the said service pipes, mains and waterleadings so purchased at the price paid therefor to the said Council, together with all costs and charges incurred by the said Municipality in connection with the said purchase. In case the said Act shall be repealed in this present Session of Parliament, then the provisions of this section shall, *mutatis mutandis*, be applicable to such portions of the repealing Act as shall relate to the matters set out in the said sections: Provided further that the sanction as aforesaid of the registered landed proprietors to terminate the said agreement with the Town Council of Cape Town shall be obtained at a duly convened meeting called by the Municipality in the same manner as meetings of ratepayers of the Municipality are by Act 14 of 1859, or may be by any later Acts amending or repealing the lastmentioned Act, convened, and that at such meeting every resolution shall in the first instance be determined by a show of hands; but that any five of such proprietors being dissatisfied with the result, shall be entitled to demand a poll, in writing delivered at the office of the Commissioners within twenty-four hours after the meeting is held. And if upon the taking of such poll, the votes of a majority of not less than two-thirds of the

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After the taking over the existing arrangement between Municipalities of Cape Town and Green and Sea Point may be terminated.

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registered owners of landed property, as aforesaid, be given in favour of the resolution submitted it may be acted upon by the Commissioners, but not otherwise. Such poll shall be taken within fourteen days after the date of such meeting and upon a day to be fixed by the Chairman of the Municipality, not being less than five days after the publication of a notice in two or more newspapers circulating in the Municipality announcing the date of such poll, and such poll shall be kept open from eight o'clock in the morning until eight o'clock in the evening. The result of such poll shall be reported to the Chairman of the Municipality or in his absence to the Secretary to the Municipality and shall be by him announced. And at such poll all males or females, whether living in or out of the Municipality, having landed property in the Municipality, and also the representative of any person absent from the Colony, or of any estate, having landed property within the Municipality, may vote in person or by proxy.

Penalty for injuring waterworks, &c.

21. Any person who shall wrongfully injure, damage, disturb, obstruct or interrupt any building, machine, erection, conduit, aqueduct, reservoir, dam, watercourse, drain, ditch, pipe, tube, standard wire, dynamo, turbine, lamp, or other work or works forming portions of the works contemplated by this Act, or obstruct, hinder or prevent the forming, constructing, completing, or maintaining of the said works, shall upon conviction be liable to a fine not exceeding ten pounds sterling, or to imprisonment with or without hard labour for any period not exceeding two months, unless such fine be sooner paid, or to both such fine and such imprisonment for such period as aforesaid.

Penalty for polluting water.

22. Any person who shall bathe or wash himself in any dam or reservoir, belonging to the company, or in any stream flowing into such dam or reservoir, or wash, throw, or cause to enter therein, any dog or other animal, or place or throw any rubbish, dirt, filth, or noisome thing into any such dam, reservoir, or stream, or dip, wash, or cleanse therein any wool, leather, or skin of any animal, or any clothes, or other thing, or in any way contaminate the same, shall for each such offence upon conviction be liable to the penalty prescribed by the preceding section.

Offences against regulations.

23. Every person guilty of an offence against any bye-law or regulation made under this Act shall, subject to the proviso in the fifteenth section of this Act contained, be liable to the penalty expressly imposed by such bye-law or regulation, and if no such penalty be imposed, then to a penalty of not exceeding five pounds sterling.

How same may be tried.

24. Every offence against the provisions of this Act including every offence against the company's bye-laws and regulations shall be cognisable, and shall be tried by criminal process in the Court of the Resident Magistrate of the district wherein such offence shall be committed, and of every fine imposed, one-third shall be paid to the Colonial Treasury, one third to the municipality wherein it is committed, and one-third to the company: provided that

the company shall not participate in any fine imposed upon it under the provisions of this Act.

No. 29—1893.

25. The company shall have a local office and a local secretary or agent and shall have a local board of directors, of which board the Chairman of the Municipality of Green Point and Sea Point for the time being shall be *ex officio* a member.

Company to have local office representative and local Board of Directors.

26. The company shall and may sue and be sued as “The Green and Sea Point Water and Electric Lighting Company, Limited,” and the service of process upon the agent or secretary of the said company at his office or place of business in Cape Town or Sea Point shall for all purposes be deemed and taken to be good service upon the company. All powers to sue or institute legal proceedings in this Colony shall be signed and executed as the trust deed or articles of association shall direct.

Company may sue and be sued in its corporate name.

27. In this Act, save where such meanings shall be inconsistent with the context, the following terms shall have the following meanings:—

Explanation of terms.

(a) “The company” shall mean the “Green and Sea Point Water and Electric Lighting Company, Limited.”

(b) “The Municipality” shall mean the Green Point and Sea Point Municipality.

28. This Act may be cited for all purposes as “The Green and Sea Point Water and Electric Lighting Company Act, 1893.”

Short title.

No. 29—1893.]

[September 12, 1893.]

ACT

To make provision for the Release of a certain further portion of the Estate Orangezicht, from the entail of *Fidei Com-missum*.

[Repealed by Act 10, 1899. Pages 3278—3280.]

No. 30—1893.]

[September 12, 1893.

ACT (1)

To Extend the provisions of the "Transfer Facilitation Act, 1890."

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 such a seller of land as is referred to in section one of the Act No. 16 of 1890, commonly called the "Transfer Facilitation Act, 1890," shall sell or shall hertofore have sold an undivided part or share and not the whole of the land affected by the mortgage bond therein referred to, the provisions of the said Act shall, *mutatis mutandis*, apply, provided that

Section 1 of Act No. 16 of 1890 extended to sales of part of land, but seller to continue liable.

- (a) The notice referred to in section one of the said Act shall be substantially in the form set forth in the Schedule to this Act;
- (b) (2) The entries referred to in section five of the said Act shall not set forth that the debt is cancelled, but shall set forth that the purchaser is jointly and severally liable with the seller for the amount of the bond.
- (c) (2) The endorsement upon the bond shall set forth that in accordance with the provisions of this Act, the purchaser has become jointly and severally liable with the seller as debtor under the bond.

2. (2) Section nine of the said Act shall not apply to any seller falling within the provisions of this Act, but such seller shall be jointly and severally liable with the purchaser in respect of such bond, and the entire land shall continue to be subject thereto.

Entire land to remain subject to bond.

3. This Act may be cited as the "Transfer Facilitation Amendment Act, 1893."

Short title.

SCHEDULE.

Schedule.

NOTICE UNDER SECTION 1 OF ACT NO. OF 1893.

To the Honourable the Treasurer:—

Whereas I, the first undersigned, A.B. (a), am the registered owner, by virtue of a Title Deed, under the provisions of Act No. 15 of 1887, dated the day of , of a certain piece of land, in the division of , field-cornetcy of , being Lot No. , called : and whereas a Mortgage Bond on the said land for the sum of £ was passed in favour of the Colonial Government on the day of , and there still remains due and owing on the said Bond the sum of £ : Now, therefore, I do hereby give notice that I have agreed to give transfer of [here insert share to be transferred] of the said land to C.D. (b), the second undersigned:

(a) Insert full name of seller.

(b) Insert full name of purchaser.

¹ See Act 18, 1896 (p. 3602).

² The provisions of these Sections apply to transfer under Act 3, 1905 (p. 4806), of land mortgaged to Government disposed of under Act 40, 1895 (p. 3566).

No. 31—1893.

And I, the said C.D., do hereby notify that I have agreed to take transfer of [*here insert share to be transferred*] of the said land, and that I am ready and willing to become liable jointly and severally with the said first undersigned to the Colonial Government under the Mortgage Bond aforesaid.

Dated at _____, this _____ day of _____

A.B.
C.D.

As Witnesses :
E.F.
G.H.

No. 31—1893.] (1)

[September 12, 1893.

ACT

To Amend the Law with regard to Alluvial Diamond Diggings.

[The whole repealed *except* section 7 by Act 11 of 1899, p. 4089.]

[Pages 3283—3284.]

7. Section twenty-eight of the Act No. 48 of 1882 shall be amended by inserting the words "one shilling" in place and instead of the words "five shillings."

No. 32—1893.

Section 28 of Act
No. 48 of 1882
amended.

No. 32—1893.]

[September 12, 1893.]

ACT

To amend and alter Ordinance 6 of 1852, and to make better provision for the Drainage and Improvement of the Municipalities of Wynberg, Claremont, Rondebosch and Mowbray.

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. Unless the context otherwise denotes, the following words shall have the meanings set opposite to them respectively:—

Definition of words

"Minister" means the Minister to whom the Governor shall assign the working of this Act.

"Council" means any of the Municipal Councils of Wynberg, Claremont, Rondebosch, or Mowbray, acting within its own territorial limits.

"Drain" means any drain used for the drainage of one building only, or of premises within the same enclosure, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed.

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" as above defined applies.

2. From and after the taking effect of this Act, every law which is inconsistent with the provisions of this Act shall be and the same is hereby repealed; but such repeal shall not affect

Repugnant law
repealed.

No. 32—1893.

Duties of Council
with regard to
Liesbeek River.

any right acquired or liability incurred previously under such ordinance or law, which rights or liabilities, if any, shall be judged of as if this Act had not been passed.

3. It shall be the duty of every Council to take all lawful measures, in accordance with the terms of this Act, in order to conserve the Liesbeek River throughout its entire course, and to prevent the water of the said river from being polluted by the introduction of either solid or liquid filth or other matter so as to cause a nuisance.

Sluices.

4. No dam shall be placed or allowed to remain in the said river unless provided with a proper sluice or sluices; and no sluice shall be deemed a proper sluice, for the purposes of this section, unless approved of by the Council within whose jurisdiction such sluice is situated or is proposed to be placed.

Dams.

5. From and after the taking effect of this Act it shall not be lawful for any person to place a dam at any spot in the said river, except with the previous permission of the Council within whose jurisdiction such dam is proposed to be placed.

Raising of sluices.

6. During the period between the 1st day of September and the 1st day of May in every year all sluices in the Liesbeek River shall be raised by the persons by whom they are maintained or used in such manner as to allow the free escape of water on the last Saturday of every month from five o'clock to seven o'clock p.m.

Pollution of river.

7. Every person who casts into the said river, or who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into the said river, any poisonous, noxious or polluting liquid so as to cause a nuisance, shall be guilty of a contravention of this section.

Fouling of river.

8. Any person casting or conducting night soil or rubbish into the said river, or washing wool or steeping or dressing skins therein, or throwing into the said river the carcase of any dead animal, or drowning any animal in it, or knowingly doing any other act or thing plainly calculated to foul the water of the said river so as to cause a nuisance, shall be guilty of a contravention of this section: Provided, however, that the washing of clothes in the said river within the limits of any Municipality, the Council of which has not published the notice in the next section provided for, shall not be deemed and taken to be a contravention hereof.

Washing in river.

9. So soon as any Council shall have erected a number of wash-houses sufficient in the opinion of the Council to supply the necessities of the inhabitants of its Municipality, it shall be lawful for such Council to publish a notice in one or more local newspapers and in the *Gazette*, prohibiting the washing of clothes in the said river, within such Municipality, from and after a date not earlier than one month from the date of the said notice.

Notices prohibiting
washing in
river.

10. Copies of such notice, in the English and Dutch languages, shall be posted by the said Council, in convenient places at or near

the said river; and from and after the date named in the said notice any person who washes dirty clothes in the said river, or at any place so close to the banks thereof, that it is possible for dirty water used in the said washing to run or drain back into the said river, shall be guilty of a contravention of this section.

No. 32—1893.

11. Any police constable, or any person authorised in writing by the Chairman or Secretary of any Council, may, after announcing his office and the object of his visit to the occupier or some person at his residence, enter upon any private property lying along the sides of the said river, whether within the limit of the four Municipalities aforesaid or not, for the purpose of ascertaining whether the terms of this Act are being complied with; and any person obstructing such police constable or duly authorised person shall be guilty of a contravention of this section.

Authority of police constable or other officer.

12. All ditches, watercourses or channels, whether artificial or natural, into which water from the said river passes and out of which the water returns again into the river, shall, for the purposes of this Act, be deemed to be a part of the said river.

Liesbeek River, what included in.

13. Any person found guilty of contravening the provisions of the fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh sections of this Act shall be liable to a penalty of not exceeding ten pounds, or in default of payment to imprisonment with or without hard labour, for any period not exceeding three months, and such penalty may be enforced at the instance of any person duly authorised to prosecute on behalf of any Council, or at the instance of any ratepayer within any of the said Municipalities.

Penalties.

14. The provisions of sections seven to thirteen, inclusive, of this Act shall apply to any other perennial stream within any of the said Municipalities, and any contravention of such sections in regard to such other stream shall subject the offender to the same penalty as if the contravention had taken place in respect to the Liesbeek River.

Sections 7 to 13 apply to other streams.

Wash-houses.

15. It shall be the duty of every Council, so soon as practicable, to erect or provide at a suitable place or places a number of wash-houses (either with or without open drying grounds), sufficient in the opinion of the Council to supply the needs of the inhabitants of its Municipality.

Wash-houses.

16. Such wash-houses shall be maintained in good order and repair, and shall be furnished with all requisite fittings and conveniences by the Council.

Order and repair of wash-houses.

17. The management of the said wash-houses, the mode in which they are to be used, and the charge made for using them shall be dealt with by regulations framed by the Council within whose jurisdiction such wash-houses are respectively situated in accordance with the provisions of this Act.

Management of wash-houses.

BBB

No. 32—1893.

Sewers and Drainage.

Control of sewers.

18. The existing and any future sewers within the area of each of the four Municipalities aforesaid, except

- (1) Sewers made by any person for his own use or profit, or by any company for use or profit of the shareholders; and
- (2) Sewers made and used for the purpose of draining, irrigating or otherwise improving land,

shall vest in, and be under the control of the Council of the Municipality.

Drainage areas constituted by Council.

19. Any Council may from time to time, but subject to the approval of the Minister, constitute and define the boundaries of areas within its Municipality, which in the opinion of the Council can be suitably and conveniently drained by a system of sewers; such areas when so constituted and defined shall be called drainage areas.

Confirmation by Minister.

20. When a resolution has been adopted by any Council to constitute a drainage area, a copy of such resolution, together with a description of the boundaries of the area, shall be submitted to the Minister, who shall, after making such enquiry as may seem fit, either confirm the resolution or disallow it, or request the Council to modify any or all of the limits of the proposed area.

Notice in *Gazette*.

21. When any drainage area has been finally approved as such by the Minister, notice of the fact, and of the boundaries of the area, shall be posted at the office of the Council, and shall be published in the *Gazette*, and in three consecutive issues of one or more local newspapers.

Council to make and repair sewers.

22. Every Council shall keep in repair all sewers belonging to it, and shall cause to be made such sewers as may from time to time be necessary for effectually draining any drainage area in terms of this Act.

Power of Council as to carrying sewers over public roads, &c.

23. Any Council may within its municipal limits carry any sewer through, across, or under any public road or street or any place laid out as, or intended for, a public street, without payment of compensation to any person, company or public body.

Over Crown land.

24. Any Council may within its municipal limits carry any sewer through, across, or under any vacant or unimproved Crown land without compensation, and through, across or under any Crown land which has been improved or built upon, or any land which is the property of a private individual or company, upon payment of compensation to the owner.

Power of Council beyond limits of municipalities.

25. Any Council may (subject to the provisions of this Act relating to sewage works beyond the limits of its Municipality) exercise beyond the said limits, for the purpose of outfall or distribution of sewage, all or any of the powers given by the last two preceding sections.

Powers of Council in dealing with sewers.

26. Any Council may, from time to time, enlarge, contract, alter, cover in, or otherwise improve any sewer belonging to it, and may close up or destroy any such sewer, on condition of providing a

sewer as effectual, for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the closing up or destruction of any sewer shall be so done as not to create a nuisance.

No. 32—1893.

27. Every Council shall cause the sewers belonging to it to be constructed, covered, ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Sewers to be properly kept.

28. Every Council shall as soon as practicable cause to be prepared a map exhibiting a system of sewerage for effectually draining every drainage area; and shall, wherever any covered sewer is made by it in any such district, provide a map indicating the position of every such sewer. All such maps shall be kept at the office of the Council and shall at all reasonable times be open to the inspection of any ratepayer within the Municipality within whose limits such area is situated.

Map of system of sewerage.

29. The owner or occupier of any premises within a drainage area shall be entitled to cause his drains to empty into the sewers of the Council, upon giving such notice of his intention as the Council may by regulation require, and upon complying with the regulations of the Council as to the mode in which the communications between such drains and sewers are to be made, and as to the provision of an adequate water supply to flush such drains; and subject to the control of any person who may be appointed by the Council to superintend the making of such communications.

Use of sewer by private owners or occupiers.

Any person causing a drain, in any drainage area, to empty into a sewer of the Council within whose jurisdiction such area is situated without complying with the provisions of this section shall be liable to a penalty not exceeding ten pounds. And such Council may close any communication between a drain and sewer made in contravention of this section; and may recover in any competent court, from the person so offending, any expenses incurred under this section.

30. Where any house within a drainage area is without a drain sufficient for effectual drainage the Council within whose jurisdiction such area is situated may, by written notice, require the owner or occupier of such house, within a reasonable time therein specified, to make a drain or drains emptying into any sewer which such Council is entitled to use, and which is not more than three hundred feet from the site of such house. And the Council may require any such drain or drains to be of such material and size, and to be laid at such level, and with such fall as may appear to the Council to be necessary.

Owner or occupier may be required to make drain.

If such notice is not complied with, the Council may, after the expiration of the time specified in the notice, do the work required, and may recover from the owner, in any competent court, the expenses incurred by it in so doing.

31. Where any such house as is in the last preceding section mentioned is more than three hundred feet from any suitable sewer

When house more than 300 feet from sewer.

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which any Council is entitled to use, the Council may, at its own expense, construct a drain from the said house to the nearest such sewer as aforesaid, and upon the completion of the said drain the Council may recover from the owner of the said house in any competent court such sum of money as bears the same proportion to the total expenditure of the Council under this section in connection with the said house, as the distance of three hundred feet bears to the total length of the said drain.

Council may change private drain at its own expense.

32. Where any house within a drainage area has a drain communicating with any sewer, which drain, though sufficient for the effectual drainage of the house, is not adapted to the general sewerage system of the district, or is in the opinion of the Council within whose jurisdiction such area is situated otherwise objectionable, the Council may, on condition of providing a drain or drains equally effectual for the drainage of the house, and communicating with such other sewer as it think fit, close such first mentioned drain, and may at its own expense, do any works necessary for that purpose.

Drain to be constructed before house built.

33. It shall not be lawful in any drainage area to erect any house, or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so erected or rebuilt, unless and until a drain or drains is or are constructed of such size and materials, and at such level, and with such fall, as may appear to the Council to be necessary for the effectual drainage of such house.

The drain or drains so to be constructed shall empty into some sewer which the Council is entitled to use, and which is within three hundred feet of the site of the house to be built or re-built. If no such sewer is within that distance then the Council may either at its own expense continue the necessary drain or drains from the said distance of three hundred feet, in the direction of the nearest suitable sewer until the said sewer is reached; or may, upon being satisfied that the drainage and sewage of the said house will be otherwise satisfactorily provided for, grant an exemption to the owner or occupier of such house from the terms of this section.

Any person who causes any house to be erected or re-built, or any drain to be constructed contrary to the provisions of this section, shall be liable to a penalty not exceeding ten pounds.

Offences and penalties.

34. Any person who in any drainage area, without the written consent of the Council within whose jurisdiction such area is situated,

- (1) Causes any building to be newly erected over any sewer of the Council; or
- (2) Causes any vault, arch, or cellar, to be newly built or constructed under any street,

shall be liable to a penalty not exceeding ten pounds, and a further penalty of ten shillings for every day during which the offence is continued, after written notice from such Council.

The Council may cause any building, vault, arch, or cellar erected or constructed contrary to the provisions of this section to be altered, pulled down, or otherwise dealt with as it thinks fit, and may recover from the offender, in any competent court, any expenses incurred in so doing.

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35. The owner of every house within a drainage area shall take steps to provide for the use of the occupants of the said house a supply of water sufficient to properly flush the drains of such house, and every such owner who neglects within a reasonable time after the receipt of a written notice from the Council to take such steps as aforesaid shall be guilty of a contravention of this section, and shall be deemed guilty of the successive contraventions in each successive day after the expiry of such reasonable time until he complies with the provisions of this section.

House owner to provide water for drainage.

Any person contravening the provisions of this section shall be liable to a penalty not exceeding two pounds.

Disposal of Sewage.

36. For the purpose of receiving, storing, disinfecting, distributing, or otherwise disposing of sewage, any Council may

Powers of Board in disposal of sewage.

- (1) Construct any works within the limits of its Municipality, or (subject to the provisions hereinafter contained) beyond the said limits;
- (2) Contract for the use of, purchase, or take on lease any land, buildings, engines, materials or apparatus, either within or beyond the limits aforesaid;
- (3) Enter into contracts for the supply of sewage to any person for any period not exceeding twenty years, and as to the execution and cost of works:

Provided that no nuisance shall be created in the exercise of any of the powers conferred by this section; and provided also that the terms of section one hundred and five of the Municipal Act, 1882, shall apply to all contracts entered into under this section.

37. Any Council may deal with any land held by it for the purpose of receiving, storing, disinfecting or distributing sewage in such manner as it deems most profitable, either by leasing the same for a period not exceeding twenty years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof: Provided always that in dealing with land for any of the above purposes provision shall be made for effectually disposing of all sewage brought to such land without creating a nuisance.

Powers of Council in dealing with land held by it.

38. Where any Council agrees with any person as to the supply of sewage, or as to works to be made for the purpose of such supply, such Council may contribute to the expense of carrying into execution by such person, all or any of the purposes of such agreement.

Power to contribute towards expenses of contractor.

No. 32—1893.

Sewage Works beyond Municipal Limits.

Notice of sewage works beyond limits of municipalities.

39. Every Council shall, at least one month before commencing the construction or extension of any sewer or other work for sewage purposes beyond the limits of its Municipality, give notice of the intended work by advertisement in one or more of the local papers circulating within the district where the work is to be done.

Such notice shall describe the nature of the intended work, and shall state the intended terminus thereof, and particulars of the roads, streets, or other land (if any) through, across, under, or on which the work is to be done; and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land, and on the local authority (if any) having the care of such roads or streets.

Notice of objections to such sewage works.

40. If any such owner, lessee or occupier, or any such local authority, or any other person who would be affected by the intended work, objects to such work, and serves written notice on the Council concerned of such objection, at any time within the said period of one month, then the intended work shall not be commenced without the sanction of the Governor, unless such objection is withdrawn.

Enquiry in objections.

41. The Governor may, on the application of such Council, appoint an inspector to make enquiry on the spot into the propriety of the intended work and the objections thereto, and to report to the Minister on the said matters. And on receiving the report of such inspector, the Governor may make an order disallowing the intended work, or allowing it with such modifications (if any) as he may deem necessary.

Inspection.

Duties of inspecting officer.

42. (1) Any officer appointed by a Council to carry out the objects of this section, if he has reason to suspect that any drain or sewer on private property within any drainage area is a nuisance or is injurious to health, or is in any way defective, may, after forty-eight hours' written notice to the occupier of the property, or in case of emergency without notice, enter upon the premises with or without assistants, and cause the ground to be opened and examine such drain or sewer.
- (2) If the drain or sewer is found to be in proper condition, the officer shall cause the ground to be closed, and any damage done to be made good as soon as possible; and the expenses of the work shall be defrayed by the Council.
- (3) If the drain or sewer is found to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the property, requiring him

forthwith, or within a reasonable time therein specified, to do the necessary work.

- (4) If the notice is not obeyed, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the Council may, if it think fit, execute the work, and may recover in any competent court, from the owner, the expenses incurred in so doing.

Liability of Occupiers.

43. Any costs and expenses recoverable under this Act by any Council from any owner of premises may be recovered from the occupier for the time being of such premises; and the owner shall allow the occupier to deduct any such moneys which he is compelled to pay under this Act out of the rent from time to time becoming due in respect of the premises, as if the same had been actually paid to such owner as part of such rent: Provided

Liability of occupier for expenses under this Act.

- (1) That no such occupier shall be required to pay any further sum than the amount of the rent for the time being due from him, or which became payable by him, after demand of such costs or expenses from him, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, unless such occupier refuses on application to him by the Council, or one of its duly authorised officers, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on the occupier.
- (2) That nothing herein contained shall affect any contract between any owner or occupier of any house, building, or other property, whereby it is agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building or other property, or to affect any express contract between landlord and tenant, inconsistent with the provisions of this section.

Mountain Fires.

44. It shall be lawful for any Council to employ such number of men as to it may seem meet, either permanently or temporarily, for the purpose of extinguishing or assisting to extinguish all grass fires along the slopes of Table Mountain.

Mountain fires.

45. The Council of any of the said Municipalities may, from time to time, make, alter and revoke bye-laws or regulations for all or any of the following purposes:

Municipal regulations.

No. 33—1893.

- (1) For regulating the structure of walls, foundations, roofs and chimneys of new buildings, and for securing the stability of such buildings, and due and proper sanitary provision therein.
- (2) For prohibiting the overcrowding of houses, dwelling-places and rooms, and the erection of objectionable buildings.
- (3) For securing regularity in and defining the lines of frontage of streets, and for securing reasonable architectural uniformity in the class of buildings to be erected in the various localities.
- (4) For regulating the proximity of new buildings to existing buildings, so as to secure free circulation of air and due ventilation.
- (5) For regulating the sanitary appliances of closets and privies in connection with buildings, and for prohibiting use of such of them as in the opinion of the Council should not be allowed to continue.

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. And to all such bye-laws the provisions of the hundred and tenth to hundred and fourteenth sections of the Municipal Act, 1882, shall apply.

Time for poll.

46. When any poll is taken for the election of Councillors in any Municipality under this Act, the poll shall commence at eight o'clock in the forenoon and shall close at six o'clock in the afternoon, anything to the contrary in the fifty-fourth section of the Municipal Act, 1882, or in any other law notwithstanding.

Joining of Municipalities.

47. If any two or more of the Municipalities aforesaid shall at any time be joined together into one Municipality, then the Council of such last mentioned Municipality shall be in the same position as if it had been one of the Councils expressly dealt with in this Act, and shall be subject to and entitled to take advantage of all its provisions.

Short title.

48. This Act may be cited as "The Liesbeek Ordinance Amendment Act 1893."

No. 33—1893.]

[September 12, 1893.]

ACT

To Provide for the Management of the South African Public Library.

BE it enacted by 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 laws.

1. The Ordinance No. 8 of 1836, so much of the Ordinance No. 5 of 1842 as is not already repealed, and so much of any other law as is repugnant to or inconsistent with the provisions of this Act, are hereby repealed.

2. In the interpretation of this Act the word "Library" shall mean the South African Public Library, in Cape Town, the word "Board" shall mean the Board of Trustees created by this Act, and the word "Subscriber" shall mean any person who shall have been admitted to the privilege of the Library under section fourteen of this Act, and who shall have paid in advance an annual subscription of not less than one pound sterling.

No. 33—1893.
Interpretation
clause.

3. A Board of Trustees, composed as hereinafter described and provided for, shall be constituted and established as a body corporate for the management of the Library, and in any action which shall be brought by or against such Board, touching anything contained in this Act, or touching anything in any way relating to the Library, it shall be lawful for the Board to sue and be sued by the style or description of "The Board of Trustees of the South African Public Library."

Board of Trustees
for management of
Library established

4. The present Committee of Management of the Library shall cease to exist when the first Board is constituted, and thereupon all moneys, funds, assets, and other property, movable or immovable, at the said date vested in the said Committee, in trust for the community of this Colony, and all moneys, funds, assets, and other property, movable or immovable, which shall hereafter accrue to, or become due and payable, or be given, bequeathed or devised to the said Library, shall vest in and belong to the Board in trust for the said Library: Provided, however, that all such money, funds, assets and other property, movable or immovable, shall be administered, laid out, and applied by the Board, in terms of, and in conformity with, the conditions and trusts on which such money, funds, assets or other property has been or shall be vested in the said Board.

Powers, &c.,
present Committee
of Management to
devolve on Board.

5. The Board shall consist of ten members, of whom one shall be the Mayor of Cape Town for the time being, or if he shall decline, or be, or become disqualified, some other qualified member of the Council of Cape Town, elected by the said Council, one shall be the Vice-Chancellor of the University of the Cape of Good Hope for the time being, or if he shall decline, or be, or become disqualified, some other qualified member of the University to be elected by the Council thereof, four shall be nominated by the Governor, and the remaining four shall be elected by the subscribers to the Library, in manner hereinafter set forth: Provided, however, that the Mayor of Cape Town for the time being or such Councillor shall be or continue to be a member of the said Board, only if and as long as there shall be paid annually by the Town Council of Cape Town to the funds of the Library, a sum of not less than three hundred and fifty pounds, and whenever such annual payment shall not be made, such Mayor or such Councillor shall cease to be a member of the Board, which shall then consist of nine members: Provided that no such Councillor or member of the University shall continue in office longer than the Mayor or Vice-

Constitution of
Board.

No. 33—1893.

Retirement of
nominated and
elected members of
Board by rotation.

Chancellor for whom he is a substitute would otherwise have been a member.

6. Of the members of the first Board nominated or elected under this Act, two of the members nominated by the Governor and two of the members elected by the said subscribers shall vacate their seats at the annual meeting held in the year 1895, and the remaining two members nominated by the Governor and two members elected by the subscribers shall vacate their seats at the next annual meeting, and upon such vacation of office by any member, he shall be succeeded by a member who shall be similarly nominated or elected as the case may be, and every such newly nominated or elected member shall remain in office for two years from the date upon which the member of the Board whom he succeeds shall have vacated office, and every such newly nominated or elected member of the Board shall in turn be succeeded by a member to be nominated or elected, as the case may be, in like manner; provided that the Governor shall determine the order in which the nominated members shall vacate their seats under this section, and that every member vacating his seat shall, if duly qualified, be eligible to be again nominated or elected, as the case may be.

Persons eligible
as members of
Board.

7. At least three weeks before a general meeting to be called by the present Committee of Management for the purpose of constituting the first Board, and subsequently before any annual general meeting, a circular shall be sent by post to every qualified subscriber, giving the name and (if known) the address of every subscriber qualified to vote, calling for nominations for members of the Board to be elected; and every subscriber who shall have been duly nominated by two other qualified subscribers, and whose nomination shall have been lodged with the Secretary of the Committee of Management on the occasion of the first election, and at all subsequent elections with the Secretary of the Board, or such person as the Board may appoint, a clear week before the day of election, shall be eligible for election as a member of the Board. The nominations received shall be published as soon as possible after the said period, in one or more newspapers circulating in Cape Town. In the event of no sufficient nominations being duly received as aforesaid, any two subscribers may at the aforesaid special meeting or the annual meeting nominate any other qualified subscriber.

Mode of election
of members of
Board.

8. Members of the Board shall be elected in manner following:—

- (a) At any time before the special meeting referred to in the last preceding section or before the annual general meeting to be held on the second Friday in March in the year 1895 and every subsequent year, every subscriber then on the books of the Library may sign and deliver to the Secretary or to such person as may be appointed by the Board for the purpose, at the Library, a written paper to the following effect for the purpose of voting for any

duly nominated candidate for membership of the Board:—

No. 33—1893.

day of

18

Election of members of Board of Trustees of Public Library.

I vote for of and
of to be members of the Board of
Trustees of the South African Public Library.

(Witness)

(Sgd.)

- (b) The said paper may be delivered through the post; but no paper shall be accepted or counted which has not been delivered at the Library before the time appointed for the meeting, and unless the signature to such paper is attested as genuine by a witness.
- (c) Any subscriber entitled to vote at such election may vote for as many candidates as there are members to be elected.
- (d) The Secretary or such person as in sub-section (a) mentioned shall open and count the said papers, and shall in the year 1894, and subsequent years, add the votes so given to the votes given by other subscribers present at the annual general meeting, and the duly qualified and nominated persons who shall have the greatest number of votes shall be elected members of the Board.
- (e) In case of an equality of votes between two or more candidates the Secretary or the said person shall determine by lot who shall be the elected members amongst those candidates.
- (f) A member having a greater number of votes or priority in case his membership has been determined by lot shall vacate his seat under section six, after the member or members having less votes or not having such priority.

9. If any member shall resign, die, become insolvent, be declared insane, not be, or cease to be, a subscriber, or shall otherwise become incapacitated from fulfilling the duties of his office, or shall be absent from the meetings of the Board for three consecutive months without permission of the Board, then and in every such case the office of such member shall *ipso facto* become vacant, and the Board may appoint from amongst the subscribers to the Library some fit and proper person to fill such vacancy, and the person so appointed shall hold office during the unexpired portion of the time of the member whose seat shall have so become vacant.

Resignation, death,
&c., of member of
Board.

10. The Board may grant leave of absence from its meetings to any member for any period not exceeding six months, and whenever any member of the Board shall obtain such leave of absence, the Board may, if it think fit, appoint from amongst the subscribers to the Library some person to fill the vacancy caused by such absence, and the person so appointed shall hold office

Absence of mem-
ber for six months.

No. 33—1893.

during such absence and during any continuation without leave of such absence, not exceeding three months, after the termination of such period, and not exceeding the term of office of the absent member.

Monthly meeting
of Board.

11. The Board shall meet at least once a month, and for the despatch of the ordinary business of the Board three shall be a quorum, provided that no new regulations shall be made, nor any existing regulations repealed or altered, nor any resolution dealing with the invested funds in the hands of the Board passed at any meeting of the Board at which fewer than five members shall be present.

Officers of Board.

12. The Board shall have the entire management and superintendence of the affairs, concerns and property of the Library, and shall annually, as soon as may be after the general meeting, elect a chairman and treasurer, and the Librarian for the time being shall be the secretary of the Board.

Majority of votes
to decide.

13. Questions arising at any meeting of the Board or any general meeting of subscribers, shall be decided by a majority of votes, and in case of an equality of votes the chairman or acting chairman shall have a second or casting vote.

Power of Board to
make rules and re-
gulations.

14. The Board at any meeting assembled from time to time may, subject to the provisions of this Act, and to all conditions or trusts, binding upon the said Board, make, repeal, alter or re-enact such rules and regulations as they may think fit for the purpose of providing for:—

- (1) The conduct of their own proceedings.
- (2) The management of the Library and its contents, and the proper custody of collections.
- (3) The accepting and dealing with gifts, legacies, endowments, &c., to the Library.
- (4) The details of the mode of election of members of the Board by subscribers at any election, and the adjournment of meetings of subscribers.
- (5) The restrictions and conditions under which and the hours during which the use of the Library and its contents shall be allowed to the public or subscribers.
- (6) The investment and dealing with the funds of the Library in the hands of the Board.
- (7) The terms of subscriptions to the Library.
- (8) The appointment of committees for general or special purposes, fixing the quorum of any such committee, and determining whether its action shall or shall not be subsequently approved by the Board.

And all such rules when passed shall be submitted for the approval of the Governor, and if approved shall be published in the *Gazette*.

Appointment,
&c. of officers of
Library.

15. The Board may appoint a Librarian and such other officers at such rates of salary and under such conditions as they shall see fit, and may suspend or dismiss such Librarian or such other

officers. The present Librarian and other officers shall continue in office unless or until suspended or dismissed under this section.

No. 33-1893.

16. The Board shall cause the Librarian to convene by special notice given for that purpose, a special general meeting of the subscribers whenever they shall be required to do so by any requisition to that effect, specifying the object and purpose of the meeting, and signed by not fewer than fifteen subscribers, on any lawful day specified in such requisition, not being less than seven days subsequent to the date of the transmission of such requisition to the Board; and if no day shall be so specified, then on any day not more than three weeks subsequent to the date of such transmission as to the Board shall seem fit.

Special general meeting of subscribers.

17. At every special general meeting of subscribers the Chairman of the Board shall, if present, preside at such meeting, and in his absence any other subscriber to the Library may be appointed by the meeting to take the chair.

Procedure at special general meeting.

18. An annual general meeting of subscribers shall be held in the month of March of each year, at which the annual report of the Board shall be read and members of the Board elected. At such annual general meeting the person appointed by the Board for that purpose shall take the chair.

Annual general meeting.

19. The accounts of the Library made up to the 31st December in each year shall be audited once a year by two auditors, one of whom shall be appointed by the Governor and one by the Board, and the mode of audit shall be such as the Governor may from time to time direct.

Auditors.

20. The Board shall, as soon as possible after every annual general meeting report its proceedings during the preceding year to the Colonial Secretary, and such report shall contain a full account of the income and expenditure, duly audited, and of all the rules and regulations passed and approved, as aforesaid, during such year, and a copy of such report shall in each year be laid before Parliament.

Annual Report to Colonial Secretary.

21. The treasurer of the Library for the time being shall pay into such bank or banks as the Board may from time to time select and appoint, all sums which he may receive on the Library account: Provided that nothing herein contained shall be taken to prevent the Board from investing such part of the funds of the Library as may not be required for the immediate use of the Library in Government stock, mortgages on houses or landed property, and to realise, call up, and reinvest the same, provided that it shall be sufficient authority to the Registrar of Deeds to cancel a mortgage bond if an extract from the minutes of the Board, certified as such by the chairman and secretary, is lodged with him, and the person therein named signs the consent to cancellation.

Duties of Treasurer of Library.

- 22. The said Library shall be daily open to the public, except on Sundays, holidays, or days on which the Library may be

Library to be open daily subject to rules and regulations.

No. 33—1893.

closed pursuant to such rules or regulations as aforesaid, and all quiet and respectable persons, even although they be not subscribers, shall have the right to read such books, magazines, and papers, as shall form the "Public Library," and may be permitted to read works in the Library of Reference or in any portion of the Library building defined under such rules and regulations as are framed in terms of section fourteen: Provided, always, that no person whose subscription is in arrear and unpaid shall have the right of demanding books or other works to be taken out of the Library or of voting at the meetings of the subscribers.

Dessinian Collection.

23. The collection of books in the Library known as the Dessinian Collection shall continue to be in a proper and commodious part of the building which is now or may hereafter be appropriated for the reception of the Public Library and separate and apart from the books thereunto belonging, subject to the sole and entire management of a committee of the Consistory of the Dutch Reformed Church in Cape Town, who shall make as heretofore all such regulations for its management as they shall deem requisite, provided the same do not interfere with the general regulations for the management of the Public Library; and provided also that such regulations shall be notified to the Board at least ten days previous to their having force and effect; and the said Consistory shall continue to expend from the funds under their separate trust and independently of the subscribers to the Library or their office-bearers, all such sums of money as they shall see fit to appropriate for the maintenance and augmentation of the valuable collection committed to their charge, and shall have power to appoint at their own expense, if needful, a Librarian to take the entire charge of the Dessinian Collection: Provided, always, that nothing herein contained shall be construed to authorise the said Consistory or its committee to interfere officially in any way with the management of the said Public Library or the application of its funds.

Coming into operation of Act and Short title.

24. This Act shall come into force on a day ⁽¹⁾ to be proclaimed by the Governor in the *Gazette*, and may be cited for all purposes as "The South African Public Library Act, 1893."

No. 34—1893.]

[September 12, 1893.

Act to apply a Sum of Money for the Service of the year ending the 30th day of June, 1894.

[Spent.]

¹ To be in force from 19th September, 1893. See Proc. No. 382, 1893.

No. 35—1893.]

[September 12, 1893.

ACT

To Consolidate and Amend the Law relating to the Theft of Stock and Produce. (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 laws mentioned in the 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 proceedings instituted previously to the promulgation of this Act.

Repealed Laws.

2. In the interpretation of this Act the following terms shall have the meanings hereinafter assigned to them, that is to say:—

Interpretation of terms.

“Stock” shall include any horse, mare, gelding, colt, filly, mule or ass; any bull, cow, ox, heifer or calf; any sheep, goat, or pig or domesticated ostrich; and the slaughtered carcass, or portion of the slaughtered carcass of any such stock.

“Produce” shall include all skins, hides, horns, wool, mohair and ostrich feathers.

“Sufficient fence” when applied to wire fences, shall mean a fence of not fewer than four wires and not less than three feet six inches high, in other cases any fence, wall or hedge through which no stock could pass without breaking, or any natural boundary through or across which no sheep would ordinarily pass.

“Theft” shall embrace besides actual stealing (1) receiving knowing to have been stolen, (2) attempting to steal, and (3) being or having been in unlawful possession, not being able to give a satisfactory account of such possession.

“Supreme Court” shall, within the limits of their respective jurisdictions include the Eastern Districts Court and the High Court of Griqualand West, as the case may be.

“Attorney-General” shall, within the limits of the districts in which they exercise their offices, include the Solicitor-General or the Crown Prosecutor respectively.

3. In the trial of cases under this Act the courts of Resident Magistrates shall (except as hereinafter is excepted) proceed in like manner as in criminal cases falling within their ordinary jurisdiction: Provided that in all cases under this Act, the Magistrate shall take down in writing, or cause to be taken down in writing, the evidence in the case, the judgment of the court, and should such judgment be a judgment of “guilty,” the sentence pronounced upon the offender.

Trial to be conducted in ordinary manner, and record to be kept.

¹ See Act 34, 1895 (p. 3559), and Act 7, 1905 (p. 4813). This Act, modified, extended by Proclamation No. 465 of 1893 to all Native Territories and by Proclamation No. 340 of 1894 to East and West Pondoland. See also Proclamation 179, 1898.

No. 35—1893.

Plea of guilty and sentence to be recorded.

4. On the day of the hearing of any case under this Act, the Magistrate shall read over, or cause to be read over, to the accused person the charge or complaint against him, and shall ask him if he pleads "guilty" or "not guilty" to the offence set forth in such charge or complaint; and should such person plead "guilty," his said plea shall be recorded, as shall also the sentence pronounced upon the offender.

Sections 43, 47, 48 and 49 of Act No. 20 of 1856 and Sec. 4 of Act 21 of 1876 to apply.

5. The provisions of the forty-third, forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," and of the fourth section of Act No. 21 of 1876, as amended by this Act, shall extend and apply to all cases of convictions under this Act, whether upon a plea of "guilty" or after a plea of "not guilty," and whatever may be the period of imprisonment or the number of lashes to which the offender shall have been sentenced.

Findings under a charge of theft.

6. It shall be lawful for the courts of Resident Magistrates on the trial of any accused person for theft, as defined by this Act, to find such accused person guilty of any of the offences embraced in the term theft as so defined, although such accused person may not have been originally charged with that particular offence.

Jurisdiction of Courts of Resident Magistrates.

7. From and after the taking effect of this Act the courts of Resident Magistrates shall, respectively, have jurisdiction, in all cases in which any person may be accused of the theft of any stock or produce, provided that it shall not be lawful save as is hereinafter excepted for any such court to punish any person convicted of any such theft in any higher or other manner than, in the case of a first conviction, by imprisonment with or without hard labour for any period not exceeding one year, or by imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or by corporal punishment in any number of lashes not exceeding twenty-five, or by both such first-mentioned imprisonment and such lashes; and, in the case of a second or any subsequent conviction within the space of three years next following a previous conviction for theft of stock or produce by imprisonment with or without hard labour for any period not exceeding two years or by corporal punishment in any number of lashes not exceeding thirty-six or by both such imprisonment and such lashes: Provided, also, that no offender sentenced under this Act to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed: Provided, further, that in regard to the infliction of spare diet under this Act, the courts of Resident Magistrate 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

Restrictions to be observed in infliction of spare diet.

courts shall, in their sentences, fix, in conformity with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet.

8. (1) It shall be lawful for such court, upon the conviction of any person on a charge of theft of stock or produce, or upon his committal for trial on such charge, at the request of the owner or owners of the stock or produce, for the theft of which such person is so convicted or committed for trial, as aforesaid, or of the person authorised in writing by such owner or owners, to inquire summarily and without pleadings but in the presence of the accused person into the value of such stock or produce; and such court upon proof made to its satisfaction of the value of such stock or produce, and of any damages which the said owner shall have sustained by the loss of such stock or produce, or by the cost of a search for, or other endeavour to recover the same, shall give judgment in favour of such owner and against the accused, for such value as aforesaid, together with such damages, if any, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted: Provided, that no such court shall give any such judgment as aforesaid in any case except one in which the proof of the guilt of the accused shall be such as would, in the opinion of such court, if given in a civil action founded upon the same theft, require such court to give judgment in favour of the owner and against the accused: And provided, also, that no Resident Magistrate shall give any such judgment for any sum exceeding forty pounds sterling: And provided, further, that no such judgment for such value shall be given in any case in which such stock or produce shall have been recovered by the owners before the conviction or committal for trial, as the case may be, of the accused person.

9. No such judgment as aforesaid shall be put in execution if the person convicted or committed for trial as the case may be shall give security to the satisfaction of such court, to pay the amount thereof should his conviction be confirmed by a judge, or should he be afterwards duly convicted when brought to trial, nor shall any such judgment be put into execution unless and until the owner of the said stock or produce shall give security, to the satisfaction of the Magistrate, to refund, in case he shall, by law, be required so to do, any sum of money which shall be levied under or upon such judgment, and to make good such damages, if any, as the accused person shall have sustained by the execution of such judgment.

10. If any conviction of any person who shall have given such security shall afterwards be quashed on appeal or review, or if any accused person who shall have given such security shall ultimately be acquitted of the theft in regard to which he was committed, then the judgment aforesaid shall be null and void: Provided,

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Judgment for compensation and damages.

The proof to be such as would entitle the owner to a judgment in a civil action.

Judgment not to exceed £40

Exception where animal recovered.

Execution of civil judgment: Security.

In case of acquittal where security shall have been given, judgment to be void.

¹ See § 2, Act 7, 1905 (p. 4813).

No. 35—1893,

Right of civil
action reserved to
owner.

Procedure where
civil judgment has
been put into exe-
cution and convic-
tion quashed, or
criminal proceed-
ings abandoned.

Further proof as
to value of stolen
animals.

When criminal case
tried in Superior
Court, Magistrate
must transmit to
Registrar particu-
lars of civil judg-
ment.

Where magistrate
has given no judg-
ment for value of
stolen animal, such
judgment may be
obtained from the
judge after convic-
tion.

however, that nothing in this Act contained shall deprive the owner of the stock or produce aforesaid of any right of civil action which he may, by law, be entitled to have or maintain, notwithstanding the quashing of such sentence or such acquittal, against the person so convicted or committed for trial.

11. As often as any such judgment as aforesaid shall have been put into execution and the conviction be quashed on appeal or review by a judge, or in the case of a committal for trial, the person committed be ultimately acquitted or discharged, then the court by or before which the person accused shall have been convicted or committed for trial, as the case may be, shall upon application of, or on behalf of, such person, give judgment, summarily and without pleadings, for such sum as shall have been levied under such execution, and such damages, if any, as referred to in section nine unless it shall be found by such court upon considering the evidence in the criminal case, and any other evidence which may be given by the owner aforesaid and the person acquitted, or either of them, that, upon grounds of law, applicable to the decision of civil actions, the said owner was and is *prima facie* entitled to have and retain such judgment as aforesaid against the person acquitted, notwithstanding such acquittal.

12. In case the value of any stock or produce with the theft of which any person shall be charged, and the amount of such damages as aforesaid, shall not sufficiently appear upon the depositions taken on the preparatory examination or at the trial, and further proof of such value or such damages shall be tendered on the part either of the owner or of the accused, such further proof shall be taken down in writing, and shall by such Magistrate be preserved.

13. As often as any charge of theft of stock or produce, in regard to which any such judgment as aforesaid shall have been given by any Resident Magistrate, shall be tried in the Supreme or any Circuit Court, it shall be the duty of the Resident Magistrate who gave such judgment to deliver, or cause to be delivered to the Registrar of such court, a copy of such further proof, if any, of value and damages as such Magistrate shall have taken, over and above the preparatory examination, together with a statement of the date and amount of the said judgment, as also a statement of the amount, if any, levied thereupon, and the said Registrar shall before, during, or immediately after the trial, lay the same before the presiding judge for his inspection.

14. In case any such owner as aforesaid shall not have obtained from the committing Magistrate any such judgment as aforesaid, and the prisoner committed for trial shall be afterwards convicted, before the Supreme or any Circuit Court, then the judge before whom such conviction shall have taken place shall upon the like request as that in the eighth section of this Act mentioned,

but in the presence of the prisoner, inquire summarily, and without pleadings, into the value and damages therein referred to, and give judgment for the same, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted.

15. Should any case in which any such judgment as aforesaid, shall have been given by any Resident Magistrate be afterwards remitted to the court of such Resident Magistrate such Magistrate shall, in forwarding the record of the proceedings in such case to the Registrar of the Supreme Court, to be laid before a Judge in Chambers for his consideration, forward with such record the same particulars regarding such judgment as such Magistrate is, under and by virtue of the thirteenth section of this Act, enjoined to deliver, or cause to be delivered, in cases in which the person accused is tried in the Supreme or any Circuit Court.

16. If, in any case, the Attorney-General, upon considering the preparatory examination, shall decline to prosecute any person against whom the committing Magistrate shall have given judgment under this Act, then such person shall be deemed to be discharged within the meaning of section eleven, unless the person in whose favour such judgment shall have been pronounced shall within a time to be fixed give security as a private prosecutor to the satisfaction of the Magistrate for the prosecution of the person accused, and unless the accused person shall be so prosecuted and convicted within a further time to be fixed by the Magistrate; and if such conviction shall be quashed on appeal or review, the provisions of section eleven shall also apply.

17. As often as more persons than one shall be convicted of the theft of any stock or produce, or committed for trial on any charge of such theft, then any such judgment as may be given for value and damages, or value without damages, by any Magistrate or Judge against such persons jointly, shall be deemed to be joint and several, and may be executed against the property of any one or more of the persons who shall have been so convicted or committed for trial: Provided that it shall be lawful to give judgment against any one or more of such persons without including in that judgment any of the other persons convicted or committed for trial for or in regard of the theft of the same stock or produce: and provided that no person against whom such judgment has been pronounced shall in any case recover under section ten or eleven of this Act more than the amount levied against himself in satisfaction of such judgment, together with any damages awarded to him under section nine.

18. Nothing in this Act contained shall be construed so as to oblige any owner of any such stock or produce to apply for any such judgment as aforesaid, or to deprive him of any right of civil action which he may have against the accused person for or on account of such stock or produce; nor shall the fact of having

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Where case is remitted to magistrate for trial, the particulars as to judgment for value of stolen animals is to accompany his record of proceedings.

Judgment given for value of stolen property to become void where Attorney-General declines to prosecute unless security for private prosecution is given.

Value of stolen property recoverable from one or more persons concerned in theft.

Owner not obliged to apply for judgment, but may proceed by civil action, if damages exceed £40, owner may sue for excess.

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obtained from any Resident Magistrate a judgment for the sum of forty pounds, prevent the owner who obtained such judgment from suing in any competent court for any damages by him sustained over and above the said sum of forty pounds: nor shall the fact of judgment under section ten or eleven bar any civil action by the owner who has lost the stock or produce forming the subject of the charge.

Magistrate in certain cases empowered to commence preparatory examination.

19. As often as any charge of the theft of stock or produce shall be brought under the notice of any Resident Magistrate, which charge shall from its nature or magnitude appear to such Magistrate to be unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such Magistrate, instead of proceeding to try the case under this Act, to commence and take a preparatory examination, in like manner precisely as if this Act had not been passed: Provided that if the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that the evidence is such as to require that the prisoner shall be put upon his trial, and be of opinion also that the exercise of the jurisdiction conferred by this Act will satisfy the ends of justice, then and in that case the Attorney-General may remit the case for trial to the court of the Resident Magistrate by whom the preparatory examination was taken, and such court shall thereupon proceed to try the same in manner and form as in the twenty-ninth section of the "Criminal Law Amendment Act, 1861," prescribed; and in case the prisoner shall be convicted, such court may pronounce upon him any sentence to which he might have been subjected under this Act, in case he had been tried under this Act without any preparatory examination having been taken: and provided that nothing herein contained shall be deemed to deprive the Attorney-General of any power to remit such cases which may at any time be vested in him by law independently of this section.

Magistrate may stop trial and turn proceedings into preparatory examination.

20. When, in the course of any trial under this Act in any court of any Resident Magistrate, it shall appear to the Resident Magistrate, from the facts disclosed by the evidence, that the case is one from which its nature or magnitude is unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such court to stop the trial, and to take, or turn proceedings into, a preparatory examination; and thereupon all and singular the provisions of the last preceding section shall apply to such preparatory examination, precisely as if such trial as aforesaid had never been commenced.

21. [Repealed by Act 7, 1905, p. 4813.]

22. Any person who shall, by way of purchase, bargain, exchange or gift, acquire or receive into his possession, from any other person, any stolen stock, or stolen produce, without guilty knowledge that the said stock or produce is stolen but without having reasonable cause, proof of which shall lie on such first-mentioned person, for believing, at the time of such acquisition or receipt, that such stock or produce was the property of the person from whom he received it, or that such person was duly authorised by the rightful owner to deal with or dispose of it, shall be deemed guilty of contravening this section, and shall be liable on conviction to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such fine and such imprisonment.

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Penalty on purchase or receipt of stolen stock or produce without reasonable belief that vendor had right to sell.

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Transactions exempted from operation of preceding section.

23. The provisions of section twenty-two of this Act shall not apply to a stock or produce purchased--

(a) On any public market.

(b) At any sale held by a duly licensed auctioneer, or held in pursuance of the order of a court of competent jurisdiction.

24. [Repealed by Act 7, 1905.]

Penalty for entry upon enclosed place with intent to steal stock.

25. (1) Any person who enters any farm, or part of a farm enclosed on all sides with a sufficient fence, and whether such entry shall be effected by breaking through such fence or not, or any kraal, with intent to steal any stock which is in or upon such kraal, farm, or part of a farm, shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding one year, or to a fine not exceeding one hundred pounds, or to both such fine and such imprisonment.

Presumptive evidence of intent to steal.

26. (1) Any person found within any farm, or part of a farm enclosed on all sides with a sufficient fence, or within any kraal, and who when so found was not proceeding along some road or thoroughfare traversing such farm or part of a farm, shall, if charged with a contravention of section twenty-five of this Act, have the burden imposed upon him of proving that he did not enter such kraal, farm, or part of a farm with intent to steal the stock, if any, kept therein.

Theft of stock and entry upon enclosed place with intent to steal, may be charged in same indictment.

27. Any person charged with the theft of stock from any such kraal, farm, or part of a farm, may in the same indictment be charged with a contravention of the twenty-fifth section of this Act; and upon conviction shall be separately sentenced in regard to each offence.

Suspected person may be apprehended without warrant.

28. If there be reasonable grounds for believing that any person is or has been in unlawful possession of any stock or produce, it shall be competent for any justice of the peace, field-cornet, landholder, or police constable to apprehend or cause to be apprehended such person without warrant, and convey him or cause him to be conveyed in custody before any Resident Magistrate having jurisdiction, and if it be found that he is or has been in possession of any such stock or produce, and is not able to give a satisfactory account of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft of stock or produce and shall thereupon be dealt with as if he had originally been charged with such crime.

¹ See § 2, Act 34, 1895 (p. 3559.)

29. If any person is reasonably suspected to have in any sack, knapsack, or other covering, any produce or the carcasses, or portions of carcasses, of slaughtered stock, it shall be lawful for any justice of the peace, field-cornet, landholder, or police constable to detain or cause to be detained such person and examine or cause to be examined the contents of such sack, knapsack, or other covering, and in case such person shall, upon such examination, be found to be in possession of any of the articles aforesaid, it shall be lawful for such justice of the peace, field-cornet, landholder, or police constable to apprehend him or cause him to be apprehended without warrant and to convey him or cause him to be conveyed before any Magistrate having jurisdiction, and in case he shall be unable to give a satisfactory explanation of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft of stock or produce and shall be thereupon dealt with as if he had been originally charged with such crime.

30. Any person charged with theft of stock or produce in accordance with either the last two sections may, if the court or jury before whom he is tried be satisfied that he had no guilty knowledge that the stock or produce forming the subject of the charge was stolen, be dealt with in all respects as though he stood charged with a contravention of section twenty-two of this Act.

31. Upon the conviction of any person for an offence under this Act it shall be lawful for the Governor, out of such funds as may from time to time be appropriated to the carrying out of the Criminal Law of the Colony, or as may be at the disposal of the Governor for that purpose, to pay to the person other than the owner of stolen property forming the subject of the charge who shall have given information or made the charge leading to such conviction as aforesaid such sum as the Governor shall direct, or as shall be provided for by a tariff to be published in the *Gazette*.

32. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apprehend any other person, or cause him to be apprehended, shall be liable to pay a fine not exceeding twenty pounds, and to pay to the apprehended person such amount, not exceeding the sum of fifty pounds, as and for damages, as the Magistrate before whom such apprehended person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid: Provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

33. Notwithstanding the provisions of section forty-two of Ordinance No. 40 of 1828, it shall be lawful for any justice of the peace, field-cornet, assistant field-cornet, or for any police officer of such rank as the Governor may from time to time design-

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Sacks, &c., of persons suspected to be conveying wool, &c., may be searched, and persons apprehended without warrant.

If unable to give explanation to be deemed guilty of theft.

On charge of theft when court or jury satisfied that prisoner had no guilty knowledge that stock was stolen.

Payment to person who gives information leading to a conviction.

Penalty for wrongful arrest.

Persons authorised to search buildings, &c., for stolen stock or produce.

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nate, upon being satisfied that there is reason to suspect that any stolen stock or stolen produce is concealed in any building, hut, kraal or enclosure, to search or to grant written authority to any person applying for the same, to search such building, hut, kraal or enclosure at any time during the day or night: Provided that any landowner shall in respect of building or huts upon his own land be entitled to exercise all the powers conferred by this section upon the officers hereinbefore mentioned.

Penalty for malicious exercise of authority to search

34. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apply for, obtain, and act upon such written authority as aforesaid, or wrongfully and maliciously, or without probable cause exercise the powers of search conferred by the last preceding section, shall be liable to a fine not exceeding twenty pounds, or in default of payment to imprisonment with or without hard labour, for any period not exceeding three months; and shall also be liable to pay to the person lawfully in occupation of the building, hut, kraal, or enclosure in question, when the same was searched, such sum not exceeding fifty pounds for damages as any competent court may award.

Damages.

Resident Magistrate to impose penalty and award damages.

35. The Resident Magistrate of the district in which any building, hut, kraal or enclosure wrongfully searched as aforesaid is situated shall have jurisdiction to impose the penalty and to award the damages in the last preceding section provided. But nothing in this or the last preceding section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy allowed by law in lieu of the remedy under this Act.

Proviso.

Purchase of feathers, skins, or hides between sunset and sunrise prohibited, except at public sales.

36. It shall not be lawful for any person to purchase or sell for purposes of trade, any produce between the hours of sunset and sunrise: Provided, however, that this prohibition shall not apply to any person purchasing or selling produce at any public sale.

Penalty for contravention of foregoing section.

37. Any person contravening the provisions of the preceding section of this Act shall, upon conviction, be liable to a penalty of not exceeding twenty pounds, or to imprisonment with or without hard labour not exceeding three months.

Not to apply to contract of sale where price not less than £50.

38. The provisions of the two preceding sections shall not apply to any contract for the purchase and sale of produce where the purchase price paid or agreed to be paid for the said produce shall amount in value to the sum of fifty pounds sterling or upwards.

Secs. 36, 37 and 38 to be in force in any division upon proclamation after request of Council by vote of three-fourths at special meeting.

39. The three last preceding sections of this Act shall only apply to and be in force in those divisions of this Colony wherein the provisions of the Act No. 13 of 1885 shall be in force at the date of the passing of this Act, or which shall from time to time be notified by the Governor by Proclamation published in the *Gazette*, and the Governor shall be authorised to publish any such Proclamation at the request of the Divisional Council of any division, and, by the like request, to revoke or alter any such Proclamation: Provided that, before any Divisional Council shall make any such request as aforesaid, three-fourths of the elected members thereof

present at a meeting to be specially called for the making of such request shall concur in making the same, and not less than three months' notice of such meeting, and of the object thereof, shall have been given by advertisement in some newspaper circulating in the division.

40. This Act may be cited for all purposes as "The Stock and Produce Theft Repression Consolidation Act, 1893."

No. 35—1893.

Short title.

SCHEDULE.

Schedule.

LAWS REPEALED.

Number and Year.	Title.	Extent of Repeal.
Act 16 of 1864...	The Cattle Theft Repression Act, 1864.	So much as remains unrepealed.
Act 9 of 1867 ...	An Act to amend the Law relating to the Trial and Punishment of Criminals for Theft and for receiving Stolen Goods knowing the same to have been stolen.	Sections 2, 3 and 4.
Act 17 of 1867...	The Cattle Theft Repression Amendment Act, 1867.	The whole.
Act 17 of 1874...	The Criminal Law Amendment Act, 1874.	Section 1.
Act 21 of 1876...	The Resident Magistrates' Court Act, 1876.	The words between "1856" and "shall" in the 2nd and 3rd lines of the fourth section, and the whole of the sixth section.
Act 18 of 1879...	The Cattle Thefts Extended Punishment Act, 1879.	The whole.
Act 32 of 1883...	The Ostrich Feathers and Skins Theft Repression Act, 1883.	Sections 5, 6 and 7.
Act 19 of 1884...	The Wool, Mohair and Carcases Theft Repression Act, 1884.	The whole.
Act 13 of 1885...	The Ostrich Feathers and Skins Theft Further Repression Act, 1885.	The whole.
Act 33 of 1891...	The Stock and Produce Theft Repression Act, 1891.	The whole.

DDD

No. 36—1893.]

[September 12, 1893.

ACT (1)

To Authorise the Expropriation of Land for the purpose of Roads in the District of Xalanga, Tembuland, in the Transkeian Territories.

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:—

Governor may expropriate certain land for road purposes.

1. Notwithstanding anything to the contrary contained in any law, it shall be lawful for the Governor at any time after the passing of this Act, to take or expropriate for the purpose of giving road facilities to certain landowners in the district of Xalanga, Tembuland, in the Transkeian Territories, such land as he may deem to be necessary for that purpose.

Roads specified.

2. The roads, for the purposes of which it shall be lawful so to take or expropriate land as aforesaid, are all or any of the roads mentioned in the report of G. E. Jarvis and A. E. Murray, dated the 2nd day of November, 1892, and shown in the plan annexed to the said report.

Compensation in respect of expropriation.

3. Compensation in respect of the taking or expropriation as aforesaid shall be claimable, in all cases in which such compensation would by law be claimable from a Divisional Council in this Colony, in connection with the construction, maintenance or repair of any divisional road, and such compensation shall be assessed in accordance with the provisions of the Lands and Arbitrations Clauses Act, 1882, but by a Road Board constituted under the provisions of the following section of this Act.

Road Board to be constituted.

4. A Road Board shall be constituted by the Governor by proclamation in the *Gazette*, which shall have the power of arbitrators under the Lands and Arbitrations Clauses Act, 1882, for the purpose of assessing such compensation as may be payable under the provisions of this Act, and the said Board shall be composed of two members appointed by the Governor, not more than one of whom shall be in the service of the Government, and one member appointed by a vote of the majority of the registered landowners in the Xalanga district, present at a meeting of such landowners, which shall be called for the purpose in accordance with directions to be hereafter issued by the Governor, and of which meeting three weeks notice shall be given in the *Gazette*.

Board to point out rights of way and assess compensation.

5. It shall be lawful for such Board to point out rights of way between farms in the said district, for which rights of way persons requiring the same shall be liable to (1) compensate the owners of farms traversed thereby, and such compensation (1) shall be assessed by the said Board in accordance with the provisions of this Act and of "The Lands and Arbitrations Clauses Act, 1882."

Short title.

6. This Act may be cited as "The Xalanga Districts Roads Act, 1893."

¹ Amended by Act 45, 1899. Compensation fixed by Governor and paid by Government, § 5 (p. 4227).

No. 37—1893.]

[September 12, 1893.]

ACT

To Provide for the Payment of certain Duty in respect of certain Insurances against Death or Injury from other than Natural causes. (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. From and after the passing of this Act, there shall become due and payable, for and in respect of all coupons, letters, notices, or handbills which purport to insure upon the death, within a period of not more than one month from the date of issue of any such coupon, letter, notice or handbill, of any person from accident or violence or otherwise than from a natural cause, or as compensation for any personal injury received within the said period, five pounds per centum upon the annual receipts from the sale or issue or valuable consideration of all such coupons, letters, notices or handbills, which charge or duty shall be in lieu of any charge or duty heretofore due and payable in respect of any such coupon, letter, notice or handbill under Schedule II, Tariff XI, of "The Stamps and Office Fees Act, (2) 1884."

Duty on Accident Insurance Coupons.

2. Every company, society, or association, shall before in any year selling or issuing as aforesaid any such coupon, letter, notice or handbill, pay to the officer duly appointed by the Governor in that behalf, the sum of fifty pounds in respect of the duty which would become chargeable as aforesaid upon such coupons, letters, notices or handbills for the then current year ending the thirty-first day of December; provided

Deposit of £50 in respect of such duty.

- (a) That the Treasurer may after the close of such year, if satisfied that the said sum of fifty pounds shall amount to more than the total duty chargeable under the provisions of the first section of this Act, repay an amount not exceeding the difference between the said sum of fifty pounds and the sum actually chargeable as aforesaid.
- (b) That in the event of the amount of duty so chargeable as aforesaid being in excess of the said sum of fifty pounds, such excess shall be paid by such company, society, or association, so selling or issuing the coupon, letter, notice or handbill, in respect of which such charge shall be in excess of the said sum.
- (c) That no duty shall be chargeable upon any *bonâ fide* second or subsequent sale or issue for valuable consideration or otherwise of any such coupon, letter, notice or handbill, in respect of the sale or issue of which duty

¹ Extended to Proclamation No. 464 of 1893 to all the Native Territories.

² No. 20.

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shall be satisfactorily proved by the seller or issuer to have already been paid or secured.

Account to be rendered annually.

3. Every such company, society, or association, so selling or issuing as aforesaid any such coupon, letter, notice or handbill, shall render a true and correct account or return to the officer duly appointed by the Governor in that behalf, not later than the thirty-first day of January in each year, of all receipts from the sale of such coupons, letters, notices and handbills for the year ending the 31st day of December preceding the rendering of such account or return, and such account or return shall be in such form as the Treasurer may require.

Penalty clause.

4. Every such company, society, or association, so selling or issuing as aforesaid any such coupon, letter, notice, or handbill, without previously paying the amount required by the second section of this Act, or failing or neglecting to render an account or return in accordance with the third section thereof, or making or rendering, or causing to be made or rendered a false account or return, shall be liable to a fine not exceeding two pounds for every such issue without such previous payment, to a fine not exceeding five pounds for every day during which such failure or neglect shall continue, and to a fine not exceeding fifty pounds for every such false account or return.

Presumption of value for issue of coupon, &c.

5. The issuing of any such coupon, letter, notice or handbill, shall be deemed to be for valuable consideration unless or until the contrary be proved.

Short title.

6. This Act may be cited for all purposes as "The Accident Insurance Act, 1893."

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